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Uniform Civil Code in India: Constitutional Aspirations, Gender Justice, And Implementation Challenges

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Uniform Civil Code in India: Constitutional Aspirations, Gender Justice, And Implementation Challenges

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Abstract

When debating the Uniform Civil Code (UCC) in India, many complexities arise from constitutional principles, gender equity, and socio-cultural diversity between various regions of the country. The UCC is contained in Article 44 of the Directive Principles of State Policy; it aims to provide a uniform code that governs personal laws related to marriage, divorce, succession, and adoption. This would promote legal uniformity and equality for all citizens under a common legal framework.

Although it has been proposed as an alternative to existing ethnic-based personal law systems, attempts to implement this legislation have failed because of concerns about religious freedom, the rights of minorities, and the preservation of the diverse fabric of Indian society, among other factors. In this article, an analysis is conducted with respect to the UCC's constitutional basis, including its development through colonial legal pluralism, and today through the courts and the legislative process. The issues surrounding the UCC's implementation are studied through the lens of significant court cases that have reinforced gender equality and the principle of non-discrimination, as well as through the use of a feminist framework that demonstrates how uniform laws can be beneficial to women yet could also be detrimental to them due to the overwhelming influence of the majority interests.

Policy initiatives from recent years, including legislative experimentation at the state level, will also be examined in this study, as well as international comparisons regarding family law reforms. This study will examine the barriers to achieving full UCC implementation, including constitutional

conflicts, administrative difficulties, political polarization, and societal opposition. The article argues that any movement toward a Uniform Civil Code must adopt an inclusive, consultative, and gender-sensitive approach that respects cultural diversity while upholding constitutional principles of equality and justice. Ultimately, the UCC should be understood not merely as a legislative goal but as part of a broader process of progressive legal reform aimed at ensuring substantive rights and social justice within a diverse democratic framework.

Keywords: *Uniform Civil Code; Constitutional Law; Gender Justice; Personal Laws; Legal Pluralism.*

Introduction

The topic of maintaining a Uniform Civil Code (UCC) in India is both central and contentious in the constitution and socio-legal discourse of this country. Since independence, the proposal for a UCC, or a common set of civil laws governing personal family matters, has been under continual scrutiny by law makers, jurists and scholars as well as civil society groups. UCC has its roots in Article 44 of the Constitution, which states that it is the duty of the state to ‘endeavour to secure for the citizens of India a Uniform Civil Code’. Thus UCC represents a strong aspiration to realise not only legal uniformity, equality and national integration but also diversity in the democratic framework of Indian society. The current system of law in India is defined by its pluralistic structure where members of various religious groups are governed by independent personal laws based on religious texts, scriptures and traditions. This pluralism demonstrates India’s cultural diversity and the principle of granting individuals freedom to practise their religion. Pluralism also raises complex issues in the context of equality before the law, gender justice, and the principle of secularism in a contemporary constitutional democracy. Supporters of the UCC say that the creation of a unified legal framework would eliminate discriminatory practices that are found in some personal laws which would therefore fulfil the ideals of equal citizenship and foster greater social cohesion. Conversely, critics raise concerns that imposing uniformity may undermine minority rights, infringe upon cultural autonomy, and risk majoritarian domination within a plural society.

The UCC debate has its origins in colonial India, when British rule codified both criminal and commercial laws but preserved the traditional religious personal law governing family and succession matters. The result was a fragmented legal system, and this fragmentation continued after India gained independence. During the debates in the Constituent Assembly, the

members of the Assembly tried to find a way to reconcile the ideals of equality and secularism with the need to take into account the diversity of religious identities in India. The compromise that was struck reflected this struggle between idealism and practical reality; the UCC was included in the Directive Principles of State Policy, thus emphasizing its aspirational nature and also reflecting the sensitivity of those who might oppose its implementation.

Since Independence, a number of legislative and judicial initiatives have contributed to the debate about uniform civil laws. Early reform in India focused on making personal laws more up-to-date and on making men and women equal; thus, the Hindu Code Bills aimed to reform personal law to promote gender equality within specific religious communities while the Special Marriage Act, 1954 was passed for the purpose of providing a secular option for individuals from different religions looking to marry. In addition, significant court rulings have continued to emphasize the inconsistencies present in the personal laws of different religions as well as the gender inequalities present in many of these laws. These rulings have reinvigorated discussion about the need for a uniform civil code in India. These developments underscore the judiciary's role in advancing constitutional values of equality and justice, even in the absence of comprehensive legislative reform.

The UCC (Uniform Civil Code) debate goes hand-in-hand with much larger issues of gender justice, secularism, and pluralism in a democracy. Women's rights advocates and those working for reform have stressed that discriminatory practices are found within personal laws in the areas of marriage, maintenance, and inheritance, and the need to eliminate these discriminatory practices is critical. Scholars, however, caution that while legal uniformity is necessary; it cannot be achieved at the expense of cultural diversity and community autonomy. The challenge, therefore, is to create a uniform code that can accommodate the constitutional principles of equality and dignity while respecting the multicultural and pluralistic character of the nation of India.

In recent years, with renewed political interest in the UCC and the emergence of various state-level initiatives, the public debate surrounding the UCC has re-emerged with greater conviction regarding its internal-external viability and desirability. In addition to providing greater clarity on the socio-political and economic context of India's pluralistic society, renewed political interest has increased the scope of public discourse and debate on the practicality and the challenges associated with the implementation of a UCC, as well as increased visibility among stakeholders and the need for broad-based social consent to implementation.

Taken together, these developments are indicative of ongoing tensions between tradition and modernity; community identity and individual rights; the socio-political realities of the constitution; and the aspirations of society and the individual.

The current study aims to critically analyze the constitutional underpinnings, gender justice ramifications, and challenges of implementing a Uniform Civil Code in India within this context. The research will contextualize the Uniform Civil Code by examining its historical background, legal establishment, and current political and social debates so as to produce an accurate and comprehensive understanding of one of the most consequential and controversial areas of Indian constitutional law. Ultimately, the analysis will examine whether there is a possibility for a deliberate, inclusive and rights-based approach to legal reform that can resolve the conflicting demands of equality, diversity and democratic governance within contemporary India.

Historical Evolution and Constitutional Foundations

The current discussion around the UCC cannot be fully understood unless we consider the history of personal laws in India, which date back to when India was a British colony. The British used a selective approach when making changes to the way people were treated through the legal process. For example, they created detailed laws about criminal behaviour, how to conduct business, and the procedures for enforcing the law; however, they deliberately did not interfere in how people followed their religious beliefs or how they treated their families. The majority of laws that governed the marriage, divorce, division of property, financial support, guardianship, and inheritance were governed by individual religions. The British applied what are referred to as "Rustic" legal traditions (i.e. The application of statutes based on scripture, tradition and Judicial interpretation) when interpreting or applying the custom of Hindus or Muslims. In doing so, there was a separation in how the law was applied to people who were the same (the public law applied uniformly) compared to the way the law was applied to people who did not share the same religion (the personal law was applied as a function of the religion of an individual).

The non-interference policy of the British towards Hindus and Muslims was not entirely neutral; in fact, they often relied on rigid interpretations of scripture and only selectively codified religious rules in a way that froze ongoing evolution in how people practice Judaism, Islam and Hinduism into fixed norms in the legal system.¹ The development of Anglo-Hindu &

¹ Special Marriage Act, No. 43 of 1954, INDIA CODE (1954).

Anglo-Mohammedan laws through court cases did not always reflect the realities experienced by members of those faiths; rather, they reflected the priorities of the British Colonial administrators. As a result, the legal order developed under the British Colonial government system created and perpetuated legal pluralism, which embedded differences between the rights and obligations of people of different faiths, and who lived in different geographical In the lead-up to independence from the British Empire, the plurality of Indian law created dilemmas in the minds of members of India's Constituent Assembly regarding the wisdom of maintaining the plethora of personal laws, or adopting a uniform legal system which would align with the tenets of modern democracy. Supporters of a Uniform Civil Code (UCC) maintained that a uniform body of civil law would provide the foundation for national unity, secularisation and the equality of the sexes, citing how differing personal laws foster the promotion of discriminatory practices, particularly in regard to women, while subverting the vision of equal citizenship outlined in India's Constitution. However, a number of Assembly members expressed concern that the imposition of a UCC would infringe religious freedoms or destroy the cultural autonomy of Indian citizens in light of India's status as a newly independent, socially diverse country.

Ultimately, the debates of the Assembly revealed an effort to find a workable compromise between those who wanted to be reformers in terms of how laws were written and applied, and those who wanted to maintain social harmony.² Compromises between these two positions resulted in a recognition that the ideal was to have uniform laws within the confines of the Constitution, but that to have sweeping changes in the law, society needed to accept that these changes would occur over time in an incremental manner. This history will explain the placement of UCC in the Articles of Directive Principles, rather than within the broader and Enforceable Fundamental Rights of the Constitution's Part III.

Article 44 and the Directive Principles

The Indian Constitution's Article 44 requires "the State shall strive to provide its citizens within India a Uniform Civil Code." The framers of the Constitution placed Article 44 in Part IV, which includes the Directive Principles of State Policy, to indicate that they considered the U.C.C. to be just an aspirational goal to be achieved over the long term and not as something that can be mandated through immediate action.³ Directive

² Flavia Agnes, *Family Law and Constitutional Claims: Uniform Civil Code Debate in India*, 12 Econ. & Pol. Wkly. 151 (1995).

³ Law Comm'n of India, 21st Report on Uniform Civil Code (2018).

Principles serve as the principles of governance and provide the goals of legislation or policy in pursuit of achieving social and economic justice, providing them with non-justiciable but significant normative value for interpreting constitutional values and influencing judicial decision-making. There are several reasons that informed the framers' placement of the U.C.C. in the Directive Principles. First, the vast cultural, religious, and linguistic diversity of India's population requires a slow and careful method for introducing legal reforms since rapid introduction of uniformity in personal law for all individuals would cause instability to a society seeking to recover from colonialism and communal strife. Second, the framers recognized that society changes slowly and that social reform evolves through consideration of new laws, dialogue among the public, and gradual reinterpretation of the existing laws. Finally, the framers intended the Directive Principles to provide guidance to future governments about the direction of social reforms, encouraging egalitarian reforms while avoiding the imposition of rigid timelines for their implementation.

Even though they are not legally enforceable, Directive Principles have considerable interpretative value in Constitutional law. Courts have often worked to harmonize Directive Principles with Fundamental Rights to view them as complementing, rather than contradicting, each other. When it comes to the Uniform Civil Code (UCC), Article 44 has been used to emphasize the importance of gender justice and social reform and the need to eliminate some of the discriminatory practices we see in certain personal laws. Legislative efforts towards UCC implementation can be seen through the Hindu Code reforms of the 1950s and the Special Marriage Act, 1954, which are incremental steps towards creating a legal uniformity osseous with individual choice of Personal Laws and Secular Alternatives.

The Constitution, in that regard, reflects both a commitment to uphold one's ability to exercise Religious freedoms under Articles 25 & 26⁴ while also supporting Equality & Reform at the same time as stated in Article 44⁵. The ongoing debate surrounding the UCC has demonstrated a consistent and recurring conflict between these values thus resulting in UCC being the subject of continuing discussions in both legislatures and society.

⁴ INDIA CONST. arts. 25–26

⁵ INDIA CONST. art. 44

Judicial Engagement with the UCC

The Indian Judiciary has been extremely influential in generating debate and discussion regarding the Uniform Civil Code, often using the pronouncements of Courts as an impetus for reform and an effort to address issues of gender inequality within personal law. The Courts have continually stressed the importance of a UCC as an important constitutional objective related to equality and justice, even though the Courts do not have the authority to compel enacting a UCC.

The first case that significantly addressed this issue was *Mohd. Ahmed Khan v. Shah Bano Begum*⁶, where the Supreme Court looked at the maintenance rights of a divorced Muslim woman under Section 125 of the Criminal Procedure Code. The Court held: “The necessity of doing full justice between the parties with regard to the issue of maintenance to the divorced Muslim woman under Section 125 of the Cr P.C. requires us to look for the best possible solution to the problem”. In looking at the issue from this perspective, the Court expressed its dissatisfaction with the State's failure to implement Article 44 of the Constitution of India, and suggested that a UCC would reduce conflicting loyalties and provide a unifying force for national integration.¹ The Supreme Court's determination resulted in intense political and social discussions about the touchy balance between the free exercise of religion and the rights of women.

In *Sarla Mudgal v. Union of India*⁷, the Court confronted the issue of bigamy arising from conversion to another religion for the purpose of circumventing monogamy laws. The judgment criticized the misuse of religious conversions and reiterated the need for a common civil code to ensure legal certainty and protect the rights of individuals, particularly women. Similarly, in *Shayara Bano v. Union of India*⁸, which addressed the constitutionality of instant triple talaq, the Supreme Court emphasized constitutional morality and gender equality, striking down a practice deemed arbitrary and discriminatory.

To this end and others, the judiciary has developed the Uniform Civil Code (UCC) into much more than a legislative measure, establishing it as an inherently constitutional goal based on the underlying tenets of equality, secularism and social justice. In addition to the direct impact of judicial remarks in raising public awareness and stimulating academic discussion about cultural diversity and fundamental rights and their correlation with law reform, the judiciary has maintained a generally restrained approach by recognizing that the ambit of enacting a comprehensive UCC is the

⁶ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 S.C.C. 556 (India).

⁷ *Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635 (India).

⁸ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

prerogative of the legislative arm of government and not the judiciary. Overall, judicial engagement has had a profound influence on the development of the UCC discourse by identifying the inconsistencies of personal laws, promoting gender-based interpretations and reaffirming the constitutional commitment to creating progressive change. Although judicial pronouncements cannot create uniform civil laws, they nonetheless continue to create momentum for lawmakers to create unified laws and to continue public discussion on the prospects of personal law reform in India.

Uniform Civil Code and Gender Justice

A major argument in favour of a Uniform Civil Code is that, among other things, it has the potential to address the structural inequalities between the sexes that are entrenched in personal law. Personal law governs all the major family relationships and has been fundamentally driven by standards of patriarchy that favour the protection of male power and deny legal autonomy to women.⁹ There have been significant improvements to personal law in relation to various areas such as inheritance rights, obligations regarding marriage, divorce, guardianship and maintenance; however, there are still many examples of systemic and structural differences between men and women in these areas in terms of both their respective rights and in relation to the average within groups of people.

Women have frequently experienced statutory inequality in the area of marriage and divorce. For example, historically, there have been unilateral divorces permitted by some interpretations of personal laws where men have had greater ability to end their marriage than women have, as a result of this statutory provision there is inequality of the bargaining position of each party in family situations. The recognition by the Supreme Court of the right to equal dignity and non-discrimination in the case of *Shayara Bano v. Union of India* addressed this issue and invalidated the instant triple talaq and highlighted that arbitrary and unilateral termination of a marriage contravenes the constitution of India. However, the Supreme Court's ruling has opened up further discussion as to whether periodic judicial interventions are enough to resolve systemic inequalities.

Another area of gender inequality is the history of inequities associated with inheritance and property rights. Historically these gaps have been perpetuated through changes in gendered succession laws; for example, the recent amendments under the Hindu Succession (Amendment) Act, 2005, have established greater equality between sons and daughters in regard to

⁹ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (2003).

inheriting property through coparcenary rights.¹⁰ However, there still remain serious practical impediments to achieving this equality due to issues such as a lack of awareness about these rights and social resistance from communities. Traditionally, and in the context of Christian and Muslim Personal Laws, debates surrounding succession rights and testamentary freedom have raised further concerns regarding the economic security of women with respect to issues of independence, equality, and economic viability.

Laws governing guardianship have historically favored fathers over mothers in the exercise of parental authority. This has resulted in the perpetuation of patriarchal structures in both family law and guardianship laws, and limits mothers from exercising their decision-making authority in relation to their children's welfare.

The persistence of inequality in succession law and the legal systems governing guardianship demonstrates that personal laws are not simply instruments of culture and religion, but rather constitute legal systems that determine the underlying social hierarchy. Advocates of the Unified Civil Code (UCC) propose that a UCC would provide an additional set of legal parameters and restrictions to clarify the laws that govern all persons and eliminate the ability of individuals to discriminate based on gender.¹¹ Critics of the UCC contend that simply creating a unified set of gender-neutral laws will accomplish nothing; in fact, they argue that it may reinforce or intensify the existing gender bias in the application of laws. Consequently, while legislative change is necessary to address gender-related inequality, legislative changes alone are not sufficient; legislation that is sensitive to the broader societal fabric of India will support social change.

Feminist Perspectives on Legal Reform

Feminist legal scholars have given various and conflicting responses to the Uniform Civil Code issue. Although some feminists see the UCC as a strong means of attaining effective gender equality, there are also concerns about accepting uniformity as a satisfactory answer to complicated legal and social issues. The multitude of opinions and perspectives among feminists points to the tension between universal human rights and respect for cultural diversity in a democracy.

Supporters of a gender-neutral UCC claim that having several systems of personal law create an opportunity for entrenching patriarchal institutions by giving religious authorities vast power over family matters. As such,

¹⁰ Archana Parashar, *Women and Family Law Reform in India* (1992).

¹¹ Ratna Kapur & Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (1996).

proponents believe that an inclusive system of civil law, based on principles of equality and dignity, would give women equal legal rights regardless of their religion.¹² Uniformity and its proponents argue that uniformity ensures equal citizenship by guaranteeing equal rights, especially in relation to bodily integrity, financial support, and access to justice.

Conversely, critical feminist voices caution that an imposed uniform code by the state to combat patriarchy could reinforce dominant cultural/normative standards of the majority group under the guise of institutional reform. Because there are multiple cultural communities in India with their own traditions and legal histories, a single-dimensional legal framework could further disenfranchise minorities. Some scholars contend that reform should focus primarily on internally changing personal laws through community-based processes rather than imposing one standard on all. This perspective emphasizes the need for participatory processes to create laws that include input from women's organizations, minority communities, and grassroots organizations.

A gender-sensitive approach to reform will require moving beyond the simplistic binary of uniformity versus pluralism. It should instead focus on substantive equality, as an effective means of ensuring that laws address real inequalities that exist in the worlds of women, rather than just formally different.¹³ For change to be effective, there must first be inclusive consultation processes; second, there must be rigorous empirical research documenting how women have experienced life in their respective cultural communities; third, there must be mechanisms to prevent there being new forms of discrimination as a result of implementing a uniform code. Ultimately, feminist debate has highlighted that without transforming entrenched structures of power in order to promote genuine empowerment; the implementation of any civil code will be unsuccessful regardless of whether it is uniform or not.

Intersectionality and Social Realities

Personal laws have different effects on women depending on a number of factors including class, religion, education, and economic conditions; there are many factors that intersect with each other which help to form an overall picture of discrimination experienced by women when trying to gain access to justice through legal channels.¹⁴ An intersectional analysis shows that making reforms only for 'formal equality' often does not solve problems caused by multiple forms of discrimination that affect people in a marginal

¹² Upendra Baxi, *The Crisis of the Indian Legal System* (1982).

¹³ B. Sivaramayya, *Inequalities and the Law* (1984).

¹⁴ Tahir Mahmood, *Personal Laws in Crisis* (1986).

way. For example, many women from lower-class families, rural areas or historically disadvantaged communities have difficulty accessing courts, finding legal representation, or even knowing what their rights are. Therefore, legislative efforts at equality do not generally result in improved conditions for women unless supported through responsive institutions. Inheritance law reforms may not succeed if cultural beliefs discourage women from asking for property or because they have limited financial independence. Women from marginalized groups are also often at higher risk of being coerced by their families than those from other groups, so legal protections alone do not provide enough safety without community support systems and social welfare programs in place to help them. Additionally, women face barriers to claiming their rights through lack of knowledge about the law, low literacy rates, or inability to access legal aid, which creates further regional differences in how well gender justice is achieved between the different regions of India.

The UCC debate's intersectionality acknowledges that women experience life through their many intersecting identities, not only their gender and religion, but also through any other factors that can put them at risk for physical harm or create barriers to accessing justice. Therefore, in addition to legal reform (e.g., the UCC), there needs to be an expansion of legal aid; gender-sensitive training for judicial and administrative decision makers; public awareness campaigns; and programs for socio-economic empowerment of women. Additionally, it shows that we need to think of solutions to problems specific to each grouping of people.¹⁵ There may be some Common Law for all to follow, but a new structure alone will not be sufficient to achieve change. To achieve gender justice means understanding intersectional inequality and how this can lead to the creation of laws that not only improve the legal wording but also help people who live their lives under different circumstances to meet their legal expectations.

In summary, the development of gender justice through UCC processes requires a multi-faceted strategy that takes into consideration both the structural inequality in personal laws and the different perspectives of women and feminism as well as their intersectional realities in relation to the creation of the new UCC.¹⁶ By taking care to develop context-specific and inclusive reform, India can develop a legal framework that reflects the constitutional mandates of the nation but also the reality of the people who live in it.

¹⁵ Law Comm'n of India, Consultation Paper on Reform of Family Law (2018).

¹⁶ Law Comm'n of India, 21st Report on Uniform Civil Code (2018).

Conclusion

The ongoing discussion of the Uniform Civil Code (UCC) has been one of India's longest-lasting and most intricate constitutional issues related to its legal and socio-political systems. As established in Article 44 of the Constitution, the UCC was intended to create a single legal system based on the ideas of equality, secularism, and national integration. Its absence today illustrates an on-going difficulty balancing the expectations of these constitutional ideals with the realities of a society that is very diverse in terms of religion, custom, and history. Thus, the debate surrounding the UCC involves more than just an issue of law or policy; it also reflects broader tensions between the rights of individuals and the right of communities to have autonomy within a democratic system.

The Supreme Court's rulings over many years have been very helpful for individuals and the academic community in keeping the idea of having a Uniform Civil Code (UCC) in their minds. The Supreme Court has consistently supported the idea of equality and justice within our Constitution and pointed out that there needs to be changes in the laws governing personal relationships by bringing them into accordance with contemporary notions of civil society through landmark rulings on subjects of maintenance rights, marriage customs, and gender discrimination conviction. The debate about whether we should move toward legal uniformity or allow personal laws to continue existing in different forms has been heightened by new legislative actions and renewed political interest. These developments indicate that while the UCC is described as being part of our constitution, there needs to be an intentional design considered toward the establishment of the UCC and widespread acceptance by society for the UCC to become a reality.

The promise of the Uniform Civil Code, from the perspective of gender justice, is the elimination of discriminatory provisions included within different personal law systems and consistent protection for all individuals, regardless of their religion. However, legal uniformity cannot provide substantive equality. Due to the use of feminist scholarship/discourse and intersectionality, we see that social norms, economic inequality, and institutional barriers continue to shape women's reality, and therefore limit the ability of women to benefit from formal legal reforms. Thus, as we work toward a uniform civil code, we must engage in broader social initiatives that will support changes within legal systems, e.g., legal information programs, increased access to justice, and an inclusive legislative process that includes the voices of marginalized communities.

Equally important is the recognition that India's constitutional framework seeks to balance competing values: equality before the law on one hand and the protection of religious freedom and cultural diversity on the other. Implementing a Uniform Civil Code without adequate consultation risks exacerbating social divisions and undermining trust in democratic institutions. Therefore, the process of reform must be gradual, participatory, and sensitive to the complexities of India's social fabric. Incremental harmonization of personal laws, community-driven reforms, and the expansion of optional secular legal alternatives may provide pragmatic pathways toward achieving the broader goals envisioned under Article 44. The Constitution of India also attempts to balance the conflicting values of equality before the law on one hand, and respect for religious freedoms and cultural diversities on the other hand. The institutionalisation of a Uniform Civil Code without sufficient consultation with the community may further polarise communities and decrease public trust in democratic institutions. Thus, reforming personal laws should be done gradually, participatively, and with sensitivity to the complexities of the social fabric of India. Consideration of incremental harmonisation of personal laws, community-based reforms, and the addition of optional secular jurisprudence to personal law systems may represent realistic and pragmatic pathways toward the ultimate realisation of the purposes of Article 44.

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