
CRITICAL ANALYSIS OF UNIFORM CIVIL CODE AND ITS IMPACT ON MUSLIMS IN INDIA

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ABSTRACT

The uniform civil code has been a debatable and controversial topic in India. The uniform civil code aims to replace personal laws and create a unitary system of personal law for the entire nation irrespective of the religion. Some favor the UCC and some are against it. In this research paper, we'll discuss the uniform civil code and the impact on the Muslim community in India. After the independence of India, UCC was unable to implement due to certain reasons, such as disagreement of the community and many more reasons. This research study investigates the uniform civil code in Uttarakhand and Goa. It also examines the two main judgments given by the Supreme Court: (1) Mohd. Ahmed Khan vs. Shah Bano Begum, 1985 and (2) Shayara Bano vs. Union of India, 2017.

While Uttarakhand was the first nation to adopt the Uniform Civil law on January 27, 2025, Goa's Uniform Civil Code is based on the Portuguese civil law of 1867. Some argue that the UCC would promote equality and secularism, while others oppose it, arguing that it will jeopardize the Freedom of conscience and free profession, practice and propagation of religion, which is guaranteed by Article 25 of the constitution.

Keywords: uniform civil code, article 25 of the constitution, Muslim

INTRODUCTION:

Uniform Criminal Laws (UCC) refers to the concept of a unitary personal law for every religion rather than different personal laws. In India, every religion has different personal laws following: Hindus, Jains, Sikhs Buddhists have the Hindu Succession Act, the Hindu Succession Act, and the Hindu Adoption and Maintenance Act, whereas in Islam, there is no codified law and it is completely based on the Muslim Personal law (Shariyat) Application Act 1937, the Dissolution of Muslim Marriage Act 1939, and Parsi and Christian have different personal laws. In simple words, create all these personal laws into single codified laws that are equally applicable to every Indian citizen. In the constitution of India, UCC is mentioned in Part IV outlines the directive principle of State Policy, *Article 44: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory state."*¹ UCC has been attempted in India, however the proposal is consistently rejected by the parliament. UCC has become a contentious issue since Uttarakhand adopted it, and it has also collided with freedom of religion, which is a fundamental right that cannot be violated. In 2024, during the speech on Independence Day, PM Shri Narendra Modi favoured the UCC and said that India should adopt the UCC in order to make it secular in the actual sense rather than the current religion-based civil code.²

HISTORICAL BACKGROUND:

There are so many questions that arise after Uttarakhand adopted the UCC, and the heated argument is still going on. Questions such as, is India ready for "one nation, one law"? Does India need UCC? If yes, then why? How will UCC change India?

In India, we have a uniform civil code on criminal offenses and civil offenses, but we have no uniformity when it comes to personal laws.

In 1849, during the time of the British rule, Lex Loci report came into existence, which emphasized the importance and necessity of uniformity in the codification of Indian law, relating to crimes, evidence, and contracts, and also talked about keeping personal laws separate from other laws. It was part of divide and rule in order to break the unity between

¹ INDIAN CONSTI. Art. 44

² Harikishan Sharma, In Independence Day Address, PM Modi Pitches for UCC, Says Time for 'Secular Civil Code', Indian Express (Aug. 16, 2024, 12:50 AM IST), <https://indianexpress.com/article/india/independence-day-address-pm-modi-pitches-ucc-secular-civil-code-9515459/>.

Indians and rule for a longer period of time.³ Every religion has personal laws, and these laws were dealt with by the local court or panchayats, and the state intervened only in exceptional matters. Hindu laws were codified, and they have been amended over time, and Brahmin laws were prioritized because the British couldn't afford to offend the upper caste, whereas Muslim laws were uncoded, and it was represented by the All-India Muslim Committee Board in order to protect the interests of Muslims.

For the first time after the independence, the B.N. Rau committee talked about the UCC, and he was appointed to reform the Hindu laws, and the report was submitted in 1947. The constituent assembly further discussed the UCC. Mohammad Ismail Sahib, who was the Indian political member and the founder of the Indian Union Muslim League, dissented the idea of UCC and said that "if anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages."⁴

B. Pockat Sahib, who was the former member of Rajya Sabha and a lawyer, said, "If such a body as this interferes with the religious rights and practices, it will be tyrannous."

WHEREAS, Nehru and BR Ambedkar supported the idea of UCC. Dr. Ambedkar said he was surprised to hear Muslims had always followed their own personal laws because there was a uniform criminal code, a common transfer of property act, a Negotiable Instruments Act, etc., in existence. In other words, there is already a uniform civil code, and the idea is to extend it to marriage and succession. Dr. Ambedkar challenged the claim of Muslim members that many of the practices came from the Quran, and so, for 1,350 years, it has been practiced by Muslims. He said, for example, the North-West Frontier Province followed Hindu law in regard to succession and other matters until 1935. In the Malabar region, Marumakkathayam, a matriarchal law, applied not only to the Hindus but to the Muslims as well. Some people wanted UCC as a part of fundamental rights, or it will be good as DPSP. The matter had to be settled by vote, and with the majority of 5:4, the subcommittee on fundamental rights, headed by Sardar Patel, decided that securing UCC was not within the scope of fundamental rights. Due to the heated debate at that time, UCC was unable to be implemented all over India and

³ *Lex loci*, Wikipedia, https://en.wikipedia.org/wiki/Lex_loci (last visited March, 2025).

⁴ Sushim Mukul, *Why Uniform Civil Code Wasn't Made Enforceable by Framers of Constitution*, India Today (Feb. 7, 2024), <https://www.indiatoday.in/india/story/ucc-uniform-civil-code-uttarakhand-dharm-history-nehru-ambedkar-constituent-assembly-constitution-law-2498704-2024-02-07>.

included part IV, i.e., the directive principle of state policy under Article 44 of the Constitution of India, by saying that when Indians are ready, UCC will be implemented by then.

UCC IN GOA AND UTTARAKHAND:

In 1867, Portugal enacted a Portuguese civil code, and Goa is considered a Portuguese colony, so Goa adopted the Portuguese civil code in 1870. Even though Goa became part of India, there were no changes in the UCC there, and the UCC is drafted according to European culture.⁵ Goa has laws such as the following:

- The parents can't completely disown the children from the property; they have to give their share, and it must be divided among all the children regarding their gender.
- If any Muslim man registers his marriage in Goa, then he cannot commit polygamy; he will be punished under sections 494 and 495 of the IPC.⁶
- In case of divorce, if the couple jointly owned the property before or after the marriage, then both of them are legally entitled equal share.

The Goa's UCC is not rigid in nature, it's also flexible in the sense that there are certain laws that are similar to India's personal law.

Later, in 2024, Uttarakhand has become the first state to adopt the Uniform Civil Code. Their main aim is to regulate a single personal law for all the communities regarding their caste, gender, and religion. Chief Minister Pushkar Singh Dhami described it as a "historic moment" for the nation. The UCC Act contains six chapters and 21 sections, and it applies to the entire nation, except the tribal areas, since they have their own rules, regulations, and laws.⁷ Certain key provisions on marriage and divorce, live-in relationships and termination of live-in relationships, intestate succession, testamentary succession, and appeals. The chief minister has introduced new rules and regulations and also created a portal <https://ucc.uk.gov.in/about-us> for registration of marriages, divorces, and live-in relationships.⁸ There are certain reasons

⁵ Apurva Vishwanath, Goa is the Only State with a Uniform Civil Code. Here's What It Looks Like, Indian Express (Aug. 16, 2023), <https://indianexpress.com/article/india/goa-is-the-only-state-with-a-uniform-civil-code-heres-what-it-looks-like-8894824/>.

⁶ *Indian Penal Code*, §§ 494–495 (1860) (India).

⁷ The Uttarakhand Uniform Civil Code, 2024, Act No. 04 of 2024 (India).

⁸ Uniform Civil Code, Uttarakhand, <https://ucc.uk.gov.in/> (last visited march 21, 2025).

Uttarakhand needs UCC, such as

- Uttarakhand has faced problems in personal laws due to its multireligious population. In order to maintain equality, they need equal personal laws such as marriage, divorce, and inheritance.
- Ever since live-in relationships came into existence, they have needed to be registered.
- Encourage women's empowerment. In some parts of Uttarakhand, specifically hilly and rural areas, women are considered inferior. UCC provides and promotes equality between genders.

ARGUMENT FOR AND AGAINST THE UCC

Ever since the BJP began to rule in India, one of the important agendas has been to implement the UCC in India. Uttarakhand and Goa have UCC successfully, now there are several states that are demanding UCC, such as Madhya Pradesh and Gujarat, where governments have also appointed committees to initiate the formulation of the UCC. There are certain reasons why the UCC is required, such as

- It simplifies the legal system by creating the same personal laws regarding their religion. This will prevent the personal harm that is segregated on the basis of religious belief.
- It promotes equality and secularism, which are given in the Preamble.
- It promotes gender equality and women's empowerment. Current personal laws have disadvantages for women regarding their marriage, divorce, inheritance, and property rights.
- It promotes national integrity, which makes India one regarding their religion, gender, and caste. It also promotes modernization.

But it has also created problems and challenges while implementing the UCC all over the nation, such as:

- There's no consensus among the communities. Due to the multireligious country, what rules should be applicable and what not, that are appropriate for all the communities, will be the biggest challenge.
- Due to lack of agreement on the provisions of the UCC, it is difficult to establish whether the UCC will be accepted by the communities or not.
- It will also be difficult for the drafting committee to draft the UCC, which will be accepted by all the communities.
- It is seen as a threat to the right to religion, which is the fundamental right, and it can't be breached at any cost. It might hurt the religious sentiments or beliefs of any religion, and if the government establishes it, then there will be state interference in personal religious affairs.
- Fear of majoritarianism, which could reflect the religious practices.
- There are chances of having internal wars within the state if the sentiments of any religion are hurt. It could increase the risk of social unrest and communal division.
- It is a huge threat to the federalism of India. In the matter of the concurrent list, if there is a conflict between state and central government laws, then the central government prevails. If the UCC is implemented by the central government, then the power of the state government could diminish.

In modern India, critics say it'll be implemented to impose Hindu laws over Muslim minorities and target them. AIMIM Chief Asaduddin said that the UCC bill forces Muslims to follow the culture of the other religions. He further said, "The Uttarakhand UCC Bill is nothing but a Hindu code applicable to all. Firstly, the Hindu undivided family has not been touched. Why? If you want a uniform law for succession and inheritance, why are Hindus kept out of it? Can a law be uniform if it doesn't apply to the majority of your state?"

Nagaland rejected the idea of UCC. Chief Minister Neiphiu Rio said, "Whereas the apparent objective of the UCC is to have a single law on personal matters such as marriage and divorce, custody and guardianship, adoption and maintenance, succession and inheritance, which in our

view should pose a threat to our customary laws, social practices, and the religious practices that will be in danger of encroachment in the event of imposition of UCC,⁹

But the main aim of the UCC is to have same personal law for all the religions. UCC has pros and cons, but if it is implemented in India, then it could cause chaos all over the nation. These days, it has become the topic of the creating difference in religion and political gain. If UCC is enacted on the entire nation, then the government has to make sure that every single community agrees with the rules and regulations and it will not infringe on the fundamental right and it shouldn't hurt the sentiments of the community. India is a diverse country with billions of people, so it would be difficult to enact the UCC because most of the religious communities will not agree with it, and it could begin an internal war.

WHEREAS, it's high time that India adopted a uniform civil code in which every religious community agrees to the rules and regulations. But it should not be rigid, and personal laws must not be replaced by a uniform civil code.

IMPACT ON MUSLIMS:

The main aim of UCC is to implement the one equal personal law for every religious community, and some people are supporting it, and some are rejecting it as well as making a political agenda. The majority of Muslims support the UCC, but it needs to be implemented to make sure the Hindu civil code does not overreach.

According to the survey conducted by CNBC TV 18 majority of Muslim women support the common law for personal matters. Approximately 67.2 percent of the 8,035 Muslim women interviewed by *News18* from 25 states and Union Territories across India said they would support the implementation of a law such as the UCC for personal matters such as marriage, divorce, adoption, and inheritance. Meanwhile, 25.4 percent, or 2,039 women, said they wouldn't support such a law, while the remaining 7.4 percent "didn't know or couldn't say." Notably, the percentage of "yes" responses stayed somewhat the same across different

⁹ CNBC TV18, Nagaland Assembly Unanimously Adopts Resolution Against UCC: Neiphiu Rio, CNBC TV18 (Sept. 12, 2023), <https://www.cnbc18.com/politics/nagaland-assembly-unanimously-adopts-resolution-against-ucc-uniform-civil-code-neiphiu-rio-17791941.htm>.

subgroups of women, such as those who had completed their graduation (68.4 percent), those in the 18-44 age group (69.4 percent), and those over 44 years old (59.6 percent).¹⁰

The survey conducted by the Tribune found 99.8% in favor of the uniform civil code. In the survey conducted by News18, 67.2% of women supported the common law regarding marriage, inheritance, and divorce. Muslim organizations reacted strongly to the centre's recent announcement that the Law Commission would hold UCC consultations afresh, with the All-India Muslim Personal Law Board (AIMPLB) saying the "majoritarian morality" should not override religious freedom and rights of minority communities in the name of a code.¹¹

UCC cannot be implemented completely all over the nation. There must be certain limitations that need to be established in order to maintain secularism and prevent war. It is not possible to implement UCC all over the country by the central government because it will cause internal war. If the state feels like UCC is needed, then it has to implement rules according to the state's needs, rather than the same provisions of UCC all over the nation. Although critics fear that it might be a threat to the right to religion and their identities. Under Muslim law, daughters receive an equal share, and the wife gets one-eighth if there are children and one-fourth if there aren't children. The son gets double the share of the daughter. The UCC will allow equal share, which may be seen as affecting their religious laws.

Article 25 of the constitution of India¹² provides the right to freedom of religion, some Muslims fear that whatever standard law will dilute the religious identities and customs. There is also the potential chance of political misuse; the inquiry about the UCC has been politicized. There are fears that it can be used as a weapon against Muslims, not in the spirit of genuine gender justice.

JUDICIAL PRONOUNCEMENT

In the case of Mohd. Ahmed Khan vs. Shah Bano¹³, which is also known as the Shah Bano

¹⁰ News18, Uniform Civil Code Survey: Muslim Women Support Common Law in Personal Matters Like Divorce, Marriage, Adoption, CNBC-TV18 (Dec. 16, 2022), <https://www.cnbctv18.com/india/news18-uniform-civil-code-survey-muslim-women-support-common-law-personal-matters-divorce-marriage-adoption-17169121.htm>.

¹¹ Tribune News Service, 99.8% in Favour of Uniform Civil Code, Reveals Survey, The Tribune (June 28, 2023), <https://www.tribuneindia.com/news/jalandhar/99-8-in-favour-of-uniform-civil-code-reveals-survey-521189/>.

¹² India Const. art. 25.

¹³ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556 (India)

case. In 1978, Mohd. Ahmad Khan gave irrevocable talaq (divorce), i.e., triple talaq, to Shah Bano, and then she filed the appeal in local court for the maintenance under Section 125 of the Code of Criminal Procedure. Ahmed Khan defended himself by saying that according to Muslim personal laws, husbands are entitled to provide maintenance until the iddat period. The timeline for the iddat period is 3 months in this case. All India Muslim Personal Board also supported Ahmed Khan's stance, and this board argued that the court does not have the power to interfere in the matter, which comes under the Muslim Personal Laws Application Act, 1937. Courts are only allowed to adjudicate the matter as per the shariyat provisions. However, the high court has given the judgment in favor of Shah Bano and ordered her husband to give Rs.25 for maintenance.

Later Shah Bano filed a revision appeal in Madhya Pradesh High Court to increase her maintenance money in 1980, and the court favored Shah Bano by increasing the maintenance money from Rs. 25 to Rs. 179.80. In 1980, the case took place in the Supreme Court in 1985 for seeking the maintenance under Article 125 of the Code of Criminal Procedure. At that point, the Supreme Court recognized the need to address the anomalies with all personal laws and recognized the need to address the issue of gender inequality. The former CJI Y.V. Chandrachud, with five bench judges, upheld the judgment of the Madhya Pradesh High Court and further increased the maintenance. The Supreme Court gave a verdict in favor of Shah Bano by applying section 125 of the Indian Criminal Code, and it is applied to all citizens irrespective of religion. Then Chief Justice Y.V. Chandrachud observed that a common civil code would help the cause of national integration by removing disparate loyalties to law. And so, the court directed Parliament to frame a UCC.

After the verdict of the Shah Bano Case, the Congress government was not happy and supported the Muslim Women Act, 1986. The majority of people in the Muslim community were dissatisfied with the judgment of the Supreme Court, and this began the political turmoil within the Congress government. The Muslim Women (Protection of Rights on Divorce) act, 1986, was enacted to nullify the judgment of the Supreme Court and let the Muslim Personal Law prevail in the matter of divorce. It was held that the maintenance period is 3 months, i.e., until the iddat period. In this act it was mentioned that a Muslim woman has the right to maintenance only for three months after the divorce, i.e., iddat, and then shifts her maintenance to her relatives or the Wakf Board.

Whereas, In the case of Shayara Bano vs. Union of India¹⁴, which is also known as the triple talaq case. In this case Shayara Bano's husband gives her irrevocable talaq, i.e., triple talaq. She filed a petition in the Supreme Court and challenged the Personal Muslim Law's three practices following Nikah Halala, polygamy, and Talaq-e-biddat. CJI Jagdish Keher with a five-judge bench was held, and on 22nd August 2017, the Supreme Court ruled on the constitutionality of the practice of triple talaq in Shayara Bano vs. Union of India by a 3:2 majority and deemed this practice as unconstitutional and held that it violated fundamental rights under Article 14, Article 15, and Article 21 of the Indian constitution. The decision in Shayara Bano v UOI not only aimed to uphold gender equality but also set a precedent for future reforms in personal law and foster a more secure and just environment for Muslim women in India.

CONCLUSION:

It is concluded that a uniform civil code is complex due to diversity in India, and it is very difficult to implement the UCC. There are both pros and cons. It will support gender equality and women's empowerment and prevent misuse of personal laws, whereas it will also threaten Article 25 of the Constitution, political misuse, and create confusion in laws. However, the uniform civil code should be implemented according to the state's needs as well as to fulfil the requirements of the citizen. UCC needs to make sure that every religious community will get a benefit and no one's religious sentiment will get hurt. Women's right activist Zakia Soman and co – founder of Bhartiya Muslim Mahila Andolan supported the uniform civil code and quote that “As a woman, I want to engage with the Uniform civil code process”. There is no right time for the gender justice. This ought to have happened under the congress or coalition governments of the past.

¹⁴ Shayara Bano v. Union of India, (2017) 9 S.C.C. 1 (India).