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## The Relevance of Uniform Civil Code in the Indian Society

Bharat Kumar and Anirudh Yadav

### Abstract

India is a land of diverse culture, tradition, custom, beliefs and faith. This is imitated in our judicial framework, which contains personal laws based on religion. India has a distinctive blend of Hindu, Muslim, Christian and Parsi's codified personal laws. There is no distinct family law applicable to all Indians in a common law books that is acceptable to all of India's religious communities. Our leaders are directed by the Directive Principles of State Policy to establish a common personal law for all religions, which has been a source of debate. Uniform Civil Code is a system of statute that governs the personal affairs of all individuals, regardless of faith, and ensures that their fundamental and constitutional rights are maintained. A Uniform Civil Code means that all members of society, irrespective of religion, will be treated likewise under a common civil code that will apply to everyone.

The Uniform Civil Code has long been seen as an excellent means for apprehending the Indian women's emancipation and elevating their standing in social institutions such as marriage and family. It will promote citizen's fraternity and togetherness by giving them with a system of personal laws that embraces core ideals of humanism. This article tries to evaluate the entire discourse around a Uniform Civil Code, including Constituent Assembly debates, justifications for its necessity and numerous reservations about its character, in order to determine the scope to which the issue of women is addressed. It is important to examine how the judiciary has attempted to approach the issue of gender parity via the Uniform Civil Code discourse. It also focuses on the challenges that forge in its path and lays down suggestions for its implementation.

**Keywords:** Uniform Civil Code, Constituent Assembly, Religion, Family, Marriage, Fundamental Rights, Directive Principles of State Policy.

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## Introduction

The notion of an egalitarian society is embodied in the Constitution of India. The vision of India's founding fathers was to create a country where all people, regardless of religion, caste, sex or place of birth, would have equality before the law and equal protection of law. To achieve these goals, numerous rules have been enacted to ensure that the state does not discriminate against its citizens based on religion, race, sex or place of birth. Another set of examples is the Directive Principles of State Policy, in which the Indian Constitution guides the state to pursue these policies in order to achieve the objective of an egalitarian society.

The term 'civil code' refers to the compilation of laws that regulate property rights and other personal affairs such as marriage, divorce, child maintenance, adoption and inheritance.<sup>i</sup> Different laws govern these issues for different communities in India at the moment. As a result, Hindu laws governing divorce and inheritance rights would vary from those governing other religions. The demand for a common civil code comprises integrating all the personal regulations into a common set of temporal laws that will adhere to every citizen of India, irrespective of their religion. Goa is the only state in India with a Uniform Civil Code that includes single family law for all. In the nineteenth century, Goa adopted the Portuguese Civil Code, which is still in effect today and was not changed even after the independence of the country.<sup>ii</sup>

We have a criminal law in India that applies to all of us, irrespective of religion, caste, gender or where they live. However, there is no analogous code in place, notably in the fields of divorce and inheritance, and even now, people are regulated by personal laws. These personal laws have various origins, rationales, and implementations. Therefore, gathering people from different religions under one roof poses a significant challenge. Article 44 of the Constitution of India declares that, "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India".<sup>iii</sup> If adopted, the Uniform Civil Code will cover all religious sect's personal laws concerning above-mentioned areas, all of which are secular in nature. Despite the fact that B.R. Ambedkar was a resilient supporter of the Uniform Civil Code, he only managed to get it passed as a Directive Principle instead of as Fundamental Rights because some members in the constituent assembly opposed. The purpose of the directive guidelines is to establish more equality for all citizens in a gradual manner. This huge obligation has been given to the government. However, till now, no significant efforts have been made by any government.



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A formula for a uniform personal law is offered in such a setting, and uniformity is presented as a method to cure all of the repressive problems that have crept into our existing personal laws. The Uniform Civil Code, as envisioned by our Indian Constitution, has been lauded as a wonderful panacea for all the social ills that Indian women suffer.

### **Historical Background and Constituent Assembly Debates**

While personal laws are not a new phenomenon, the Indian system of personal laws as we know it now dates from the late 18th century, when the officers of the East India Company excluded elements of religious law from their application.<sup>iv</sup> In disputes over inheritance, marriage, caste, and other religious practices and institutions, the 1772 Plan of Warren Hastings declared that Hindus and Muslims would be regulated by their respective laws. Granting colonised communities considerable autonomy helped the colonists diffuse resistance to colonial control and was thus administratively advantageous.<sup>v</sup> However, while the British consolidated the rules in the area of criminal law with the Indian Penal Code of 1862, they did not take akin step in the area of civil law with reference to the family. However, the British amended the personal laws through their interpretation, resulting in a “strange combination of religious regulations and English legal conceptions” and the creation of what was originally recognised as Anglo-Hindu law and Anglo-Muslim law.<sup>vi</sup>

With the Indian independence movement, the call for a secular Uniform Civil Code arose, as such a Code was intended to promote unity amongst all communities and establish a united assembly against the dominance of British. The controversy raged during the constitution-making process. The proponents of the Code thought that, in order to develop a nation and modernise it, India needed to secularise its legal system. The right to religious freedom, besides elements of community identity and religious minorities protection, have all been offered as grounds against the Uniform Civil Code.<sup>vii</sup>

We should analyse the constitutional basis of Article 44 of the Constitution, as well as the objectives underlying its inclusion in the Directives Principles of State Policy, to have a greater consideration of the Uniform Civil Code. The decision to provide the Uniform Civil Code in the Directive Principles of State Policy, Article 35 in the proposal and Article 44 in the final Constitutional documents, was based on Nehru and Gandhi’s promise to the Muslim clerics that the adoption of a Uniform Civil Code would be delayed and that it would be made a state obligation.<sup>viii</sup> The basis for this guarantee was the agony of partition, when Muslims who chose to remain in India feared that their religious and cultural practices would be eroded in a Hindu India.<sup>ix</sup> In response, K.M. Munshi, B.R. Ambedkar and



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Alladi Krishnaswamy Iyer, advocated that it should be included in the Directive Principles to serve as an ideal for social justice. Ambedkar was a fervent believer in the state's right to intervene in religious matters by enacting legislation, especially where this action served the cause of social justice.<sup>x</sup>

According to K.M. Munshi, Constituent Assembly's Drafting Committee member, the architects of the Constitution aimed to integrate personal law in order for the country's way of life to become cohesive and secular over the period. He also referenced the case of Europe, which has a civil code that every person from all over the world is required to adhere. There is no reason to conclude that the Uniform Civil Code seek to assert authority over the minorities.<sup>xi</sup> Rajkumari Amrit Kaur underlined the urgency of a Uniform Civil Code, calling it 'critical' to the development of society. The occurrence of personal laws found on religion, which divided the country in many aspects of life, is one of the reasons holding India back from becoming a nation, according to Amrit Kaur, Hansa Mehta and M.R. Masani, who demanded that the uniform civil code provision be moved from the directive principles part to the fundamental rights part. Other associates of the Constituent Assembly like Mohamed Ismail Saheb, who was backed by B. Pocker Sahib, argued that a right to one's own personal law should be included in the fundamental right to religion and people were not forced to give up their own personal law.<sup>xii</sup>

In support of Uniform Civil Code, B.R. Ambedkar in the Constituent Assembly debate said,

I don't personally understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequalities, discriminations and other things, which conflict with our fundamental rights.<sup>xiii</sup>

B.R. Ambedkar has long been a vocal opponent of the mainstream Hindu society. He had already highlighted various ills of Hinduism, namely casteism and untouchability, to the point where he denounced himself as a Hindu. Despite this, he disputed in the Constituent Assembly that the Uniform Civil Code was a mouthpiece for the majority or that the majority was tyrannical. He added that the Shariat Act of 1936, which became relevant to the Muslims in India, was an instance of how useful homogeneity in legislation is, and that it was appreciated by Muslim colleagues. For their own benefit, the Muslims who were controlled by Hindu laws in distinct locations were all mutually come under the ambit of this unified law. Similarly, if certain precepts of a majoritarian religion, such as Hinduism, were integrated into the Uniform Civil Code, it would be because they were appropriate for



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a progressive society, not because they belonged to Hinduism. This is not to be confused with tyranny of the majority.<sup>xiv</sup>

This comment by B.R. Ambedkar says volumes about his commitment to a Uniform Civil Code so as to bring about the much-needed improvements in an Indian's personal law dimensions, regardless of religion or group. Hindu Code Bill was outlined by B.R. Ambedkar to mend Hindu laws, which made divorce legal, outlawed polygamy, and provided inheritance rights to daughters. A diluted version of the code was passed i.e. the Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956, and Hindu Succession Act 1956, despite strong opposition.

### **The Judiciary on Uniform Civil Code**

The Indian Supreme Court has always been a staunch advocate of the Uniform Civil Code. The well known case of Mohd. Ahmed Khan vs. Shah Bano Begum And Ors<sup>xv</sup> brought the topic of the Uniform Civil Code to the forefront once more. The Supreme Court in this well-known case brought a divorced Muslim lady under Section 125 of the Code of Criminal Procedure, 1973, and ruled that she was allowed to receive maintenance in spite of her 'iddat period' had finished. The Shah Bano case has become a watershed moment in the history of religious, secular, and gender rights debates. The Shah Bano case emphasises the necessity for a unified law that meets a woman's basic needs. It tries to argue that the suffering of women should be at the centre of any women's rights legislation. The matter that the law should try to sort out rather than what the particular religion has set down for that woman is the husband's failure to keep his wife after comfortably granting her a divorce.

The question in Smt. Sarla Mudgal, President, Kalyani & Ors vs Union of India & Ors<sup>xvi</sup> was if a Hindu husband who was married under Hindu law can marry again by accepting Islam. Acceptance of Islam for a second marriage, according to the Supreme Court, is a violation of personal laws. Furthermore, the Hindu Marriage Act, 1955, allows Hindu marriages to be dissolved, which implies that simply converting to Islam and marrying again will not end the marriage under Hindu Marriage Law, and thus it will be a violation of Section 494(5) of IPC. In the Sarla Mudgal case, the Supreme Court urged the state to adopt a unified civil code based on the principle that in a cultured society, there is no vital link between religion and personal law. Such legislation is deemed vital because it contributes to the stability of the marriage and family institution, which in turn supports social homogeneity and as a result, national integration.<sup>xvii</sup>



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In 1997, John Vallamatton, a priest from Kerala, filed a writ petition and said that Christians faced discrimination under Section 118 of the Indian Succession Act as it imposed arbitrary check on their willful gift of property for religious purposes. In *John Vallamattom & Anr against Union of India*, the Supreme Court declared the Section invalid and stated that it is a big concern that Article 44 of the Indian Constitution has not been implemented. Parliament has yet to intervene in the process of drafting a unified civil code for the country. By resolving ideological inconsistencies, a Uniform Civil Code will aid the process of national unity.<sup>xviii</sup>

In *Shayara Bano vs Union of India And Ors*,<sup>xix</sup> The Supreme Court refutes the application of Talak-ul-Biddat. It was a triumph for Muslim women in terms of their fundamental human rights and equality as guaranteed by the Indian Constitution. This decision was made on the basis of individual rights, not religious beliefs. This recent ruling is largely seen as laying the groundwork for the Uniform Civil Code.

### **Relevance of Uniform Civil Code**

Under international law, a state that endorses an international treaty is lawfully obliged to fulfill its obligations. Therefore, by ratifying the International Covenant on Civil and Political Rights (ICCPR) in 1966 and the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, India is obligated to implement the apt provisions and assure gender equality in state laws. Women in India, however, continue to face discrimination and injustice in the fields of marriage, succession, divorce, and inheritance under Hindu, Muslim, and Christian laws. The personal laws of many communities must be evaluated and reformed as a first move for a just gender code.<sup>xx</sup>

Even after the codification of personal laws, women's social status is still marred by an inferiority complex. Women and girl children of all religions are equally affected by succession and marriage difficulties. The state has the authority to establish specific arrangements for children and women under Article 15(3) of the Indian Constitution.<sup>xxi</sup> Apart from that, personal laws should be interpreted in light of human rights. Human rights include the principles of equality and fairness, which are also incorporated in the Preamble of the Indian Constitution. The creation of a Uniform Civil Code could be the ultimate solution to eliminating gender discrimination that has pervaded our religious and social structures. The Uniform Civil Code also tries to address the particularistic and frequently reactionary features of religious group's personal laws. As a result, bringing about social reform and uplifting the position of women is also an objective. For the welfare of societal modernity and a



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common code of justice for all, the Uniform Civil Code is highly desirable.<sup>xxii</sup>

The one common reason used by all political parties to justify their opposition to the execution of the Uniform Civil Code is that doing so would violate rights under Article 25, which includes “freedom of conscience and free profession, practice, and propagation of religion”. Here, I would like to propose a counter argument which is found in 25(2), where it is stated explicitly that this article will not change the working of any existing law.<sup>xxiii</sup>

Furthermore, if all religions are governed by the same set of rules, politicians will have less to give their vote banks in return. As a result, the code can put an end to the current vote bank politics. The lack of such a unified set is harmful to democracy’s genuine ethos and must be addressed.

The Uniform Civil Code must be followed by people of various religions and faiths. It will enhance the secular fabric while also ensuring national unity and integrity. In order to achieve this objective in the spirit of secularism, all religious beliefs must come together to form a shared and coherent set of ideas and aspirations. The purpose of creating a uniform civil code that regulates personal laws is to serve everyone fairly by implementing reasonable and equitable standards. Moreover, being the cornerstone of secularism, such a code would aid in the formation of a system of laws that would administer the personal matters of all citizens, irrespective of faith.

By establishing personal laws, we have created an alternative legal system based on norms that date back thousands of years. That would change if there would be a single civil code. It is a symbol of a modern progressive nation that discard religious and caste politics. Our economic development has been great, but our social development has been slow. A Uniform Civil Code will aid societal progress and assist India achieve its objective of becoming a fully advanced country. All rules pertaining to marriage, inheritance, family and other matters should be applied equally to all people of India. A universal civil code is the only way to guarantee that all People are treated equitably. A unified civil code does not imply that people’s right to practice their religion would be hindered; rather, it means that everyone will be treated as equals and that all Indian citizens, whether Hindus, Muslims, Christians or Sikhs, will be bound by the same laws.

### **Challenges**

Given the scope of interests and opinions that must be looked upon, establishing a set of laws that would apply to each community is a difficult and time-taking task. Misinformation about the Uniform Civil Code is one of the most serious difficulties. Minorities may believe the Uniform Civil Code is a



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way of imposing majority beliefs on them because the substance has not been specified. Due to the topic's intricacy and sensitivity, another stumbling block is a lack of political will. Personal laws differ amongst religious communities, causing the fight over the Uniform Civil Code to become politicised. Personal laws, according to opponents of the Uniform Civil Code, are drawn from religious convictions. They argue that it is best not to bother them because this might lead to enmity and hatred between different religious communities. Additionally, as a secular society, India provides minorities the right to practice their own religion, culture, and to administer their educational institutions mentioned under Articles 29 and Article 30 of the Constitution.<sup>xxiv</sup> They believe that enacting the Uniform Civil Code would violate these articles.

Article 44 is laconic in itself. It simply urges the state to create a 'common civil code' for the entire country. The universal civil code is not mentioned in any other portion of the Constitution. Articles 371A and 371G, on the other hand, clearly prohibit the application of parliamentary legislation to customary customs lest the state legislatures of Nagaland and Mizoram agree. In tribal regions of Meghalaya, Assam, Mizoram and Tripura, the Constitution's Sixth Schedule gives regional and district council exclusive law-making jurisdiction over customs and family law. As a result, Parliament cannot create a Uniform Civil Code that applies to whole India, especially the state of north-east.

In order to meet the goals of the Directive Principle of State Policy and adopt Uniform Civil Code, the following ideas should be addressed as soon as possible:

- To embrace the essence of the Uniform Civil Code, people should be encouraged to adopt a modern and secular outlook. To do this, education and awareness measures must be implemented.
- The Uniform Civil Code should be designed with core concerns of all religious communities in consideration.
- A committee of esteemed experts should be constituted to keep conformity and focus should be given on not to outrage the feelings of any group or community.
- Given the sensitive nature of the topic, it is important that the effort comes from the religious bodies involved.



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## Conclusion

The preamble of the Indian Constitution provided ideals of liberty, equality, fraternity and justice to the people of India. To instill these ideals in a society, the government must make a concerted effort to eradicate social and economic inequality and progress toward a social order formed on economic, social and political equality and justice. Personal laws in India are a peculiar mixture of Hindu, Muslim, Christian, and Parsi's customs and beliefs. There is no unified family law for all the people of India in a common law books that is acceptable to all of India's various beliefs. Most of them, however, feel that a Uniform Civil Code is essential and would aid in the development and consolidation of India's national character. The Uniform Civil Code would be an ideal protector of citizen rights in an ideal state. It will be a progressive piece of legislation if it is passed. With the passage of time, the need for a Uniform Civil Code for all citizens, irrespective of religion, has developed, safeguarding the protection of their fundamental and constitutional rights. The introduction of a unified civil code can help foster secularism and national integrity.

Lastly, we should remember Mahatma Gandhi's words, "I do not expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religious working side-by-side with one another."

## Endnotes

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<sup>v</sup> Mullally, S. (2004). Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case. *Oxford Journal of Legal Studies*, 24(4), p. 676.

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