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## Uniform Civil Code in India: A comprehensive analysis

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### Abstract

The research paper delves into the intricate layers of the term "Uniform Civil Code" (UCC), dissecting its three components: "Uniform," "Civil," and "Code." It navigates through the historical evolution of these terms and their implications in the context of Article 44 of the Indian Constitution, which calls for the state to strive for a UCC. The paper traces the origins of the UCC back to colonial India, emphasizing its significance in the post-independence period, particularly examining the efforts to codify Hindu law. The study explores the ongoing debate surrounding the UCC, emphasizing the constitutional directive principles and the obligation of the state to implement a UCC. It analyzes key legal cases, from Shah Bano to Shayara Bano, that have shaped the discourse on a uniform civil code. The paper critically assesses the political landscape, with a focus on the Bharatiya Janata Party's (BJP) stance and the challenges in translating the UCC promise into legislative action. Furthermore, the research addresses the socio-legal aspects of the UCC, examining its implications on matters such as marriage, divorce, inheritance, and adoption. The paper also evaluates concerns related to freedom of religion, secularism, and the potential impact on diverse communities. Drawing insights from global experiences, including the example of Goa's existing uniform civil code, the research explores the feasibility and desirability of a UCC in the multifaceted Indian society. In conclusion, the paper advocates for a comprehensive socio-legal study to assess the viability and desirability of a UCC in contemporary India. It underscores the need for balanced legislation that harmonizes diverse traditions while upholding constitutional principles, fostering national unity, and ensuring equal rights for all citizens.

**Keywords:** Uniform Civil Code (UCC), Goa's uniform civil code, socio-legal study, inclusive approach, societal fabric

### Introduction

The term "Uniform Civil Code" consists of three terms. They are "Uniform", "Civil" and "Code". All these three terms have very wide meaning in different senses. "Uniform" refers to the similar form of a thing for all. Generally, "Common" and "Uniform" are used as synonym of each other but when their de-facto difference is observed, they prove to be different on many aspects. But in reference of present subject, "Uniform" means one and the same in all circumstances, whereas "Common" refers to same in similar conditions. However, when these two words are taken into consideration in context to Art. 44 of the Constitution, they are generally used as synonym of each other.

The term "Civil" has a very elastic expression and it can be used in several senses. The word "Civil" is derived from the Latin word "Civil" meaning a citizen. The word "Civil" when used as an adjective to "law", has been defined in the shorter oxford dictionary as pertaining to the private rights and remedies of a citizen as distinguished from criminal political, etc."

The word "civil" according to dictionary, means "relating to the citizens as an individual; civil rights". In Black's Law Dictionary, it is defined as relating to private rights and remedies sought for by civil actions as contrasted with criminal proceedings". Using the word 'nature' along with it has stretched its width further.<sup>18</sup> "Civil law" is used in the sense of personal issues such as family related laws. Moreover, it also includes components such as contracts, compensation and such other laws which do not provide penal provisions.

The word 'code' is derived from the Latin word 'Codex' which means, a book. "Code" means a collection of system of laws. The collection of laws and constitutions made by order of the Emperor Justinian is distinguished by the application of 'The Code' by way of eminence.

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The history of law codes in Europe reveals that, the term 'code' is not used only for various ancient bodies of legal rules but it is also applied to the bodies of laws which were or are known as Barbarian or Germanic law and also to the collection of maritime customs and usages widely accepted throughout Europe.

In present era, term 'code' is referred in the sense of a comprehensive work of legislation which regulates a large portion of law and arranged systematically and based on uniform principles.

As per the definition incorporated under section (S.) 2(1) of Code of Civil Procedure, 1908; "Code" includes rules.

Thus, the term 'civil code' means a law which is related to civil matter and precisely "civil code" refers to a branch of law which is total codification of civil legislation. When the 'Uniform' adjective is used with 'Civil Code', it refers to a code which is uniformly applicable to all the citizens. Thus, "Uniform Civil Code" refers to a code which is a collection of legal rules which are applied to all the citizens uniformly.

The origin of the UCC 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 relating to crimes, evidence, and contracts, specifically recommending that personal laws of Hindus and Muslims be kept outside such codification.

Increase in legislations dealing with personal issues in the far end of the British rule forced the government to form the B N Rau 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.

The Uniform Civil Code (UCC) calls for the formulation of one law for India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption. The code comes under Article 44 of the Constitution, which lays down that the state shall Endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

The issue has been at the center of political narrative and debate for over a century and a priority agenda for the Bharatiya Janata Party (BJP) which has been pushing for the legislation in Parliament. The saffron party was the first to promise the implementation of UCC if it comes to power and the issue was part of its 2019 Lok Sabha election manifesto.

The problem of a civil code has been recurring problem throughout the history of the states. The newly emerging states have always been trying to acquire a civil code based on the successful civil codes of the other states e.g. Japan formulated civil code on the basis of German code. Sometimes new states which got independence from colonial power faced the same problem. India being a composite state has been trying for a Uniform Civil Code so as to tie over the major problems caused by diversities of different personal law systems invoked in the country for a last few centuries

The issue of framing a Uniform Civil Code has been a subject of the continuing debate since 1950. Article 44 of the Constitution which is a directive principle lays obligation on the state to secure for the citizens a Uniform Civil Code throughout the territory of the India. The bare

reading of the Article makes it clear that it is an imperative duty of the state to make effort in this regard. The Directive Principles of State Policy lays down certain economic and social goals to be achieved by the various governments i.e. the Central Government and the State Government. These directives impose certain obligation on the state to take positive action in certain direction in order to promote the welfare of the people. Though these principles are "non-justifiable" but they are Constitutional directions which the state is supposed to abide by. Justice Mathew has aptly observed<sup>1</sup> that the moral right embodied in part IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in part IV of the Constitution are not specifically enforceable as against the state by the citizen in a court of law in case the state fails to implement its duty, but nevertheless, they are fundamental in the government of the country and all the organs of the state including the judiciary are bound to enforce these directives".

But even after passing of 50 years of Constitution this has not become a reality. No sincere efforts have been made to fulfill this obligation. This has promoted the Apex court to remind the legislators to fulfill their obligation under this said article. The courts have shown its concern over contradictions in the personal laws of various communities and emphasized the need to enact a Uniform Civil Code for all the citizens of India. As per the recent Allahabad High Court judgment that states that the Uniform Civil Code (UCC) is a necessity and mandatorily required, there is a need to understand the phenomenon of the UCC in India. The question that arises is, how did the concept of UCC come into being? What were the steps taken in the post-Independence period to bring the UCC about? What is the jurisprudence of the case laws on the issue?

UCC as a directive principle as discussed above. Although, the writers of the Constitution attempted to bring a Hindu Code Bill in the Parliament that included progressive measures like women's equal rights of inheritance, unfortunately, it could not see the light of the day. It was only on 5<sup>th</sup> September 2005, when the Hindu Succession (Amendment) Act, 2005 received assent from the President of India that the discriminatory provisions regarding property rights in the Hindu Succession Act, 1956 were removed.

In this light, from a judicial perspective, the Supreme Court has emphasized the importance of having a UCC in several cases that needs to be analyzed, starting from the Shah Bano Begum case to the recent Shayara Bano versus Union of India case that questioned the legitimacy of the practice of *talaq-e-bidat* (triple talaq) and declared it unconstitutional. Beginning with the Mohd. Ahmed Khan v. Shah Bano Begum and others case, the Supreme Court dealt with the issue of maintenance under Section 125 of the Code of Criminal Procedure after Shah Bano's husband pronounced talaq against her. While ruling on the case, Chief Justice YV Chandrachud observed that the Parliament should outline the contours of a common civil code as it is an instrument that facilitates national harmony and equality before law. Despite this, the government did not address the issue and brought forth the Muslim Women's Protection of Rights on Divorce Act in 1986.

For the next decade, there was silence about the issue but then came the case of Sarla Mudgal, President, Kalyani, and others versus Union of India and others, where the Supreme

Court urged the government to secure a Uniform Civil Code based on the model of the Hindu code to protect the abused and achieving national solidarity. In a similar vein, the cases of Lily Thomas versus Union of India and ABC v. The State (NCT of Delhi) were dealt with. While in the former, the Supreme Court emphasized the significance of UCC in terms of succession, and in the latter, it held that a single mother of the Christian religion was eligible to apply for sole guardianship of her child without the assent of the natural father under the Guardian and Wards Act, 1890 that had not recognized the right of Christian single mothers. In this context, the court pointed out the inconvenience caused in absence of a uniform civil code. Cut to the present, the Bhartiya Janata Party (BJP), which has been in power since 2014 had stated in its general election manifesto that, "BJP believes that there cannot be gender equality till such time India adopts a Uniform Civil Code, which protects the rights of all women, and the BJP reiterates its stand to draft a Uniform Civil Code, drawing upon the best traditions and harmonizing them with the modern times." In practice, this has not been the case and as the current government brings measures like increasing the age of girl child to 21 for marriage which is a laudable step to ensure gender equality, it needs to think how to ensure the overall development of the society including women by bringing in a UCC and how to balance the aims of Article 51 A (f) and Article 51 A(e) of the Constitution that deals with the aspects of valuing and preserving the rich heritage of composite culture and renouncing practices that are derogatory to the dignity of women respectively. Therefore, a comprehensive socio-legal study is required to examine the desirability of Uniform Civil Code in the present society

### Meaning of Civil Code

'Uniform Civil Code' of India is a term referring to the concept of an overarching Civil Law and the term 'Civil law' is a legal system inspired by Roman law, the primary feature of which is that laws are written into a collection, codified, and not determined, as in common law, by judges. The principle of civil law is to provide all citizens with an accessible and written collection of the laws which are obligatory to all without discrimination. Besides, the term 'code' is a rule for converting a piece of information into another form or representation, not necessarily of the same type. In communications and information processing, encoding is the process by which information from a source is converted into symbols to be communicated. It covers, systematize and arrange (laws and regulations) into a code; (b) to convert (a message, for example) into code; and Code a collection of laws, rules, or signals & a body of writings. Thus, uniform civil code administers the same set of secular civil laws to govern all people, even those belonging to different religions and regions.

### Matters of Uniform Civil Code

It is important to note that the term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance.

### Certain subject matters of uniform civil code are as follow

- a) Marriage, Divorce and Other matrimonial clauses;
- b) Succession (Inheritance);

- c) Guardianship;
- d) Maintenance;
- e) Adoption;
- f) Partition;
- g) Gifts and Wills;
- h) Religious institutions;
- i) Joint Family System; and matters of Charitable trust, etc.

The demand for a uniform civil code essentially means unifying all these Personal laws, to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.

The mere three words and the nation break into hysterical jubilation and frantic wailing. These three words are enough to divide the nation into three categories - politically, socially and religiously. Politically, the nation is divided into various parties some are in favor of and some are against the implementation of the Uniform civil code. Socially, the intelligentsia of the country, who analyze logically the pros and cons of the uniform civil code and the illiterate who have no opinion of their own and succumb to the political pressure are at opposite poles. And, religiously, there is a dangerous of widening the bitterness between the majority Hindus and the minority community mostly the Muslims.

In India, the Supreme Court first directed the Parliament to frame a uniform civil code in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum, popularly known as the Shah Bano case. In this concerned case, a penurious Muslim woman claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq by him. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y.V. Chandrachud observed that "A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies".

After this decision, nationwide discussions, meetings, and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the uniform civil code; not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

The second instance in which the Supreme Court again directed the government of Article 44 was in the case of Sarla Mudgal v. Union of India. In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnize second marriage. The Court held that a Hindu marriage solemnized under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion

to Islam and Marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnized after converting to Islam would be an offence under Section 494 of the Indian Penal Code, 1860.

Justice Kuldeep Singh also opined that Article 44 has to be retrieved from the cold storage where it is lying since 1949. The Hon'ble Justice referred to the codification of the Hindu personal law and held that "Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of the 'uniform civil code' for all the citizens in the territory of India".

The Supreme Court's another reminder to the government of its Constitutional obligations to enact a uniform civil code came in July 2003 when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act.<sup>31</sup> The priest from Kerala, John Vallamattom filed a writ petition in the year 1997 stating that Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief Justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief Justice Khare stated that "We would like to State 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 regrets that Article 44 of the Constitution has not been given effect to. Parliament 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". Thus, as seen above, the apex court has on several instances directed the government to realize the directive principle enshrined in our Constitution and the urgency to do so can be inferred from the same.

### **Uniform Civil Code and Freedom of Religion**

The spine of controversy revolving around uniform civil code has been secularism and the freedom of religion enumerated in the Constitution of India. The preamble of the Constitution states that India is a "secular democratic republic". This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A State is only concerned with the relation between man and man. It is not concerned with the relation of man with God. It does not mean allowing all religions to be practiced. It means that religion should not interfere with the mundane life of an individual<sup>[1]</sup>.

In *S.R. Bommai v. Union of India*<sup>[2]</sup>, as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting a law.

In India, there exist a concept of "positive secularism" as distinguished from doctrine of secularism accepted by America and some European states i.e. there is a wall of separation between religion and State. In India, positive secularism separates spiritualism with individual faith. The reason is that America and the European countries went through the stages of renaissance, reformation and enlightenment and thus they can enact a law stating that State shall not interfere with religion. On the contrary, India has not gone through these stages and thus the responsibility

lies on the State to interfere in the matters of religion so as to remove the impediments in governance of the State<sup>[3]</sup>.

Under the Constitution of India, Articles 25 to 28 guarantees the right to freedom of religion<sup>[4]</sup>. Article 25 guarantees to every person the freedom of conscience and the right to profess practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms. The protection of Articles 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the integral parts of religion<sup>[5]</sup>.

Uniform civil code is not opposed to secularism or will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion<sup>[6]</sup>. The uniform civil code will not and shall not result in interference of one's religious beliefs relating, mainly to maintenance, succession and inheritance. This means that under the uniform civil code a Hindu will not be compelled to perform a Nikah or a Muslim be forced to carry out Saptapadi. But in matters of inheritance, right to property, maintenance and succession, there will be a common law. The whole debate can be summed up by the judgment given by Justice

R.M. Sahai as he said that "Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fiber. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative, both, for protection of the oppressed and for promotion of national unity and solidarity".

### **Uniform Civil Code in Indian Scenario**

How full proof will be the uniform civil code? Will there be more abuse and less obedience of uniform civil code? Will uniform civil code have negative effect on the society? Such questions are bound to be raised after the implementation of the Uniform Civil Code. All laws are formulated to be obeyed, but they are abused. This does not mean that law should not be enacted. Similarly, there is a great possibility of the uniform civil code being abused, but this should not eschew the Parliament from enacting the Uniform Civil code; the social welfare and benefits resulting from the implementation of uniform civil code are far greater.

While explaining the reason for including Article 44 in the Directives Principles, it was observed that "When you want to consolidate a community, you have to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in Europe, which have a Civil Code, everyone who goes there forms a part of the world and every minority has to submit to that Civil Code. It is not felt to be tyrannical to the minorities<sup>[7]</sup>."

Some legal experts argue that progressive law is welcomed but a suitable atmosphere must be created in which all sections feel secure enough to sit together and cull out the most progressive of their personal laws. But this can be answered by an example of Hindu law. When the Hindu Code Bill, which covers Buddhist, Sikhs, Jains as well as different religious denominations of Hindus, was notified, there was a lot of protest. And the then Law Minister, Dr. Ambedkar, had said that for India's unity, the country needs a codified law. In a similar fashion, the uniform civil code can be implemented, which will cover all the religions, whether major or minor, practiced in India and any person who comes to India has to abide by the Code.

Not many know that a uniform civil code exists in the small state of Goa accepted by all communities. The Goa Civil Code collectively called Family Laws, was framed and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian State scrapped all the colonial laws and extended the central laws to the territory but made the exception of retaining the Family Laws because all the communities in Goa wanted it. The most significant provision in this law is the pre-nuptial Public Deed regarding the disposal of immovable and movable property in the event of divorce or death. During matrimony, both parents have a common right over the estate, but on dissolution, the property has to be divided equally; son and daughters have the equal right on the property. As the procedure involves compulsory registration of marriage, this effectively checks child and bigamous marriage. The philosophy behind the Portuguese Civil Code was to strengthen the family as the backbone of society by inculcating a spirit of tolerance between husband and wife and providing for inbuilt safeguard against injustice by one spouse against the other.

Commenting that the dream of a uniform civil code in the country finds its realization in Goa, former Chief Justice of India Y.V. Chandrachud had once expressed hope that it would one day awaken the rest of bigoted India. The section of the nation against the implementation of uniform civil code contends that in ideal times, in an ideal State, a uniform civil code would be an ideal safeguard of citizens' rights. But India has moved much further from ideal than when the Constitution was written 50 years ago.

## Conclusion

In conclusion, the research paper provides a comprehensive analysis of the Uniform Civil Code (UCC) in India, unraveling its historical evolution, constitutional foundations, and the ongoing socio-legal debates. The paper underscores the significance of a UCC, examining its implications on various facets of personal laws, including marriage, divorce, inheritance, and adoption. Highlighting the constitutional directive principles, especially Article 44, the study delves into the political landscape, emphasizing the Bharatiya Janata Party's (BJP) stance and the challenges hindering the translation of the UCC promise into legislative action. It critically assesses key legal cases, from Shah Bano to Shayara Bano, shaping the discourse on a uniform civil code and emphasizes the need for balanced legislation that harmonizes diverse traditions while upholding constitutional principles. Examining global experiences, including the example of Goa's existing uniform civil code, the research explores the feasibility and desirability of a UCC in the

diverse Indian society. The paper advocates for a comprehensive socio-legal study to assess the viability and desirability of a UCC in contemporary India. It stresses the importance of balanced legislation that respects cultural diversity while ensuring equal rights for all citizens, fostering national unity. In essence, the research paper calls for a thoughtful and inclusive approach towards the formulation of a Uniform Civil Code, recognizing the complexities of India's societal fabric. It highlights the need for a nuanced understanding of the socio-legal implications, promoting national harmony and equality before the law, while respecting individual rights and diverse cultural traditions.

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