



# **From Diversity to Unity: EXAMINING THE PATH TO UNIFORM CIVIL CODE IN INDIA**

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## **ABSTRACT**

India a land of diverse cultures, religions and personal laws has long debates on the concept and implementation process of Uniform civil code (UCC) in the context of the Indian Constitution, specifically focusing on the Article 44 as a directive principle of state policy. A unified body of rules addressing private issues like adoption, divorce, marriage, inheritance, and maintenance is what the Uniform Civil Code aims to establish.

The paper aims to address the pertinent question of whether it is a contemporary necessity. The analysis aims to provide insights into the complex landscape surrounding the UCC discourse in India. The Indian Judiciary has consistently emphasized the necessity of a UCC and has directed the government of India to take steps in this regard. However, the journey towards implementing a UCC in India is riddled with numerous challenges due to the sensitive nature of the subject. Maintaining gender equality, advancing social justice, and recognizing various religious benefits would all need to be balanced in order to execute the UCC. Recognizing the historical need for a UCC to counteract discrimination and promote unity, the study further examines the intertwined relationship between UCC and secularism. The implementation of the UCC would require a balancing act of respecting diverse religious beliefs, upholding gender equality and promoting social justice. The paper critically evaluates the feasibility of implementing a UCC are discussed to illuminate legal perspectives.

**KEYWORDS:** Uniform Civil Code, Secularism, Gender equality, Judiciary.

**INTRODUCTION:****UNIFORM CIVIL CODE (UCC)**

UCC is a proposed set of laws that would be applicable uniformly to all citizens within a particular jurisdiction, regardless of their religious beliefs. In the context of India, the idea of a UCC is enshrined in Article 44 of the Constitution, aiming to replace a diverse personal law based on religious practices with a common set of civil laws governing matters such as marriage, divorce, inheritance and adoption. Article 44 of the Indian constitution states that – “The state shall endeavor to secure for citizens a UCC throughout the territory of India.”

Article 44 appears in Part IV of the constitution which provide “Directive Principles of State Policy”.

Part IV contains a set of guidelines or principles laid down in Part IV of the Indian Constitution (Articles 36-51) which are a fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. However, they are not enforceable in any court as provided under Article 37 and therefore if a directive is infringed, no remedy is available to the aggrieved party by judicial proceedings.

None of such directives has evoked so much reactions as the constitutional requirement of a UCC for all citizens throughout the country. The contentious debate surrounding the UCC (UCC) in India is rooted in a complex interplay of legal, social, cultural, and political dynamics. The nation's rich religious diversity, with distinct personal laws for various communities, adds sensitivity to the proposal of a UCC, as it necessitates navigating through deeply entrenched cultural practices.

**HISTORICAL BACKGROUND OF UNIFORM CIVIL CODE**

The origin of the UCC in India can be traced back to the colonial period of India. Initially, the British policy was one of non-interference in religious matters. Different Indian communities adhered to their respective religious-based legal practices. No attempt was made to codify the personal laws except towards the close of the British rule in India.<sup>1</sup>

During Warren Hastings' governance in 1772, it was stipulated that Muslims would be governed by the laws of the Quran, while Hindus would follow the Shastras. This approach persisted through subsequent legislative acts, including the Cornwallis Code of 1793 and the Act of 1797.

In 1834, the first Law Commission, headed by Lord Macaulay, drafted a penal code, leaving personal laws untouched and subject to religious tenets. Although the first law commission expressed a desire to codify personal laws, later British policy refrained from interference unless there was a significant demand supported by strong public opinion, as reiterated by subsequent Law Commissions.<sup>2</sup>

<sup>1</sup> See Derrett, “The Codification of Personal Law in India:Hindu Law”, 6 Indian Y.B of Int. Affairs (1957),p.189

<sup>2</sup> M.P.Jain, Outlines of Indian Legal History p. 488 (1981)

The Lex Loci Report of October 1840 underscored the need for uniformity in codifying Indian law but recommended excluding the personal laws of Hindus and Muslims.<sup>3</sup> The Queen's Proclamation of 1859 assured non-intervention in the social and religious affairs of Indians.

## CONSTITUTIONAL ASSEMBLY DEBATES ON UNIFORM CIVIL CODE

The Constituent Assembly of India extensively debated the UCC during the framing of the Indian Constitution. Notably, what is now Article 44 was initially referred to as draft Article 35 during these discussions. Various amendments to draft Article 35 were proposed by members such as Mohamed Ismail Sahib, Naziruddin Ahmad, Mahboob Ali Beg, Sahib Bahadur, and Pocker Sahib Bahadur, with Muslim members taking a leading role.<sup>4</sup>

Mohamad Ismail Sahib from Madras proposed adding a proviso to Article 35, stating that any group, section, or community should not be obligated to give up its personal law. He argued that the right to follow one's personal law is a fundamental right and should be among the justiciable fundamental rights. He cited precedents from Yugoslavia and the Kingdom of Serbs, Croats, and Slovenes to support his argument.

Naziruddin Ahmad suggested a proviso stating that the personal law of any community can only be changed with the prior assent of the community in question. He argued that not obtaining consent would conflict with Article 19 of the Draft Constitution, which guarantees freedom of religion. Ahmad emphasized a gradual approach towards the UCC with the consent of the concerned people.<sup>5</sup>

Mahboob Ali Baig Sahib Bahadur proposed a proviso stating that the article should not affect the personal law of the citizen.<sup>6</sup> He highlighted that for Muslims and some other communities, personal law is entirely dependent on religious tenets.

Pocker Sahib Bahadur, from Madras, supported Ismail Sahib's motion, criticizing Article 35 as a tyrannous provision that shouldn't be tolerated. He condemned the UCC, asserting that it is the duty of the majority in a democracy to secure the rights of every minority.

Opposing these amendments, K.M. Munshi from Bombay argued that Article 35 does not infringe Article 19 of the draft constitution. He objected to the view that the provision is tyrannous to minorities, citing examples from advanced Muslim countries that do not recognize the personal law of each minority. Munshi emphasized the need to separate religion from personal law and argued that without a UCC, gender equality is impossible.<sup>7</sup>

<sup>3</sup> Banerjee, Anil Chandra (1984). *English Law in India*. Abhinav Publications. P. 134

<sup>4</sup> Constituent Assembly Debates (Proceedings), Volume VII, Tuesday 23<sup>rd</sup> November 1948. <https://indiankanoon.org/doc/870715/> Last Visited On 28/10/23.

<sup>5</sup> Mohd. Shabbir, "Muslim Personal Law, UCC, Judicial Activism: A Critique", XII Alig. L.J. 1997, p. 47.

<sup>6</sup> Constituent Assembly Debates, Vol. VII, p. 543 <https://indiankanoon.org/doc/607985/> Last Visited On 29/10/23.

<sup>7</sup> Constituent Assembly Debates, Vol. VII, p. 547-548

A.K. Ayyar from Madras supported Munshi, urging the Assembly to pass the article dealing with the UCC. He questioned why Muslims had more confidence in British rule than in a democratic rule that would consider the religious tenets and beliefs of all people.

Before the amendments were voted on, Dr. B.R. Ambedker expressed his disagreement with the proposed amendments. He favored interference in personal laws and dismissed the notion that Muslim law has been immutable over time. Ambedker provided instances of Muslims in various provinces who were largely governed by Hindu Law. He attempted to alleviate Muslim concerns by suggesting that it is perfectly possible that the future parliament would make the application of the Code purely voluntary in the initial stage and suggested to Muslim members, "not to read too much into Article 44".

Subsequently, Draft Article 35 was put to a vote, and the Constituent Assembly adopted the Article, which would later be renumbered as Article 44 in the Constitution of India.

Justice Gajendragadkar observed the following: "22. The personal laws prevailing in this country owe their origin to scriptural texts. In several respects their provisions are mixed up with and are based on considerations of religion and culture; so that the task of evolving a UCC applicable to the different communities of this country is not very easy. The framers of the Constitution were fully conscious of these difficulties and so they deliberately refrained from interfering with the provisions of the personal laws at this stage but laid down a directive principle that the endeavour most hereafter be to secure a UCC throughout the territory of India. It is not difficult to imagine that some of the members of the Constituent Assembly may have felt impatient to achieve this ideal immediately; but as Article 44 shows this impatience was tempered by considerations of practical difficulties in the way. That is why the Constitution contents itself with laying down the directive principle in this article."<sup>8</sup>

## **ARGUMENTS SURROUNDING UNIFORM CIVIL CODE**

The discussion surrounding UCC involves a wide array of perspectives. The UCC, envisioned to replace diverse personal laws with a civil code that is applicable to all citizens holds the promise of ensuring legal equality and justice. However, it also simultaneously raises concerns about cultural sensitivity and individual liberties.

### **1) National Integrity**

The proponents of UCC contend that uniformity in the civil code would act as a potential catalyst for fostering national unity in India. It would help to national integration and cohesiveness by mitigating communal tensions arising from differences in legal practices among religious communities.

<sup>8</sup> Constituent Assembly Debates, Vol. VII, p. 547-548

In the case of Mohd. Ahmad Khan v. Shah Bano Begum<sup>9</sup>, Chief Justice Chandrachud observed as follows: "A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

## 2) Secularism

Proponents of UCC contend that it aligns with the principles of secularism by promoting equality and justice for all citizens, regardless of their religious beliefs. Having a common set of laws for all citizens, irrespective of their religious affiliation, would ensure a level playing field and equal treatment under the law.

In the case of Sarla Mudgal v. Union of India<sup>10</sup>, Justice Sahai observed that: "When Constitution was framed with secularism as its ideal and goal, the consensus and conviction to be one, socially, found its expression in Article 44 of the Constitution...Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. '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 promotion of national unity and solidarity."

## 3) Woman Empowerment

The Proponents of UCC contend that personal laws based on religious practices often discriminate against women, particularly in matters of inheritance, divorce, and maintenance. Implementing UCC would ensure equal rights for women in all communities, empowering them to make decisions regarding their personal lives. Women would be granted equal rights and status to men in matters of marriage, divorce, inheritance, adoption, maintenance, etc.

K.M. Munshi, Member of the Drafting Committee stated thus:

"I know there are many among Hindus who do not like a UCC, because they take the same view as the honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect, and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which

<sup>9</sup> Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945 <https://indiankanoon.org/doc/823221/> Last Visited On 05/11/23.

<sup>10</sup> Sarla Mudgal v. Union of India, AIR 1995 SC 1531, <https://indiankanoon.org/doc/733037/> Last Visited On 06/11/23.

would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India."<sup>11</sup>

## **Arguments Against UNIFORM CIVIL CODE**

### **1) Violation of Religious freedom**

Opponents of a UCC assert that its introduction would violate the religious freedom of minority groups. They contend that personal laws are an integral part of religious practices and should be safeguarded as a matter of cultural identity and individual rights. For instance, Islam equates the practise of legalising what is prohibited by Allah and prohibiting to the sin of worshipping other gods besides Allah which is the most fundamental teaching of Islam.<sup>12</sup>

It is responded by pointing out that Article 25(2) provides that the State can make any law regulating or restricting any economic, financial, political or other secular activity associated with religious practice or falls within the field of social reform or social welfare.

In the case of *Sarla Mudgal v. Union of India*<sup>13</sup>, Justice Kuldeep Singh observed that: "Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. "

### **2) Violation of secularism**

The opponents of UCC argue that secularism means respecting and accommodating the diversity of religious practices and allowing communities to govern their personal matters based on their own traditions and customs.

The 21st Law Commission of India stated that:

"1.21. The term secularism only has meaning if it can also assure that the expression of any form of 'difference', not just religious but also regional does not get subsumed under the louder voice of the majority; and at the same time no discriminatory practice hides behind the cloak of \_religion 'to gain legitimacy."<sup>14</sup>

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<sup>11</sup> Supra note 7.

<sup>12</sup> Holy Quran 9:31 with Tafsir Ibn Kathir. Also see Holy Quran, 45:12, 7:3, 6:59 and 33:36.

<sup>13</sup> Supra note 10.

<sup>14</sup> Law Commission of India, Reform of Family Law: Consultation Paper on the Reform of Family Law (2018).

<https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>

### 3) Imposition of Majoritarian views on Minority

The minorities have an apprehension that personal laws of the majority would be imposed on them in the name of UCC and are thus opposed to it. Dr. Ambedkar however held that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community if certain portions of the Hindu law were incorporated into the new civil code projected by Article 35 because they were found to be the most suitable.<sup>15</sup>

#### JUDICIAL APPROACH TO UNIFORM CIVIL CODE

The judicial stance on the implementation of the UCC in India highlights the urgency of UCC. Even though over five decades have elapsed since the Constitution was framed, the realization of the ideal UCC specified in Article 44 is yet to be achieved. The judiciary has consistently expressed concern about the delay in its realization which is reflected in various pronouncements of the Supreme Court from time to time.

In the case of *Mohammad Ahmed Khan v. Shah Bano Begum*<sup>16</sup>, Chief Justice Chandrachud expressed a sense of disappointment and regret concerning Article 44 of the Indian Constitution, describing "dead letter." He highlighted the absence of any official initiatives towards formulating a common civil code for the entire country. The Chief Justice acknowledged the reluctance of any community to unilaterally make concessions on this matter and underscored that it was the duty of the State to secure a UCC for all citizens. Despite recognizing the challenges involved in bringing individuals from different faiths onto a common platform, Chief Justice Chandrachud stressed the necessity of initiating the process. He argued that a starting point was essential for the Constitution to hold any meaningful significance. Additionally, he asserted that the role of a reformer inevitably falls upon the courts when palpable injustices are evident. He states, "We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

In the case of *Jordan Diengdeh vs S.S. Chopra*<sup>17</sup>, the court observed the lack of uniformity in laws related to judicial separation, divorce, and nullity of marriage. The court highlighted the necessity of introducing grounds such as irretrievable breakdown of marriage and mutual consent for divorce in all cases. The case at hand was presented as an example where the marital tie between the parties had completely and signally broken down. The court expressed the view that there was no purpose or benefit in continuing a marriage that had so

<sup>15</sup> Supra note 4.

<sup>16</sup> Supra Note 9.

<sup>17</sup> *Jordan Diengdeh vs S.S. Chopra*, 1985 AIR 935 <https://indiankanoon.org/doc/569459/> Last Visited On 10/11/23.

completely broken down. The court observed, "Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste... We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have find themselves in. We direct that a copy of this order may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take."

In the case of *Sarla Mudgal (Smt.) and others v. Union of India*<sup>18</sup>, Justice Kuldeep Singh expressed disappointment that, even after 41 years, subsequent governments had not shown the inclination to address Article 44, which calls for a UCC. He criticized the failure of governments to make efforts toward a unified personal law for all Indians. He argued that there is no justification in delaying the UCC any further since more than 80% of the citizens have already been brought under the codified personal law. It was further highlighted that the Hindus alongwith Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration.

It is however submitted that it is not correct to say that the enactment of four Hindu laws in 1955-56 has brought over 80% of the citizens under the codified personal law for the following reasons:

- i)The four Hindu laws of 1955-56 fall short in comprehensively addressing all aspects of Hindu personal law, particularly matters related to co-parcenary, joint family, and property partition. Traditional Hindu legal principles, represented by the Mitakshara and Dayabhaga schools, continue to influence legal decisions.
- ii)Despite being intended for uniform application across India, these laws have exceptions and variations. In certain regions, such as Goa, Daman, and Diu, archaic Hindu usages from the 19th century remain in effect. In Pondicherry, many Hindus opt to be governed by the French Civil Code. Additionally, specific states like Jammu and Kashmir, Uttar Pradesh, Tamil Nadu, Andhra Pradesh, and Kerala have introduced their variations and amendments to the Hindu Code.
- iii)Southern Indian states, including Andhra Pradesh, Karnataka, Kerala, and Tamil Nadu, witness Hindu matriarchal families adhering to various customary laws instead of the Hindu Code.
- iv)Moreover, local customs and practices in North-eastern states, such as Nagaland, Mizoram, Meghalaya, Arunachal Pradesh, and Sikkim, are safeguarded under Article 371A of the Indian Constitution or through legislative provision and judicial decisions. This allows diverse tribes to follow their customs exempt from the four Hindu laws.
- iv)The entire tribal population following Hindu, Buddhist, Jain, and Sikh religions is exempt from the four Hindu law enactments.
- v)The Hindu laws permit Hindus, Buddhists, Jains, and Sikhs to observe their respective customs and usages in various matters, including prohibited degrees in marriage, marriage rites, divorce, adoption, Mitakshara Coparcenary Property, joint family properties governed by Marumakkattayam, Nambudri, and Ahyasandantana customs, properties held by Sthanamandans, and specified impartible estates.

<sup>18</sup> Supra Note 10.



The learned Judge further requested the Prime Minister to take a fresh look at Article 44 to secure an UCC and wanted the court to be informed about the steps taken. But in *Lily Thomas v. Union of India*<sup>19</sup>, court clarified the remarks made in *Sarla Mudgal's* case were only an obiter dicta.

Justice Sahai. J. was of the opinion that although UCC is desirable, the time was yet not ripe. He suggested entrusting the matter to the Law Commission for examination in consultation with the Minorities Commission.

Justice Sahai. J. in his separate but concurring judgment observed:

"Marriage, inheritance, divorce, conversion are as much religious in nature and content as any other belief or faith... But these are matters of faith. Reason and logic have little role to play. The sentiments and emotions have to be cooled and tempered by sincere effort.... The desirability of uniform Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change...Even the slightest deviation shakes the social fibre. `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 promotion of national unity and solidarity. But the first step should be to rationalise the personal law of the minorities to develop religious and cultural amity."

### **Suggestions and Conclusions**

The question of implementing a UCC in India remains a contentious issue, with arguments both for and against its immediate adoption. While the idea of UCC has historical roots and aims at ensuring equality, a careful consideration of the present socio-cultural and legal landscape suggests that the time may not be ripe for India to embrace a UCC.

In June 2016, the Law Commission was assigned the responsibility of examining matters related to a UCC following a reference from the Government of India. The Law Commission, in the absence of a consensus on implementing a UCC, proposed a balanced approach. It suggested preserving the diversity inherent in personal laws while ensuring that these laws align with the fundamental rights guaranteed by the Constitution of India. The 21st Law Commission held that a UCC "is neither necessary nor desirable at this stage".<sup>20</sup>

Rather than advocating for a UCC, which the Commission deemed unnecessary and undesirable at the current stage, it focused on addressing discriminatory aspects within existing laws. The Commission highlighted that

<sup>19</sup> *Lily Thomas v. Union of India*, AIR 2000 SC 1650 <https://indiankanoon.org/doc/80351/> Last Visited On 15/11/23.

<sup>20</sup> Law Commission of India, *Reform of Family Law: Consultation Paper on the Reform of Family Law* (2018), ch. 1, para. 15. <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf> Last Visited On 17/11/23.

many countries worldwide are recognizing and respecting differences, suggesting that the existence of diversity does not inherently indicate discrimination but is indicative of a healthy and robust democracy.

The implementation of the UCC must be a gradual process applying only to those who are willing to be bound by it in the initial stages. This gradual process allows for a smoother transition, giving individuals, communities, and institutions the time to adapt and understand the implications of the proposed changes. Dr. Ambedkar observed in the Constituent Assembly thus: "It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary [...] so that the fear which my friends have expressed here will be altogether nullified."<sup>21</sup>

In *Pannalal Bansilal and others vs. State of A.P. and Another*<sup>22</sup>, it was observed: "The first question is whether it is necessary that the legislature should make law uniformly applicable to all religions or charitable or public institutions and endowments established or maintained by people professing all religions. In a pluralist society like India in which people have faith in their respective religions, people of India professing different religions faiths, born in different castes, sex or sub-sections in the society speaking different languages and dialects in different regions and provided a secular Constitution to integrate all sections of the society as a united Bharat. The directive Principles of the Constitution themselves visualise diversity and attempted to foster uniformity among people of different rates..... In one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law of amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.

In conclusion, although a UCC is seen as desirable goal, it is unnecessary and undesirable at this stage. The first step as observed by Justice Sahai should be to rationalise the personal law of the minorities to develop religious and cultural amity. The debate surrounding the implementation of a UCC in India necessitates a careful and gradual approach. Proposing a phased, voluntary implementation ensures adaptability and a measured transition. An optional UCC enacted to coexist with the various religious personal laws is suggested. The implementation of the UCC should be a meticulously planned and inclusive process, driven by consensus and upholding principles of justice, equality, and non-discrimination. It requires careful consideration to ensure that it respects the diverse societal fabric of India and maintains a fair and just legal framework for all citizens.

<sup>21</sup> Constituent Assembly debates, Volume VII (here on, CAD, Vol.) 3 December 1948 p. 1979. <https://indiankanoon.org/doc/607985/> Last Visited On 20/11/23.

<sup>22</sup> *Pannalal Bansilal and others vs. State of A.P. and Another*, AIR 1996 SC 1023 <https://indiankanoon.org/doc/1494202/> Last Visited On 24/11/23.