



# ILE

FORTNIGHTLY REVIEW

VOLUME 1 AND ISSUE 5 OF 2023

INSTITUTE OF LEGAL EDUCATION



## ILE FORTNIGHTLY REVIEW

APIS – 3920 – 0035 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://fn.iledu.in/>

Journal's Editorial Page – <https://fn.iledu.in/editorial-board/>

Volume 1 and Issue 5 (Access Full Issue on – <https://fn.iledu.in/category/volume-1-and-issue-5-of-2023/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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## A CRITICAL ANALYSIS OF UNIFORM CIVIL CODE

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**Best Citation** – JAISIKA BANSAL, A CRITICAL ANALYSIS OF UNIFORM CIVIL CODE, *ILE FORTNIGHTLY REVIEW (ILE FN)*, 1 (5) of 2023, Pg. 23-29, APIS – 3920 – 0035 | ISBN – 978-81-964391-3-2.

### I. Abstract:

*This paper examines the basic nature and implications of the uniform Civil Code. The paper begins with an introduction to uniform Civil Code, discussing its origin or Objectives. In addition, this part itself describes the need or desire for a Uniform Civil Code, whether it should be implemented or not. Continuing the research paper, this paper discusses the observation regarding the Goa Civil Code, with the Report of Law Commission of India including its controversies.*

*We then move on to the argument in favour of the implementation of Code and arguments against the implementation of Uniform Civil Code. The paper also discusses the challenges in implementing the UCC which Indian judicial judgement and attitudes towards the Uniform Civil Code. Finally, I concluded it with some recommendations and conclusion.*

*The idea of Uniform Civil Code refers to the amount set of secular civil laws which govern all citizen of India with no consideration of their religion, caste, language or tribe which will be governed under it are the personal laws related to the adoption, maintenance, marriage and divorce. This paper involved the questions emerged in debate of Uniform Civil Code. The analysis is with respect to the present condition of communities at gross root level the need for the hour. The paper question the concept of unified civil code and propagated also till what extent is it feasible for Indian population.*

### II. Keywords: -

Implement, Constitution, Act, personal laws, equality, freedom

### III. Introduction:

The Uniform Civil Code (UCC) is a proposal in India to formulate and implement personal laws of citizens which apply to all citizens equally regardless of their religion. The code comes under Article 44 of the Indian Constitution, which states that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India. The UCC calls for the formation of one law in India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, and adoption. The UCC is meant to

replace the various laws applicable to various communities which are inconsistent with each other. These laws include the Hindu Marriage Act, Hindu Succession Act, Indian Christian Marriage Act, Indian Divorce Act, and Parsi Marriage and Divorce Act. Meanwhile, certain ones like Sharia (Islamic Laws) are not codified and solely based upon their religious scriptures. The proposals in UCC include monogamy, equal rights for son and daughter over inheritance of paternal property, and gender and religion-neutral laws in regards to will charity, divinity, guardianship, and sharing of custody. The laws may not result in much difference to the status

of Hindu society as they have already been applicable on Hindu through Hindu code bills for decades. The debate for the UCC dates back to the colonial period in India, and during the drafting of the constitution, prominent leaders like Jawaharlal Nehru and Dr. B.R. Ambedkar pushed for a Uniform Civil Code. However, they included the UCC in the Directive Principles of State Policy (Article 44) mainly due to opposition from religious fundamentalists and a lack of awareness among the masses during the time.

#### A. Article 44:

Article 44 of the Indian Constitution, which is a part of Directive Principles of State Policy, states that the State shall endeavour to secure a Uniform Civil Code for citizens throughout the Country, the objective of Article 44 was to address the discrimination against vulnerable groups and harmonise diverse cultural groups across the country. Dr. B.R. Ambedkar, while formulating the Constitution, had said that a UCC is desirable but for the moment it should remain voluntary, and thus Article 35 of the draft Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made, Ambedkar had also said that no one should be apprehensive that if the State has the power, it will immediately proceed to execute that power in a manner that may be found to be objectionable by any community.

#### B. Origin:

The origin of the UCC, however, dates back to colonial India when the British government submitted its report in 1835 stressing the need for uniformity in the codification of Indian law regarding crimes, evidence, and contracts, specifically recommending that personal laws of Hindu and Muslim be kept outside such codification. The increase in legislation dealing with personal issues in the far end of British rule forced the government to form the BN Rao

Committee to codify Hindu law in 1941. The task of the Hindu Law Committee was to examine the question of the necessity of common Hindu Laws. The committee, in accordance with scriptures, recommended a codified Hindu law, which would give equal rights to women. The 1937 Act was reviewed and the committee recommended a civil code of marriage and succession for Hindus.

However, the demand for the Uniform Civil Code was first put forward by women activists in the beginning of the twentieth century, with the objective of women's rights, equality and secularism. Till independence in 1947, a few law reforms were passed to improve the condition of women, especially Hindu widows. In 1956, the Indian parliament passed Hindi Code Bill amidst significant opposition. Through a demand for a Uniform Civil Code was made by Prime Minister Jawaharlal Nehru, his supporters and women activists, they had to finally accept the compromise of it being added to the Directive Principles because of heavy opposition. The Uniform Civil Code (UCC) is a proposal in India to formulate and implement personal laws of citizens which apply on all citizens equally regardless of their religion, gender, and sexual orientation.

#### C. Objective:

- The Uniform Civil Code is a proposal in India to formulate and implement personal laws of Citizens which apply on all citizens equally regardless of their religion, gender, Caste.
1. The UCC aims to provide a single set of legal rules governing personal matters like marriage, divorce, inheritance and adoption for all citizens of India, irrespective of their religion.
  2. The idea of Uniform Civil Code is to bring about a sense of cohesion and equal treatment among all Indian citizens.



3. The Uniform Civil Code resonates with the idea of "one Country, one rule" to be applied to all religious communities.
4. The UCC comes under Article 44 of the Indian Constitution, which lays down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.
5. The objective of the Uniform Civil Code is to address each individual and every issue with a common law for all and evict contradictions based on religious customs and practices.

#### IV. Literature review:

The Uniform Civil Code will ensure equality among all the people who live in the territory of India and how it will make sure that everyone will be treated equally if the Uniform Civil Code is implemented. Hindu man monogamy and uniform Civil Code provides an insight of religious aspects that will be affected by the Uniform Civil Code. It will eliminate the unequal status of a child adopted by Hindu and a child adopted by Non-Hindu. A Uniform Civil Code will guarantee equitable legal Treatment for women in the matter of personal laws and aid in eradication of gender prejudice. After the implementation of Uniform Civil Code all the Religions will be treated equally. Article 25 states freedom of conscience and free profession, practice, and propagation of religion. So, the UCC cannot be forcefully imposed on the people as then it will clearly violate Article 25 of the Indian Constitution. The passing of the Verdict juvenile justice (Care and protection of children) Act seems to be an attempt to move towards the UCC. As it paved the way for the adoption of children by persons from the Muslim communities even though not allowed under their personal laws.

• **Personal law Reform and Gender Empowerment- A debate on Uniform Civil Code, Nandini Chavan & Qutub Jehan Kidwai.**

The book explores the possibility of reforming the Muslim personal law and Hindu personal law from a women's rights perspective. The whole book is divided into two parts (i.e) Hindu personal law and Muslim personal law. The UCC with less controversies are discussed in this book. The debate on the Uniform Civil Code and personal laws are analysed from the viewpoint of Dr. Asghar Ali Engineer with special reference to gender issues.

• **On violence- A Reader, By Bruce B. Lawrence, Aisha Karim.** This book exclusively deals with the case of the Shah Bano, a Muslim divorce case in South Asia which brought out the need for Uniform Civil Code in the Supreme Court. This explains the bad deeds that are done towards women in Indian society and it is explained legally.

#### V. Research Methodology:

The research method here follows the doctrinal research method. Which includes collection of secondary data from various sources like books, research papers, articles, online legal databases, and other writings to incorporate the various views of the multiple jurists, with the intention of presenting a holistic view. The researcher has made extensive use of case laws in this paper, so as to discern a trend in the judicial pronouncements.

#### VI. Research questions:

- A. Will the implementation of UCC affect the nation in a positive way or a negative way?
- B. If it affects the nation in a negative way then will it violate any of their rights?
- C. If it affects the nation in a positive way then will it protect their rights?

#### VII. Observation:

##### A. Goa Civil Code:

The Goa Civil Code, also called the Goa Family Law, is the set of civil laws that govern the residents of the Indian state of Goa. Goa is the only state in India that has a Uniform Civil Code

regardless of religion, gender, or caste. When Goa became part of a Union Territory in 1961 under the Goa Daman and Diu Administration Act of 1962, Parliament approved the Portuguese Civil Code of 1867 in Goa and would be authorised by the legislature authority to amend and repeal.

Some what's in which the Goa Civil Code is different from the Indian Laws Include:

1. A married couple jointly holds ownership of all the assets owned or acquired by each spouse.
2. In case of divorce, each spouse is entitled to a half share of the assets. However, the law also allows antenuptial agreement, which may state a different division of assets in case of divorce.
3. These agreements also allow spouses to hold the assets acquired before the marriage separately. Such agreement cannot be changed or revoked. A married person cannot sell the property without the consent of his/her spouse.
4. The patents cannot disinherit their children entirely. At least half of their property has to be passed on to the children compulsorily. This inherited property must be shared equally among the children.
5. Muslim men, who have their marriage registered in Goa, cannot practise polygamy. Also, there is no provision for a verbal divorce.

## B. Cases:

### 1. Shah Bano Case

Shah Bano was a 73 years old woman who sought maintenance from her husband, Muhammad Ahmad Khan. He had divorced her after 40 years of marriage by triple talaq and denied her regular maintenance; this sort of unilateral divorce was permitted under the Muslim personal law. She was initially granted maintenance by the verdict of a local court in

1980. Khan, a lawyer, himself, challenged this decision, taking it to the Supreme Court, saying that he had fulfilled all his obligations under Islamic Laws. The Supreme Court ruled in her favour in 1985 under the "maintenance of wives, children and parents" provision (section 125) of the CrPC, which applied to all citizens irrespective of religion. It further recommended that a Uniform Civil Code be set up.

### 2. Sarla Mudgal Case

This is the second instance in which the Supreme Court again directed the government under Article 44. In this case Sarla Mudgal V. Union of India, the question was whether a Hindu Husband, married under the Hindu law, by embracing Islam can solemnise the second marriage. The Supreme Court held that adopting Islam for a Second marriage is an abuse of personal laws. Further said that Hindu marriage can be dissolved under the Hindu Marriage Act, 1955 i.e. mere by converting itself into Islam and marrying again does not dissolve the marriage under Hindu Marriage Law and thus will be an offence under section 494(5) of the Indian Penal Code.

### 3. John Vallamattom V. Union of India

The priest from Kerala, John Vallamattom filed a writ petition in the year 1997 stating the section 118 of the Indian Succession Act was discriminatory against the a Christians as it imposes unreasonable restrictions on their donation of property for the religious or charitable purpose by will. The bench comprises chief Justice of India V.V khare, Justice S.B Sinha and Justice A.R. Lakshmanan struck down the section declaring it to be unconstitutional. Further, khare stated that;

*'Article 44 provides that the state shall endeavour to secure for all citizens a Uniform Civil Code throughout the territory of India. It is a matter of great regret that Article 44 of the constitution has not been given effect to Parliament and is still to step in for framing a common civil code in the country. A common Civil Code will help the cause of national*

*integration by removing the contradictions based on ideologies'.*

### C. Law Commission of India:

The 22nd Law Commission of India has decided again to solicit views and ideas of the public at large and recognised organisations about the Uniform Civil Code. This is in view of the fact the consultation paper by the previous Law Commission on the subject is more than three years old.

In 2018, the 21st Law Commission of India released a Consultation Paper on 'Reform of Family Law', in which it opined that "formulation of Uniform Civil Code is neither necessary nor desirable at this stage".

### D. Controversies:

In the lead up to the Assembly elections, Union Home Minister, Amit Shah announced that a Uniform Civil Code will be put into effect in Himachal Pradesh if the Bharatiya Janta party wins the Assembly elections. The BJP led state government in Uttarakhand has already established a committee to implement a Uniform Civil Code for the State.

The enactment to the UCC infringes on the right under the constitution to practice the religion of one's choice, which gives religious communities the ability to adhere to their own regulations.

Secondly, it is challenging to create a Uniform Civil Code across India because of particular constitutional provisions in some areas of the North-East that protect indigenous family law. Moreover, it was never the intention of the frame makers of the constitution to practice total uniformity.

### E. How will UCC Impact on different religious?

#### 1. On Hindu

If the UCC is introduced, existing Hindu laws would have to be amended.

Eg- Hindu Marriage Act does not apply to schedule tribes & customary practices over rides its provisions. However, UCC won't permit any of these exceptions.

#### 2. On Islam:

While triple talaq is prohibited, Islamic law permits contract marriage (mutah), short-term marriage to another man in the event of divorce (Nikah halala) & polygamy. These are likely to become ineffective if the UCC is implemented.

#### 3. On Christian:

The UCC will have an impact on Christian personal law such as inheritance, adoption & succession, but the element of marriage and the catholic church's non-recognition of divorce will require additional thought.

#### 4. On Sikh:

Sikh marriages are covered by the Anand Marriage Act of 1909 in which there is no provision for divorce. Sikh separations are then governed by the HMA, but if the UCC is introduced, a common law is likely to apply to all communities & marriages registered under the Anand Act.

#### 5. On Parsis:

Parsis do not recognize the rights of adoptive daughters, while an adopted son can only perform the last rites of the father.

If the UCC is introduced, then guardianship & custody laws for all religious will be common & this will go.

### VIII. Suggestion:

#### A. What are the argument in favour of implementing a Uniform Civil Code in India

The Uniform Civil Code (UCC) has been a topic of debate in India for a long time. Here are some arguments in favour of implementing the Uniform Civil Code in India:



1. **Social Cohesion:** A Uniform Civil Code provides for one law for the entire country, applicable to all religious communities in their personal matters such as marriage, divorce, inheritance, adoption, etc. It is based on the performance that no connection exists between religion and law in modern civilization. The objective of Uniform Civil Code is to address each individual and every issue with a common law for all and evict contradiction based on religious customs and practices. The Uniform Civil Code has been recommended to ensure national integration.

2. **Reduction in litigation:** UCC will lead to reduction in litigation emanating from multiple personal laws. It will simplify the Indian legal system.

3. **Women's Rights:** Uniform Civil Code will give more rights to women. In personal laws, women did not get their rights after divorce or at the time of death of the husband, but with the implementation of Uniform Civil Code, they will get their rights.

4. **Reduce Vote Bank Politics:** The concept of Uniform Civil Code will also aid in reducing vote bank politics, which is practiced by most of the political parties during every election. If all religious are subject to the same laws, there will be no room for politicising issues of discrimination, concession or special privileges.

5. **Equality:** All will be treated equally. No discrimination will be there.

#### B. What are the argument against implementing a Uniform Civil Code in India:

Argument against implementing a Uniform Civil Code in India is as follows:

1. India is a diverse country with various cultures and Religions, and it is challenging to initiate a Uniform Civil Code immediately.

2. Personal laws of various communities are governed by their religious scripture, and

implementing a Uniform Civil Code would evict contradiction based on religious.

3. The Uniform Civil Code is a contentious issue, and there are differences between politics parties and religious groups regarding its implementation.

4. The implementation of a Uniform Civil Code would require a significant change in the existing legal system, which will be a challenging task.

5. The implementation of a Uniform Civil Code may lead to the loss of cultural and religious identity among different communities.

#### C. What are the challenges in implementing a Uniform Civil Code in India:

The implementation of the Uniform Civil Code in India of debate for a long time. Here are some challenges in implementing a Uniform Civil Code in India:

1. **Opposition from religious Groups:** The implementing of a Uniform Civil Code faces opposition from various religious groups who believe that it would interfere with their religious practices and beliefs. Many communities, particularly minority communities perceive Uniform Civil Code as an encroachment on their religious freedom.

2. **Lack of political Consensus:** The implementation of a Uniform Civil Code requires a consensus among political parties. However, there is a lack of political Consensus on the issue, with some parties supporting it and others opposing it.

3. **Difference within the laws themselves:** The customary practices among communities vary a lot. There are differences within the laws themselves, which makes it difficult to implement a Uniform Civil Code.

4. **False perception:** Many people still do not know what the Uniform Civil Code really means. There are still false perception surrounding it, especially among the minorities,



which make a rational debate on its implementation quite difficult.

5. **Fundamental Rights Violation:** There is an apprehension that the Uniform Civil Code may be in conflict with the fundamental rights of freedom of conscience of free profession, practice, and propagation of religion (Article 25), and the freedom to manage religious affairs (Article 26).

6. **Different personal Laws followed by various communities:** The biggest challenge in the implication of UCC is different personal Laws followed by various communities. And further, there doesn't exist a consensus among the communities themselves.

IX. **Conclusion:**

According to my view, an Ideal State UCC would be an ideal safeguard of Citizen's Rights. Its adoption will be progressive legislation. To reform the practice of the majority while providing protection for vulnerable people in minority groups. People need to understand that religion and law are two different concepts. This is because the Constitution allows people to follow their religion, which will continue despite the enactment of a Uniform set of laws. The Uniform Civil Code will not restrict their rights to follow or profess their religion. And so I conclude that yes there is the desirability of Uniform Civil Code.

In the end, we should recall the words of Mahatma Gandhi: *'I don't expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Mussalman, but I want to be wholly tolerant, with its religious working side-by-side with one another.'*

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