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# UNIFORM CIVIL CODE (UCC) - A ROADMAP TO ACHIEVE GENDER JUSTICE IN INDIA

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## Introduction

The uniform civil code in India refers to the proposal of having a common set of laws that would apply to all citizens, regardless of their religion, for matters like marriage, divorce, inheritance and adoption. Currently, India has different personal laws for different religious communities. For example, Hindus, Muslims, Christians, and other groups follow their own religious laws for personal matters.

The idea of uniform civil code is mentioned in Article 44 of the Indian constitution, which is part of directive principle of state policy. However, it has not been implemented yet, mainly due to concerns over religious freedom and the belief that it could infringe on personal and religious rights.

Supporters of the UCC argue that it would promote equality, justice, and national integration by removing disparities between religious communities. On the other hand, critics argue that it could undermine religious diversity and be seen as an imposition on various communities' practices and beliefs.

The debate around the UCC is complex, touching upon the issues of secularism, social justice, and minority rights in a pluralistic society like India<sup>1</sup>.

## Historical background of the Uniform Civil Code

### Uniform civil code during the British rule-

During the British rule in India, the concept of a uniform civil code was not fully realized, but there were attempts to introduce legal reforms that aimed at standardizing certain aspects of

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<sup>1</sup> Why India needs Uniform Civil Code, Daily Excelsior, available at, <http://www.dailyexcelsior.com/india-need-uniform-civil-code>

personal law, especially for Hindus. British colonial administrators were focused on consolidating their control over the subcontinent and creating a uniform legal framework. However, the approach they took was a combination of codifying certain laws for some communities while allowing others to continue practicing their traditional personal laws.

### Key Developments during British rule-

1. Hindu law reforms- the British government did enact several reforms related to Hindu personal law, such as the **Hindu marriage act, 1856**, the Hindu widow's remarriage act 1856 and the **Indian succession act 1865**. These laws sought to improve the position of women and regulate the social practices like widow remarriage and inheritances among Hindus.
2. Muslim personal law-for Muslims, the British legacy followed the policy of allowing them to practice their personal law (based on Islamic principles) under the guidance of religious scholars. There were fewer attempts at codifying or reforming Muslim personal law, and Muslims continued to follow their own traditions in matters of marriage, divorce and inheritance.
3. Introduction of the **India Penal Code** in 1860-while personal laws largely left to communities, the British introduced a common criminal code for the entire subcontinent- the Indian penal code-which applied to all citizens, regardless of religion.
4. The British policy of non- Interference in religious laws- initially the British took a somewhat hands-off approach when it came to religious matters, allowing each community to regulate its own personal laws. However, in the 19<sup>th</sup> century, the British began to intervene more in Hindu law, in part because they felt some customs were inhumane or unjust (e.g., sati or child marriage).
5. While these reforms brought about changes in the personal laws of certain communities, they did not lead to a uniform set of civil laws for all religions. Instead, personal laws continued to vary across religious groups, reflecting the pluralistic and diverse society in colonial India.

The UCC debate emerge post-independence-

after India's independence in 1947, the idea of a uniform civil code was revived, particularly under the framework of the Indian constitution included **article 44**, which encourages the state to work towards implementing a uniform civil code, but they did not make it compulsory, as it was seen as a contentious issue. The diversity in religious laws and the concern about religious freedoms meant that the UCC was not immediately pursued after independence.

In summary, during British rule, personal laws were largely governed by religion, and while there were attempts to codify certain laws, there was no movement towards a comprehensive uniform civil code for all citizens. The notion of a UCC became a more prominent political issue only after India's independence.

### **Uniform Civil Code post the colonial rule in India-**

Post-colonial India, after gaining independence in 1947, saw the continuation of the debate around the uniform civil code (UCC). The issue has remained contentious, as it touches on matters of religious identity, secularism, gender equality, and personal freedom.

### **The Constitution of India and the UCC-**

The Indian constitution, adopted in 1950, contains article 44 under the directive principles of state policy (DPSP), which encourages the state to work towards the implementation of a uniform civil code across the country. However, it is important to note that the DPSPs are not legally binding, unlike fundamental rights.

Article 44 states-

“The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

The framers of the constitution left the implementation of the UCC to be pursued gradually, while recognizing that India's diverse population, with various religious practices, might make the immediate imposition of a UCC challenging. As a result, personal laws for different communities (Hindu, Muslim, Christian, etc.) continued to operate after independence.

### **Early efforts and reforms-**

In the years following independence, there were some significant reforms that sought to modernize personal laws, especially for the Hindu community:

**The Hindu code bills (1950s)-** these were a set of laws that modernized Hindu personal laws and sought to standardize them, addressing issues like marriage, divorce, inheritance, and adoption. The Hindu marriage act (1955), Hindu Succession Act (1956), and Hindu Adoption and Maintenance act (1956) were some of the major legislations enacted.

**The Special Marriage Act (1954)-** this law provided an alternative to religious personal laws, allowing interfaith and inter-community marriages under a secular framework. It was an important step towards creating a common legal framework for all citizens of all religions who chose not to marry under their respective religious laws.

Muslim personal law- the government did not introduce a UCC or attempt to reform Muslim personal law as extensively as Hindu law, though there were discussions in the 1970s and 1980s regarding issues like the **Muslim Women (Protection of rights in Divorce) Act, 1986**, which came about after the controversial Shah Bano case. The Shah Bano case (1985) involved a Muslim women's right to maintenance after divorce, which led to the controversial ruling by the Supreme Court in her favour. The backlash from conservative Muslim groups resulted in the government enacting a law to protect the practice of "Talaq:" under Muslim personal law.

Minority rights and political sensitivity- in the 1980s and beyond, particularly during the rise of religious and communal tensions, the call for a UCC became more politically sensitive. Religious groups, especially Muslims, expressed concerns that a Uniform Civil Code could undermine their personal laws, particularly related to marriage, divorce, and inheritance. Political parties often found themselves balancing the desire for a UCC with the need to maintain political support among religious minorities.

### **Current debate-**

The debate around the uniform civil code remains unresolved and highly polarized. Proponents and critics have made arguments on both sides-Supporters of the UCC argue that it would promote equality, social justice, and national integration. They believe that a

uniform set of laws would eliminate discriminatory practices in personal laws and ensure equality between men and women, regardless of their religion. They also emphasize that the UCC could help bring about gender justice, especially for women in communities where personal laws are seen as patriarchal (e.g., in Muslim law regarding inheritance and divorce).

Opponents argue that the imposition of a Uniform Civil Code could undermine the religious and cultural diversity of India. They believe that it could infringe upon the religious freedoms guaranteed by the constitution, especially the right to practice one's religion. Some see it as a form of state interference in personal matters and fear that it could marginalize minority communities, particularly Muslims, who might view the UCC as an imposition of the majority's values.

### **Implementation of Uniform Civil Code through various case laws in India**

The implementation of a Uniform Civil Code (UCC) in India has been a subject of ongoing discussion, with various case laws highlighting the legal complexities and constitutional debates surrounding the issue. While the Indian judiciary has not yet implemented a comprehensive UCC, there have been several landmark judgments and judicial observations that have shaped the discourse around the UCC, particularly in relation to gender justice, secularism, and personal laws. Here's a look at some important case laws that have addressed the issue:

1. **Shah Bano Case (1985):** this case is one of the most significant in the context of UCC discussion. Shah Bano, a Muslim woman, was denied maintenance after her divorce, as per Islamic personal law. The Supreme Court ruled that under **Section 125** of the **Criminal Procedure Code (CrPC)**, which applies to all citizens irrespective of religion, Shah Bano was entitled to maintenance. The judgment emphasized that personal laws should not override the protection given by secular laws like Section 125 of the CrPC. This case highlighted the potential for uniformity in laws for all citizens, irrespective of religion<sup>2</sup>. The judgment triggered debates about whether a UCC could ensure gender justice by replacing religious personal laws, especially those that were perceived as discriminatory towards women. Following the case, the Muslim Women

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<sup>2</sup> Mohd.Ahmed Khan v. Shah Bano, AIR 1985 SCC 556

(Protection of Rights on Divorce) Act, 1986 was passed, which sought to override the Supreme Court's decision, reaffirming the conflict between personal laws and secular laws.

2. **Sarla Mudgal Case (1995):** in this case, the court observed that personal laws should not permit practices that are inconsistent with the secular laws of India, like the prohibition of bigamy. The court called for the enactment of a UCC to provide uniform laws for all citizens, noting that the personal laws of various communities might lead to practices that are inconsistent with the broader societal goals of equality and justice<sup>3</sup>.
3. **John Vallamattom Case (2003):** the case revolved around the practice in the Christian community that prohibited a Christian from donating property to a religious or charitable organization unless they were at least 18 years old. the Supreme Court ruled that this provision violated the rights of the Christian community under the Indian Constitution and was unconstitutional<sup>4</sup>. This judgment reinforced the idea that personal laws should not discriminate or infringe upon an individual's fundamental rights, suggesting that uniformity in personal laws might be necessary equality before the law.
4. **Triple Talaq Case (2017):** the Supreme Court in a landmark judgment declared the practice of triple talaq unconstitutional, stating that it violated the fundamental rights of Muslim women. Judgment was a significant step towards gender justice, highlighting that personal laws should not infringe upon the dignity and equality of individuals, particularly women. The judgment demonstrated that reforms in personal laws were necessary to ensure equal rights for women, and that such laws should be aligned with the constitutional principles of equality and non-discrimination<sup>5</sup>.
5. **K.S.Puttaswamy v. Union of India (2017):** although not directly related to UCC, this case is significant in the context of personal laws, especially those that affect women's autonomy. The court held that right to privacy is intrinsic to the right to life and liberty under Article 21 of the Constitution<sup>6</sup>. This can be interpreted to mean that personal laws that infringe upon individual rights-especially the rights of women in matters like

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<sup>3</sup> Sarla Mudgal v. Union of India and Others, AIR 1995 SCC 635

<sup>4</sup> John Vallamattom v. Union of India (2003)

<sup>5</sup> Shayara Bano v. Union of India AIR 2017 9 SCC 1 (SC)

<sup>6</sup> K.S.Puttaswamy v. Union of India-Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161

marriage, divorce and inheritance-must be reformed in alignment with constitutional guarantees.

### **Uniform Civil Code and gender justice**

A Uniform Civil Code is defined in the Indian Constitution, which pushes for the formation of a common body of law. Uniformity, on the other hand, only exists in criminal laws, which applies to all citizens of the country, regardless of their religious views. All personal laws such as the Hindu Succession Act, 1956, Muslim Personal Law (Shariat) Application Act, 1937, and the Indian Christian Marriage Act, 1872, are therefore incoherent, as they grant unequal rights based on factors such as gender and religious affiliation. Various Indian political parties have pushed for legislation to be passed in parliament on this issue.

Article 44 of the Constitution of India mandates that the government work to ensure that the Indian citizens have access to a uniform civil code across the country's borders.

### **The Constitution and Gender Justice**

In the years following independence, the Indian state established a slew of laws to fulfil the Constitution's mandates, which guarantee equal rights, assist in mitigating the effects of societal discrimination and support women. While the Indian Penal Code (IPC), 1860 contains many crimes that can affect both men and women (robbery, theft, murder, etc), only a few of those crimes are especially designated as crimes against women by the IPC. For example- rape (**sec-376-IPC**) kidnapping and abduction for different purposes (**Sec. 363-373**), homicide for dowry, dowry deaths and attempts (**Sec.302/304-IPC**), torture both physical and mental (**Sec. 498-A-IPC**), molestation (**Sec.354-IPC**) and sexual harassment (**Sec. 509-IPC**).

### **Need of Uniform Civil Code for achieving gender justice in India**

The need for a Uniform Civil Code (UCC) in India, especially in terms of gender justice, has been a topic of significant debate. The UCC aims to replace personal laws based on religious customs and traditions with a common set of laws that would govern all citizens regardless of their religion, for matters such as marriage, divorce, inheritance, and adoption.

Following are the reasons for implementation of UCC to achieve gender justice in India

1. **Equality across religions-** different religious communities in India have their own personal laws, which sometimes treat women unfairly. For example, under certain religious personal laws, women may have limited rights in matters of inheritance, marriage, or divorce. A UCC would ensure that women of all religions have equal rights, promoting gender equality across religious boundaries.
2. **Gender neutrality-** some personal laws have provisions that are patriarchal or discriminatory towards women. For instance, in certain cases, women may be denied the right to initiate divorce or may have limited access to their spouse's property. A UCC could ensure that laws are gender-neutral, making sure that both men and women enjoy equal legal rights.
3. **Simplified legal framework-** the current legal system in India is complicated, with different laws for different communities. This can be a challenge for women seeking legal redress, as the processes and outcomes may vary. A UCC could provide simpler, more uniform system that is easier to understand and access, helping women seek justice without being confused by multiple legal frameworks.
4. **Protection from discriminatory practices-** several communities follow traditional practices that can be harmful to women, like child marriage or polygamy. A UCC could standardize laws that prohibit such practices for all citizens, protecting women from exploitation and discrimination.
5. **Empowerment of women-** A UCC could create a more inclusive legal system, where women's rights are recognised and upheld equally in all spheres of life. This could encourage greater participation of women in social, political, and economic activities, leading to more empowerment and progress.
6. **Promoting national integration-** A UCC can also contribute to the idea of "unity in diversity" by ensuring that the laws of the land are the same for all citizens, regardless of their religious or cultural background. This could help to bridge divides between different communities and foster national cohesion.



7. **International standards of gender justice-** India is a signatory to various international human rights conventions, such as the convention on the elimination of all forms of discrimination against women (CEDAW). A UCC that promotes gender justice could help India meet its international commitments, ensuring better protection and equality for women.

### **Challenges in implementing UCC**

While the UCC is seen as a potential step forward for gender justice, there are challenges as well:-

1. **Cultural sensitivity-** many argue that personal laws are integral part of cultural identity and religious freedom, so enforcing a UCC could lead to resistance.
2. **Political resistance-** there are concerns that UCC could be used as a tool for political agendas, causing further divisions in society.
3. **Gradual change needed-** a sudden imposition of UCC might disrupt established systems and could face practical difficulties in implementation.

Overall, while the UCC has the potential to strengthen gender justice in India, careful consideration and sensitive implementation are crucial to balance both legal reform and respect for religious diversity.

### **Conclusion**

Uniform Civil Code (UCC) has the potential to significantly contribute to achieving gender justice in India. By promoting legal equality and eliminating discriminatory practices rooted in personal laws, the UCC could help address the existing disparities faced by women, especially in matters of marriage, inheritance and divorce. While its implementation would require careful consideration of India's diverse cultural and religious fabric, a well-balanced UCC can pave the way for a more inclusive society where gender equality is not just a constitutional ideal, but a lived reality. However, it is crucial that the process of its formulation and adoption involves extensive dialogue, awareness, and consensus-building to ensure that the UCC does not inadvertently perpetuate new forms of inequality or injustice.

The Indian judiciary has consistently emphasized the need for laws that uphold the constitutional values of equality, non-discrimination, and justice for all, including women. The implementation of a Uniform Civil Code in India faces significant challenges, primarily due to religious, cultural, and political sensitivities. While a UCC may promote gender equality and justice, its practical implementation requires overcoming resistance from religious communities, political hurdles, and legal complexities. A gradual and consensus-based approach, rather than an abrupt implementation, may be necessary to ensure that the UCC is both socially acceptable and legally effective. The debate over the UCC will likely continue to evolve as India grapples with balancing its pluralistic society with the goal of achieving social justice for all citizens.