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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# UNIFORM CIVIL CODE

SUBMITTED BY- BHAVYA SRIVASTAVA

UNDER GUIDANCE OF- PROF. MAMTHA

## ABSTRACT

This paper is about the Uniform Civil Code, which has been mentioned in the Part IV of the Constitution of India under article 44 where it states “The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” Although article 44 of the constitution is part of the Directive Principles of State Policy which is not enforceable in the court of law, yet it places a duty on the government to provide its citizens with economic and social policies that will promote prosperity and well-being of the people.

The Uniform Civil Code is concerned with codifying personal laws for matters like marriage, divorce, adoption etc. These matters presently are covered by each religion’s own laws governing the people following that particular religion. The implementation of the code would mean that all the personal laws would be codified in a single law and everyone would be made to follow the same rules, irrespective of the community they belong. This has raised various issues and has always been a topic of dispute.

So, on one hand the article 25 of the constitution of India, talks about the religious freedom and allows any community to practise and propagate their religion and follow their beliefs which manifests in the form of personal laws. On the other hand, the Uniform Civil Code aims to subvert that and make a streamlined law for every citizen of the country. It also means that to a certain extent this is a tussle between Fundamental Rights and Directive Principle of State Policy.

**Key Words-** Uniform Civil Code, Constitution, Personal Laws, Fundamental Rights, Directive Principle of State Policy

# INTRODUCTION

India is a diverse country with multitude of cultures and practises. In every part of the country there are different customs that are being followed by the people for generations. These customs are not simply a monotonous practise but an identity to which people take pride in. And for this reason, our constitution makers were sensitive towards making the country a place where people from diverse religion and practise can find a place in. And for this they incorporated article 25<sup>1</sup> and article 26<sup>2</sup>, as part of fundamental rights, in the constitution. And to further that the term 'secular<sup>3</sup>' was added to the Preamble later on.

In India we can broadly classify three prominent religions, whose followers' different personal laws as enshrined by their respective religion. For example, Hindu Marriage Act 1956, governs the issue of marriage, divorce, maintenance etc for Hindus, Sikhs, Jains and Buddhists. While the Islamic Law governs the Muslim and Christians follow the laws of Christianity.

At the same time, constitution makers envisioned a state with uniformity and added article 44<sup>4</sup> as part of Directive Principles of State Policy. Though not enforceable in nature, it places a heavy duty on the shoulders of the government to make a uniform law for the personal matters that would govern all the citizens irrespective of their religion, custom or practise.

The aim of Uniform Civil Code is to bring equality and to weed out the discrimination and injustice done in the name of the religion.

The Uniform Civil Code would be replacing all the existing personal laws, as the guidelines of article 44 but the core issue is that this code is considered in violation with the article 25 of the Indian constitution. Here while one provides for religious freedom the other talks about streamlining all the religions. And at the same time while one is Fundamental Right which should be provided the other is Directive Principle meaning only an obligation which may or may not be fulfilled.

This paper aims to discuss the various issues surrounding the application, implementation, obstacles, pros and cons of Uniform Civil Code. At the same time, it also discusses the possibility that whether it is truly violative of Fundamental Rights and if there are any possibilities to implement the laws without hurting the sentiments of the citizens of the country.

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<sup>1</sup> Article 25- Freedom of conscience and free profession, practise and propagation of religion



(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion

<sup>2</sup> Article 26- Freedom to manage religious affairs – Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law

<sup>3</sup> 42 Constitution Amendment Act, 1976

<sup>4</sup> Article 44- Uniform Civil Code for the citizens- The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.



## RESEARCH PROBLEM

The study here is on the Uniform Civil Code and the issues surrounding the implementation of the code in a diverse nation like India.

## **HYPOTHESIS**

The Uniform Civil Code is a struggle between the Fundamental rights and the Directive Principle of State Policy.

## **METHODOLOGY**

This is a doctrinal study. There has been use of secondary data collection by the means of books, research papers, articles, comments, notes and other relevant writings to formulate the findings of the study. The relevant case laws have been used to great extent to showcase the findings of the study. The judgements given by the honourable courts are put forward to support the study.

## **RESEARCH QUESTION**

1. What are the obstacles in the way of implementing the Uniform Civil Code?
2. Whether the Uniform Civil Code be made a new law or should the existing personal laws be blended together?

## **OBJECTIVES**

- To understand the issues in the matter of making and implementing the Uniform Civil Code.
- To understand that whether the Uniform Civil Code is in the violation of the Fundamental Rights

## **UNIFORM CIVIL CODE**

The Uniform Civil Code or UCC aims to create a uniform set of laws which can be utilised in governing personal matters such as marriage, divorce, inheritance and adoption for all citizens of the country. The purpose of UCC is to promote secularism, gender equality and social justice among the people by means of making every citizen follow the same set of the laws in matters of

their personal life.

The concept of UCC is not new or a solely Indian concept, it has been a topic of debate and discussions in many countries around the world. In India, due to multicultural and diverse religious population, the debate of UCC revolves around religious customs and traditions. The group of people who approves the UCC claims that these laws would bring gender equality and promote woman's rights as the laws provided by the UCC would not discriminate on the basis of the gender. They also claim that UCC would bring forth, national integration and secularism by enforcing the same set of laws to all citizens irrespective of their religious and cultural background.

The opposing view of UCC holds that these uniform laws would infringe upon the religious and cultural rights and hence would undermine the diversity of the country. They pointed out that religious identity is an integral part of a person's life and should be preserved to protect the religious rights as guaranteed by the fundamental rights in the constitution. Another argument against UCC, is that it would be difficult and not practical to enforce UCC in a diverse country like India.

## **GENDER JUSTICE**

Gender justice is an important aspect which determines the nature of a just society. It is a notion that every person in the society is being treated equally and are being provided with similar opportunities and have same rights, irrespective of their gender. Like in many other societies around the world, in Indian, the concept of UCC is intertwined with that of gender justice.

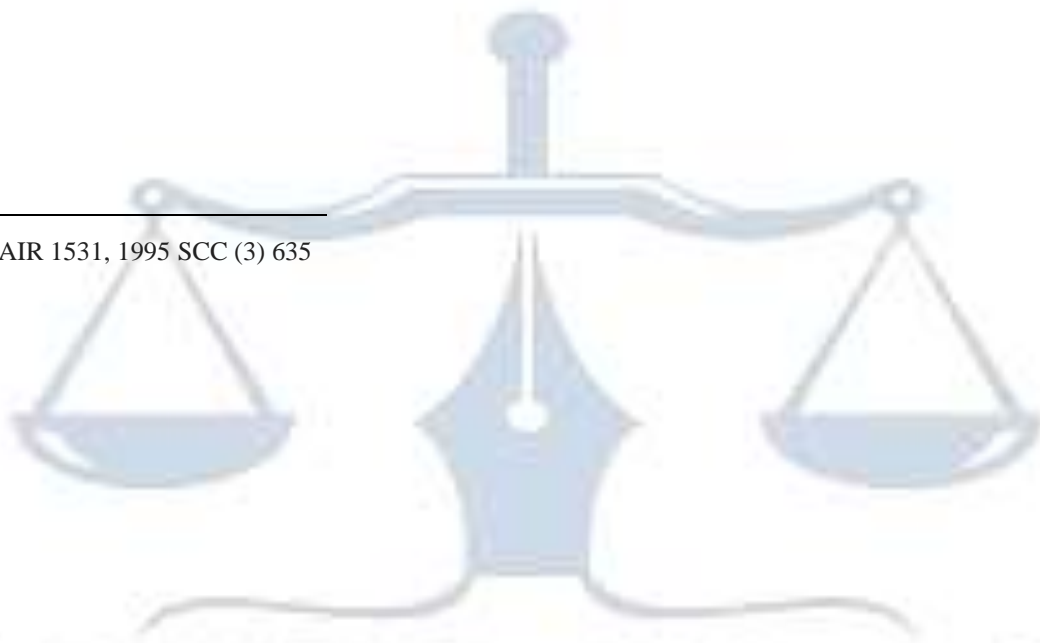
Currently, in India, the citizens of the country are governed by their respective personal laws which are often viewed as oppressive when concerned with women who are always get lesser rights under personal laws in comparison with the males. Thus, it is great significance, to realize that current personal laws are discriminatory in nature particularly towards the women. Hence, gender justice becomes a crucial aspect and an important reason for the requirement of the UCC.

Gender justice is one of the important aspects which is raised in favour of the uniform civil code where it is addressed that UCC would eliminate inequalities and injustice towards the women to a large extent. For example, woman have fewer rights in matter of divorce, inheritance and child custody in religious laws. Uniform Civil Code would bring a change and ensure that all the laws would be same for everyone.

As in the case of *Sarla Mudgal V Union of India*,<sup>5</sup> the issue raised was that whether a hinduman, married under Hindu law, after converting Islam would be allowed to solemnise a second marriage. The court held that converting to Islam would not automatically dissolve the previous marriage. They stated that a Hindu marriage can be only dissolved under the section 13 of the Hindu Marriage Act 1955. Under this case, the court also emphasised the importance of the Uniform Civil Code, which will stop people from taking undue advantageof the personal laws of each other.

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<sup>5</sup> 1995 AIR 1531, 1995 SCC (3) 635



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# **CONSTITUTION AND UNIFORM CIVIL CODE**

The Indian Constitution under Article 44 provides for a UCC as a directive principle of state policy, but it has not been implemented yet. As the directive principles are directions and not necessary requirements which have to be followed, and the directive principles are also not enforceable in the court of law which is another drawback to it. Hence, the implementation of UCC in India would require significant political will and consensus-building among different political and religious groups.

On the other hand, the constitution of India also provides with the Fundamental Rights which are essential and must be provided to every citizen of the country. These rights are also enforceable in the court of law. Not only that, on the violation of a fundamental right, a citizen also has a right under article 32<sup>6</sup> of the Indian Constitution that the aggrieved person can directly approach the Supreme Court.

At the same time Preamble in the constitution mentions the word secular<sup>7</sup>, which means that the state has no religion. It is by principle goes to say that a secular state should not discriminate on the basis of religious matters. As in the case of *S.R. Bommai V Union of India*<sup>8</sup>, the court found it difficult to define 'secularism', though the judges in the case agreed that religion is a fundamental right and should be provided and that the religion should not be mixed with the politics.

Though in the case of *Mohd. Ahmed Khan V Shah Bano Begum*<sup>9</sup>, the court in this case held that the Muslim women should also be provided maintenance under section 125<sup>10</sup> of The Code of Criminal Procedure after the 'iddat' period. The judges here emphasised the need of the Uniform Civil Code which would mend the disparity in different ideologies. The judgement in this case highlighted and gave new spark to already on-going debate on UCC.

So, through the years, there has been a constant struggle between the Fundamental Rights and the Directive Principle of State Policy, while one side is a necessary requirement for the citizens other is also a necessity with changing times and should be taken in consideration.

## **JUDICIAL DEVELOPMENTS**

I. Mohd. Ahmed Khan V Shah Bano Begum (1985)- This case was one of the earliest cases which raised the issue of the UCC. In this case it was held by the court that under the article

125 of the code of the criminal procedure even the muslim women should be provided maintenance. This judgement led to a heated debate on the

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<sup>6</sup> Article 32- Remedies for enforcement of rights conferred by this part, Part III: Fundamental Rights, Constitution of India

<sup>7</sup> Added by 42<sup>nd</sup> Amendment Act, 1976

<sup>8</sup> 1985 SCR (3) 844

<sup>9</sup> 1985 AIR 945

<sup>10</sup> Section 125- Order for maintenance of wives, children and parents, Chapter IX: Order for maintenance of wives, children and parents, The Code of Criminal Procedure, 1973



uniform civil code. Later, with the coming of Muslim Women (Protection of Rights on Divorce) Act, 1986, lead to further discussion on UCC.

II. Sarla Mudgal V Union of India (1995)- In this case a hindu married male converted to Islam and married the second time which by the court was held invalid as a Hindu marriage can only be dissolved by the provisions mentioned under the Hindu Marriage Act 1955, and not otherwise. It was this time again that the court emphasised the need and the utility of the Uniform Civil Code where the disparity brought because of various religions would be mended.

III. Mrs. Pragati Verghese And etc. V Cyril Verghese (1997)<sup>11</sup>- This case challenged the section 10<sup>12</sup> of Indian Divorce Act, 1869, this case was proposed by the Christian wives. It was contended that the provision here were anarchic and discriminatory for wives against husband and also from wives of other communities, where they were denied equality. The court here held the section 10 as ultra vires and struck it down. Here, too the need for UCC was felt as the uniform laws would bring equality for every person irrespective of their religion.

IV. Danial Latifi V Union of India (2001)<sup>13</sup>- This case came after the judgement of the Shah Bano case, where the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, was challenged. And the other issue which was raised that whether muslim women should get maintenance under section 125 of The Code of Criminal Procedure. In this case the court upheld the validity of the Muslim Women (Protection of Rights on Divorce) Act and the husband should provide maintenance under the section 3(1)(a) of the act. If the husband fails to provide maintenance after iddat period, the wife can claim the same under the section 125 of The Code of Criminal Procedure.

V. John Vallamattom v. Union of India (2003)<sup>14</sup> – This case is related to the Christian laws which was concerned with donation of personal property where it was stated that section 118 of Indian Evidence Act, 1925 imposes arbitrary restriction on donating property for religious purposes on basis of will. The court held the section 118 unconstitutional as it is violative of article 14 of the constitution. In this very case the Supreme Court stated that Uniform Civil Court is a necessity as it will pave the road for the national integration and will also eliminate contradictions which is raised due to conflicting ideologies of different communities.

VI. Shayara Bano V Union of India (2017)<sup>15</sup>- This case was related to the practise of the triple talaq or talaq-e-biddat which is concerned with the personal laws of the muslim. In this case a girl was given divorced without any reason with just saying the word ‘talaq’ three times. Here the constitutional validity of such a divorce was challenged. The court held in this case that triple talaq is unconstitutional and also instructed the legislature to make laws regarding this issue to

protect the rights of the women. This

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<sup>11</sup> AIR 1997 Bom 349, 1997 (4) BomCR 551

<sup>12</sup> Section 10- Grounds for dissolution of marriage, III- Dissolution of Marriage, The Divorce Act, 1869

<sup>13</sup> AIR 2001 SC 3958

<sup>14</sup> (2003) 6 SCC 611

<sup>15</sup> AIR 2017 9 SCC 1 (SC)





was another case where the need of the Uniform Civil Code was realised and the Supreme Court observed that UCC would ensure gender justice and equality.

VII. Joseph Shine v. Union of India (2018)<sup>16</sup>- This case was raised by the means of the Public Interest Litigation, where the constitutional validity of the section 497<sup>17</sup> of Indian Penal Code and section 198(2)<sup>18</sup> of The Code of Criminal Procedure was questioned. The apex court declared both the sections unconstitutional in this case and while passing the judgement observed the need of UCC.

## **STRIKING A BALANCE**

The Part III and Part IV of the Indian constitution mentions the Fundamental rights and the Directive Principle of State Policy respectively. The article 25 which is a fundamental right on one hand mentions about the freedom to practise the religion of their choice, on the other hand the article 44 which is a directive principle mentions the uniform civil code. The constitution of India promises its people the right to the religion as there are various religions practised in the country and are varied customs, so it makes it difficult to promote the uniform laws. This has led to a clash which has created a complex legal and social landscape.

Though, both article 25 and article 44 are integral part of the Indian Constitution, their implementation at the same time creates various issues and has led to various conflicts. The judiciary has played a role of mediator in the regard of this issue, time and time again they have resolved the conflicts and strived to maintain the delicate balance between the rights and the equality which the courts have ensured is provided to all the citizens of the country. The courts have reiterated that the religious diversity should be respected while also aiming for gender equality by the means of the Uniform Civil Code.

The duty to make and enact laws is given to the legislature, hence it is their responsibility to ensure that the uniform laws should be made in such a way that they conform with religious diversity as well as fulfil the expectation of gender justice. The laws should respect the individual freedom and at the same time promote the justice and equality among the people.

## **DISADVANTAGE OF UNIFORM CIVIL CODE**

The Uniform Civil Code, though has a lot of people supporting its implementation, there are also people who are wary of these laws and fear that these laws would be a threat to the cultural and religious diversity of the country. The uniform civil code would undermine the cultural diversity by imposing the same set of laws and this would ultimately erode away the

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<sup>16</sup> AIR 2018 SC 4898

<sup>17</sup> Section 497- Adultery, Chapter XX: Of Offences Relating to Marriage, The Indian Penal Code, 1860

<sup>18</sup> Section 198(2)- No person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the Indian Penal Code, Chapter XIV: Conditions Requisite for Initiation of Proceedings, The Code of Criminal Procedure, 1973



unique characteristic of diversity that is seen in India and which in itself a special feature with which India is recognised in the world.

It is also believed that the implementation of UCC would affect the minority community to a larger extent and is feared that the such uniform laws would favour the majority over the minority and thus having the power to overriding the cultural practises of the minority community. In India, where different communities have their own distinct practises and culture, imposing such laws might led to social unrest.

Another problem with UCC is the implementation of uniform law in a diverse and vast country like India which has numerous languages, customs and traditions. It has imposed logistic challenges if such a law has to enforced in the vast landscape of India and will hence require a considerable resources and infrastructures and a great amount of individual will to implement these laws fairly over the entire country.

Furthermore, there is a claim that UCC would promote justice and equality to women by providing women's rights in civil code by standardising laws relating to marriage and divorce but at the same time there are also religious customs and practises which are more favourable for the women and applying these uniform laws might weaken them. And hence, it might not entirely be favourable for the women and would not lead to improved rights.

Lastly, the biggest obstacle in the path of implementing the Uniform Civil Code is the non-compliance and resistance of the code by the people of the country. India is a country where religious practises are first and foremost, and the religion is at times considered an identity of an individual and hence an integral part of the country. In this situation, it is normal for the people of the country to resist such laws which threaten their religious practises and it is not wrong to say that there have major clashes over the issue of the religion and hence implementation such laws are a sensitive issue and the authorities have to tread carefully where uniform civil code is concerned.

## **INTERNATIONAL PERSPECTIVE ON UNIFORM CIVIL CODE**

In several countries, personal matters such as marriage, divorce, and inheritance are governed by

civil laws that are applicable to all citizens, irrespective of their religious or cultural background. The implementation of a UCC in some countries has been seen as a step towards modernization and secularization of personal laws. While the debate over the UCC in India has been going on for a while, it is also important to look at international perspective to understand the functioning of a uniform laws in other countries and to see how it has impacted the people of the country.

- France- The French Code exist from the time of Napoleon, the code deals with all the matters related to marriage, divorce and inheritance. This code is uniformly applied to all the citizens, irrespective of their religious or cultural background. At the same time, French laws also allows autonomy in certain matters of marriage ceremony and



family law disputes. The French code is a proof that rights of an individual can co-exist with that of individual freedom and religious diversity.

- United States- Although, the uniform personal laws are not directly enshrined in the federal law, but the states have the right to make laws regarding family law, property rights and inheritance. The USA has a decentralized system which allows more flexibility and has more space for the accommodation for the diverse culture and religious practises. Even though, there are on going debates over the same-sex marriage and reproductive rights, the laws in this country could find a way to balance uniformity and diversity on certain other matters.
- United Arab Emirates- The United Arab Emirates follows a dual system of laws which allows for both the existence of the cultural diversity and a uniform set of laws at the same time. The country has implemented unified laws for sharia law for personal matters like marriage, divorce, child custody and inheritance for Muslim citizens while the non-muslim citizens are allowed to follow their respective religion.

## **UNIFORM CIVIL CODE IN INDIAN STATES**

- Goa- Goa, was a former colony of Portuguese and the uniform law was first introduced in 1867 as the Code of Canon Law or the Goa Civil Code. This code was applicable to every citizen of the state irrespective of their religion or culture. After Goa became part of India in 1961, an act was passed called Goa Daman and Diu administration act 1962 which allowed the code to be amended. This code is still in existence as a uniform law which governs all the matters of marriage, divorce, inheritance and succession regardless of an individual's practises.
- Uttarakhand- Recently, a new bill regarding the personal laws with matters involving marriage, divorce, adoption, inheritance and succession. This new bill also contains laws which provide rights to people in live-in relationship, like a woman who is deserted in live-in relationship would be allowed maintenance. This new law also prohibits certain practises like nikah-halala and triple talaq. Section 4 of this new law mentions that there should be no spouse living at the time of the marriage, meaning that this law also prohibits the practise of bigamy or polygamy. This bill has further given recognition to the children born out of voidable marriage and of live-in relationship and consider them as legitimate. This bill also ensures equal inheritance rights for sons and daughters which would include illegitimate children, adopted children or those children who are born from surrogacy or assisted reproductive technology.

# **CONCLUSION**

In conclusion, the Uniform Civil Code aims to promote gender equality and social justice, by providing the citizens with the same set of laws irrespective of their religion or gender. The problems in implementing UCC are complex and involve various issues such as religious rights, cultural diversity and gender equality. The UCC is also a constant struggle between the fundamental rights and the directive principles. Therefore, it is important to uphold the rights of the citizens while at the same time providing them with the equal status which has been promised to them by the constitution.

Hence, it becomes of vital consideration that while implementing the Uniform Civil Code, all the different situations and factors should be taken in consideration. It is important to strike a balance between the fundamental rights and the directive principles, so that the individual freedom as well as the natural justice and gender equality are provided evenly to the citizens of the country. Hence, a middle path should be found to fulfil these aspirations and a balance may be maintained so that the constitutional values of India could be upheld.

There has been the example of Goa and Uttarakhand where the uniform laws have been implemented, albeit, at different times and in different situations, having different rules but the aim of both the laws are same. In both the states uniform laws are implemented for the citizens of the state and the goal is to provide them with the gender equality and justice. It is of crucial importance that the observation after implementation of these laws in these states, should be taken into account and from their inferences, policies should be formed, for citizens of the country which could find a balance between their freedom as well as justice to all.

Though while we look at the positive side of the Uniform Civil Code, we should also consider the negative effect it can have on the various communities. It is essential to consider the challenges that might occur on implementing of the uniform civil code, as the social unrest and resistance are consequences which are factors that can become a possibility, if there are no proper provision taken, when the cultural and religious diversity are at risk.

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