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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

**FEASIBILITY AND IMPLICATIONS OF  
IMPLEMENTING A UNIFORM CIVIL CODE IN INDIA  
– A COMPARATIVE ANALYSIS**

AUTHORED BY - GAURAV MANI TRIPATHI

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## ABBREVIATIONS

AIR	All India Reporter
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPC	Code of Civil Procedure
CrPC	Code of Criminal Procedure
IPC	Indian Penal Code
Ltd.	Limited
PIL	Public Interest Litigation
SCC	Supreme Court Cases
Sec.	Section
V.	Versus
Vol	Volume
UCC	Uniform Civil Code
UDHR	Universal Declaration of Human Rights
UK	United Kingdom

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## LIST OF CASES

Bano v Union of India (2017) 9 SCC 1.

John Vallamattom v. Union of India (2000) 6 SCC 224 Naveen Kohli v. Neelu Kohli AIR 2006 SC 1675

Smt. Sarla Mudgal, President v. UOI & Ors 1995 AIR 1531 Ishrat Jahan v. Union of India Writ Petition (C) No. 665 of 2016

S.R. Bommai v. UOI 1994 AIR 1918

Mohammad Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556

Ahmadabad Women's Action Group (AWAG) v. Union of India AIR 1997 SC 3614 Lily Thomas etc. v. UOI and others AIR 2000 SC 1650

Ammini E.J. v. UOI AIR 1995 Ker.252

Pragati Verghese v. Cyrill George Verghese AIR 1997 Bom. 349 Naveen Kohli v. Neelu Kohli 2006 (4) SCC 558

*Pannalal Bansilal v. State of Andhra Pradesh* AIR 1996 SC 1023 paragraph 12: (1996) 2 SCC 498

*Maharishi Avadhesh v. UOI* 1994 Supp (1) SCC 713 *John Vallamattom v. UOI* AIR 2003 SC 2902 *Danial Latifi v. UOI* 2001 7 SCC 740

*Reynold Rajamani v. UOI* AIR 1982 SC 1261 *Prabhakar v. Shanti Bai* 2008 HLR 250

*Khursheed Ahmad Khan v. State of U.P. and Others* Civil Appeal No. 1662 of 2015 *Indian Young Lawyers' Association v State of Kerala* (2019) 11 SCC 1.

## **ABSTRACT**

Uniform Civil Code (UCC) is the set of laws that administer personal matters for every citizen, irrespective of what religions they belong to. UCC is the bill that has been proposed in India which will reinstate every personal law with sets of common laws that will be valid to all. This study tried to focus on the significance of UCC in India at current vis-à-vis the Indian personal law system. As per Indian Constitution, Article 44 is the directive principles of the state policies which intensely elucidate concerning 'Uniform Civil Code'. It mentioned that states will enterprise to secure for the citizen UCC all through all the territories of India.

This socio-legal study seeks to investigate the implications of implementing a Uniform Civil Code on various aspects of personal laws, societal dynamics, and legal frameworks. A critical analysis of constitutional provisions related to personal laws, secularism, and fundamental rights forms a crucial part of this study. It explores the constitutional mandate for a Uniform Civil Code and the challenges in reconciling it with the principles of religious freedom and cultural diversity. The study tried to explore the problems and challenges predicted to arise in securing the UCC, like multiculturalism, fear of the Hindu Code, encroachment on autonomy of religions, other favoured Indian approach to religious issues, and the role of judiciary in securing UCC. In addition, it tried to introduce appropriate models and the favourable model of setting up and executing UCC.

This study also deals with the cases by the court towards UCC. This research work also tried to examine the issues surrounding a successful adoption of UCC for India and attempt to offer suggestion to resolution the same while maintain in views the present development in India. This study concluded that considering the strained social relation in India, UCC with clear and appropriately amended provisions would be most appropriate for the interest of India in the current position.

## **CHAPTER 1 INTRODUCTION**

The realm of personal laws and the prospect of implementing the UCC have long been subjects of intense scrutiny and debate, particularly in pluralistic societies like India. Personal laws, which are based on religious and cultural traditions, regulate issues like marriage, divorce, inheritance, and succession for particular religious groups. The call for a Uniform Civil Code seeks to harmonize these diverse legal frameworks into a single secular code applicable to every citizen regardless of their religious affiliations.

The discussion surrounding personal laws and the UCC encapsulates multifaceted dimensions encompassing legal, social, cultural, and political considerations. The proponents argued that the UCC is imperative for fostering equality, secularism, and modernization within legal systems. They contend that uniformity in personal laws would mitigate discriminatory practices, promote gender justice, and uphold the principles of a secular democracy. Conversely, critics express concerns over the potential infringement of religious freedoms, cultural autonomy, and minority rights. They highlight the complexities of pluralistic societies and caution against imposing homogenizing legal standards that may undermine diversity and communal harmony.

The UCC is a concept designed to replace personal laws derived from religious texts and traditions with a uniform set of laws that applies to all citizens regardless of their religion. In India, the proposal of a UCC has been a topic of ongoing debate and discussion for many years, and its implementation remains a matter of considerable interest and controversy.<sup>1</sup>

In the legal context of India, the UCC denotes to a single set of law administering individual subjects like marriages, divorce, inheritance, adoption, and succession for every people in India, regardless of their religion or community. The idea of a UCC is enshrined in Article 44<sup>2</sup> of the DPSP in Constitution of India, which states that the state

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<sup>1</sup> Paras Diwan, Law of Marriage and Divorce (2016.)

<sup>2</sup> Article 44, The Constitution of India

will attempt to protect for its citizens UCC throughout the territory of India.<sup>3</sup> The UCC seeks to unify these varied laws into one standard code, thereby promoting legal equality and simplifying the legal system. This initiative is driven by the objective of ensuring that all individuals, regardless of their religion, are treated equally under the laws, and addressing inconsistencies and disparities present in the current system. However, the execution of the UCC in India involves navigating multifaceted socio-cultural landscapes, as it must reconcile with the deeply rooted personal law of different groups and the potential resistance to such a significant shift in legal norms.

As of now, the country has specific personal law for various communities, like Hindu Law, Muslim Law, Christian Law, and Parsi Law, which govern matters like marriages, divorce, and inheritance among members of these respective communities. The implementation of a UCC would involve replacing these diverse personal laws with the general sets of law applicable to every person uniformly.

The idea of a UCC has been a topic of debate and controversy in India for many years. Supporters argue that it would advance gender equality, secularism, and national unity by providing equal rights and treatment for all citizens under a single legal framework. They believe that a UCC would address discriminatory practices found in some personal laws, especially those that disadvantage women.

Article 44 recommends the enactment of a UCC, but it is not legally binding. Despite this, the idea of a UCC is often seen as a step towards achieving social justice and gender equality.

Article 44<sup>4</sup> states: "The States will endeavour to secure for the citizen the UCC throughout the territory of India."

This provision embodies the framers' vision of social justice, gender equality, and national unity. However, it's important to note that Directive Principles are not legally enforceable by courts but are deemed essential for the country's governance. The

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<sup>3</sup> Satyam & Shobitabh, Uniform Civil Code – A Critical study (2023)

<sup>4</sup> Article 44, The Constitution of India

adoption of a UCC remains a directive principle, dependent on legislative action by the government.

The inclusion of Article 44 in the Constitution highlights the emphasis placed on the UCC as a means to promote unity and equality among citizens, regardless of their religion, caste, or community. Nevertheless, the actual implementation of a UCC has sparked significant debate and controversy in Indian politics and society, with varying opinions on its necessity, feasibility, and impact.<sup>5</sup>

The implementation of a UCC faces several challenges due to religious sensitivities and political considerations. Critics argue that imposing a common civil code could violate on the religious privileges and cultural identities of minority groups. There are concerns about potential backlash and resistance from conservative groups. Instead of implementing a UCC in one go, there have been calls for gradual reforms and amendments to existing personal laws to bring them in line with modern principles of justice and equality. This approach aims to address the concerns of different communities while moving towards a more uniform legal framework. The adoption of a UCC would have significant legal and political implications. It would require extensive legislative changes and could lead to contentious debates in Parliament and society at large.<sup>6</sup>

Public opinion on the issue of a UCC varies across different sections of society. While some groups advocate for its implementation as the way to endorse nationwide integration and parity, others view it as an infringement on religious freedom and cultural autonomy. While this move could simplify the legal structure and encourage fairness by making sure that every individual is subject to the equivalent legal standard, it also raises significant challenges. The diverse religious and cultural practices in India mean that the one-size-fit-all approaches can be met with resistance from communities who view their personal laws as integral to their identity. Therefore, the feasibility of implementing a UCC hinges on carefully navigating these social complexities, ensuring that reforms respect cultural traditions while advancing the principles of legal equality and integration.

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<sup>5</sup> Patel, Keshav, Uniform Civil Code in India: A Constitutional Perspective and Ongoing Debate, SSRN(2023)

<sup>6</sup> Huzaifa Aslam, Constitutional Aspects Revolving Around Uniform Civil Code, TSCLD, 2023

Given that many religious minorities in India may strongly oppose a UCC, a more effective and peaceful approach would be to gain support from the leadership of the various communities. This process should ideally involve addressing internal differences within communities through sustained and transparent dialogues with diverse representatives. Such discussions should seek common ground and incorporate feedback mechanisms.

This approach was notably missing in the Uttarakhand implementation, where the drafting committee comprised retired judges and bureaucrats but lacked experts in personal laws. Legal reforms should be implemented gradually rather than all at once. An incremental approach aids in building consensus and increases trust in the government, particularly amongst minority groups. The main aim of any legal system should be justice. Although balancing cultural sensitivity with ensuring equal rights is challenging, India must focus on eliminating discriminatory provisions in all laws. Simply pursuing legal uniformity is not enough to achieve justice for India's diverse communities.

The study examines the social and cultural implication of executing the UCC on various religious communities and marginalized groups. It considers factors such as gender equality, minority rights, and social justice in assessing the potential benefits and drawbacks of uniformity in personal laws. Based on the findings, the study proposes policy recommendations for addressing the complexities surrounding the accomplishment of UCC. It suggests avenues for dialogue, legal reforms, and social interventions aimed at promoting inclusivity, equity, and justice within the framework of personal laws.

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## **PROBLEM STATEMENT**

The UCC has been a subject of contentious debate in India for decades. While Article 44 of DPSP recommends its execution, the application of the UCC in contemporary India faces numerous challenges and complexities. India's legal framework is characterized by the coexistence of diverse personal law governing different religious communities. This fragmentation leads to disparities in rights and treatment among citizens, particularly in matters concerning marriage, divorce, inheritance, and adoption.

Existing personal laws often perpetuate gender disparities, particularly disadvantaging women in areas like marriage, separation, and heritage. A UCC is seen as a potential solution to address these inequalities and promote gender justice.

The debates related to the execution of the UCC is highly politicized, with different political parties and interest groups holding divergent views. Political resistance poses a significant obstacle to legislative reforms necessary for the enactment of a UCC.

Adopting a UCC requires extensive legal reforms and modifications to existing laws. Constitutional provisions need to be interpreted to promote secularism, equality, and justice, while also protecting basic privileges and religious freedom.



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## **OBJECTIVES OF THE STUDY**

- To study the history, origin and development of Personal Laws and uniform civil code.
- To analyse the judicial approach towards the personal laws and uniform civil code
- To examine the possible social and legal developments by execution of UCC.
- To study the need and importance of Uniform civil code.
- To propose appropriate solutions by framing the model draft of uniform civil code.

## **RESEARCH QUESTIONS**

1. What are the historical origins and evolutionary trajectories of personal laws in India, and how have they shaped contemporary legal frameworks and societal norms?
2. What are the constitutional provisions and legal principles governing personal laws in India, and how do they intersect with the call for a Uniform Civil Code?
3. What are the key challenges and barriers to the implementation of a Uniform Civil Code in India, and how can they be addressed while navigating the complexities of pluralistic societies?
4. What recent legislative and judicial developments have occurred in relation to personal laws and the Uniform Civil Code in India, and what impact have they had on the discourse and trajectory of legal reforms?
5. What are the potential avenues for dialogue, consensus-building, and reform initiatives aimed at promoting legal uniformity, social justice, and communal harmony within the framework of personal laws and the Uniform Civil Code?



## **METHODOLOGY**

The research design for proposed research work will be doctrinal in nature. In doctrinal research, there will be a thorough and analytical examination of international and national statutes, legal instruments, judicial decisions, and similar sources. In exploratory research, the focus will be on an analytical and comparative study of research articles, journals, case diaries, case laws, and research papers. Additionally, data will be gathered from books and pertinent websites.



## **CHAPTER 2**

# **HISTORICAL BACKGROUNDS AND PHILOSOPHY OF UNIFORM CIVIL CODE**

### **Historical Background**

Under British colonial rule, India had a legal system that acknowledged various personal laws based on religious and customary practices. Each community followed its own set of personal laws for issues such as marriage, inheritance, and succession. As India approached independence, the call for UCC grew stronger, driven by broader social reform movements seeking to unify the legal framework governing all citizens. This push for a UCC was part of a larger effort to modernize and standardize laws to ensure equal treatment across different communities and to address disparities arising from the diverse personal laws that existed. The growing support for a UCC reflected a desire to create a more cohesive and equitable legal system in post-colonial India.

The INC, under the direction of Mahatma Gandhi and other prominent leaders, advocated for social reforms aimed at promoting gender equality and abolishing discriminatory practices based on religion and caste. The demand for a UCC was prominent in the discussions leading up to India's independence, reflecting the vision of the freedom struggle for a modern, progressive, and inclusive society. After independence, the debate over the implementation of UCC intensified during the drafting of the Indian Constitution. Article 44 which states that the states will endeavor to save for its people UCC all over the Indian territories.<sup>7</sup>

Historical research indicates that while the Mughals expanded their empire and established an effective criminal justice system, they did not impose a uniform family code. Despite instances of Mughal rulers destroying Hindu temples and infringing upon Hindu rights, there is little evidence of them interfering with Hindu personal laws. Even

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<sup>7</sup> Destha Kiran, Uniform Civil Code In Retrospect And Prospect (Deep & Deep Publication, 2012)

Emperor Akbar, who introduced the new religion "Din-i-Illahi," did not modify Hindu personal laws. For example, he permitted the practice of Sati to continue, despite it being morally reprehensible and prohibited in Shariah, where it was considered akin to suicide and thus not acceptable in Islam.

The origins of the UCC in India can be traced back to colonial times, particularly when the British government issued a report in 1835 highlighting the necessity for standardized laws in India. This report emphasized the need for codification in areas such as offenses, evidence, and contracts. However, it explicitly recommended that the personal laws of Hindus and Muslims should be excluded from such codification. This decision was influenced by the British authorities' awareness that meddling with personal laws could provoke strong sentiments among the Indian populace.<sup>8</sup> During British colonial rule, India had a legal system that recognized different personal law depended on religions and customary practice. The Mahatma Gandhi and other prominent leaders, advocated for social reforms aimed at promoting gender equality and abolishing discriminatory practices based on religion and caste.

The demand for a UCC was prominent in the discussions leading up to India's independence, reflecting the vision of the freedom struggle for a modern, progressive, and inclusive society. After independence, the debate over the implementation of a UCC intensified during the drafting of the Indian Constitution.

The creators of the Constitution acknowledged the significance of a UCC in advancing social justice, gender equality, and national unity. Nevertheless, the execution of Article 44 remained a directive principle rather than a legally enforceable right, thereby granting the government discretion in its implementation.

The demand for a UCC gained prominence during India's independence movement. Leaders such as Mahatma Gandhi and B.R. Ambedkar advocated for social reform and gender equality, emphasizing the need for a common civil law applicable to all citizens irrespective of religion or caste.

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<sup>8</sup> <https://www.nextias.com/blog/uniform-civil-code-ucc/>

After independence in 1947, efforts were made to reform personal laws in certain areas. The Hindu Code Bills, introduced in the 1950s, aimed to codify and reform Hindu personal laws related to marriage, succession, adoption, and maintenance.<sup>9</sup> On the other hand, similar reform was not applied to other religious communities because of political sensitivities. The complexity of India's religious and cultural landscape made it challenging to introduce uniform changes across all communities without causing significant resistance or controversy. Political leaders were cautious about pushing reforms that could alienate or provoke opposition from various religious groups, each with their own established personal laws and traditions. This cautious approach meant that while some reforms were pursued, they often did not extend to all communities, reflecting the delicate balance between advancing legal uniformity and respecting diverse cultural and religious practices.

Over the years, there have been several legal battles and landmark judicial pronouncements related to the implementation of a UCC. The Supreme Court of India has reiterated the importance of Article 44 and called for its implementation, emphasizing the principles of equality and secularism.

Political parties in India have varied stances on the issue of a UCC, often influenced by electoral considerations and ideological differences. While some parties advocate for its implementation, others oppose it, citing the need to respect religious diversity and cultural autonomy.

In 2005, the Law Commission of India submitted a report titled "Reform of Family Law," which included recommendations for the implementation of a UCC.<sup>10</sup>

The report highlighted the need for legal reforms to address issues related to marriage, divorce, adoption, and inheritance, particularly with regard to gender justice and secularism.

However, the recommendations of the Law Commission report did not lead to significant legislative action on the implementation of a UCC at the national level.

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<sup>9</sup> Shetreet Shimon & Chodosh Hiram E., Uniform Civil Code, Oxford University, 2015

<sup>10</sup> Uniform Civil Code in India <https://www.crpc.in/images/uniform-civil-code.pdf>

Despite periodic discussions and debates on the issue, progress towards enacting a UCC remained slow due to political sensitivities, concerns about religious diversity, and the complexity of legal reforms.<sup>11</sup>

The focus of the debate then shifted to the Muslim Personal Law, which incorporates elements of Sharia law, allowing for practices such as unilateral divorce and polygamy. The UCC was proposed twice, in Nov 2019 and Mar 2020, but was quickly withdrawn both times before being introduced in parliament. Reports suggest that the bill was reconsidered due to disagreements between the BJP and RSS. Opposition parties and some allies of the BJP from the NDA, particularly from Northeast India, have voiced opposition to the UCC. They argue that it would contradict the "idea of India" and eliminate special privilege for tribal groups. This renewed discussion about implementing a UCC followed Prime Minister Narendra Modi's calls for it in June 2023..

#### Legal Reforms

Legal reforms related to the UCC in India have been the matter of discussions for decades. While significant progress has been made in certain areas, comprehensive reforms towards a UCC remain elusive. Here are some key legal reforms and initiatives related to the UCC in India:

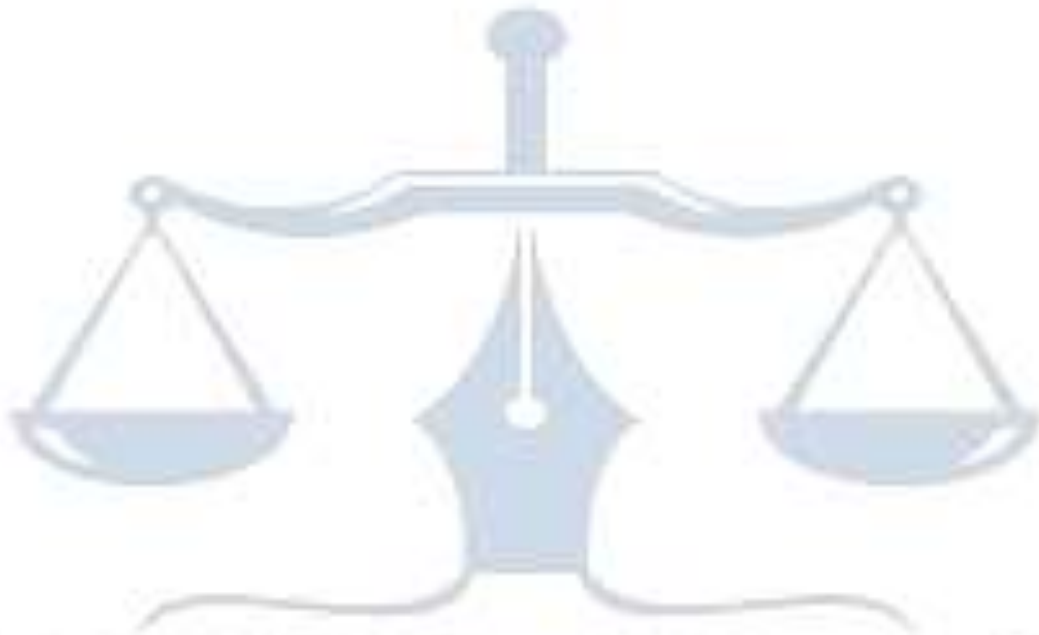
#### Hindu Code Bills (1950s):

Shortly after independence, the Indian government introduced the sequence of legislation known as Hindu Code Bill to reforms and codify Hindu personal law.

The Hindu Marriage Act (1955), Hindu Succession Act (1956), Hindu Minority and Guardianship Act (1956), and Hindu Adoptions and Maintenance Act (1956) were enacted to address issues related to marriage, inheritance, guardianship, and adoption among Hindus.

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<sup>11</sup> Megha Ojha, Scope For The Implementation Of Uniform Civil Code In Contemporary India, PalarchsJournal,



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These reforms aimed to promote gender equality and modernize Hindu personal laws but were limited to the Hindu community, leaving other religious communities governed by their respective personal laws.<sup>12</sup>

#### Muslim Personal Law Reforms:

The topic of legal reforms within the Muslim community, which is primarily governed by Sharia law, has been a matter of considerable debate and controversy. There have been numerous attempts to address issues such as triple talaq (instant divorce), polygamy, and women's rights within Muslim personal laws.

The Supreme Court of India, in the landmark case of Shayara Bano v. Union of India (2017), declared the practice of instant triple talaq unconstitutional and called for legislative reforms to protect the rights of Muslim women.

#### Goa Civil Code:

The state of Goa, a former Portuguese colony, has its own UCC known as the Goa Civil Code, which governs personal matters for all residents irrespective of religion.

The Goa Civil Code, enacted in 1867, is based on the Portuguese Civil Code and applies uniform laws related to marriage, divorce, inheritance, and adoption.

#### Law Commission Reports:

The Law Commission of India has periodically examined the issue of a UCC and submitted reports with recommendations for legal reforms.

The 71st report of the Law Commission (1978) and the 270th report (2017) included recommendations for the implementation of a UCC, emphasizing the need for gender justice, equality, and secularism.

#### Public Interest Litigations (PILs):

Various public interest litigations have been filed in Indian courts seeking reforms related to the implementation of a UCC.

<sup>12</sup> Nilanjana Bhaduri Jha, “Does India really need a Uniform Civil Code?” Times of India, 2020





Courts have occasionally intervened in cases related to personal laws and gender justice, issuing rulings and guidelines aimed at promoting equality and protecting individual rights.<sup>13</sup>

Despite these legal reforms and initiatives, comprehensive progress towards a UCC applicable to all citizens of India remains a complex and contentious issue. The challenges are multifaceted, including political sensitivities, religious diversity, societal norms, and legal complexities. Implementing a UCC requires careful consideration of these factors while upholding constitutional principles of equality, secularism, and justice.<sup>14</sup>

### **India's commitment to human rights**

India's commitments to human right is reflected in various international agreements, including the UDHR and the Convention on the CEDAW. Here's how India's commitment to human rights intersects with the idea of UCC in background of these articles:

Universal Declaration of Human Right (UDHR):

India played a significant role in the drafting and adoption of the UDHR in 1948 and has been a signatory to it since then.

Article 16 of the UDHR specifically addresses the right to marriage and family, stating that "Men and women of full age, without any limitation due to race, nationality or religion, have the rights to get married and to found family."

A UCC, if implemented in accordance with the principles of the UDHR, would ensure equality in marriage and family matters, regardless of religion or other considerations. It would uphold the rights to wed and found the family without discrimination.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

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<sup>13</sup> Rajeev Dhawan, "The Apex Court and Personal Law" The Hindu, 14 March 1997

<sup>14</sup> <https://www.nextias.com/blog/uniform-civil-code-ucc/>

India ratified CEDAW in 1993, committing to take steps to get rid of discriminations against woman in every area of life, including civil matters.

Articles 15 and 16 of CEDAW address the right to equality in marriage and family matters, emphasizing the elimination of discrimination based on gender.

Implementing a UCC that ensures equal right for woman in marriage, divorce, heritage, and adoption would align with India's obligations under CEDAW.

In summary, India's commitments to human right, as outlined in the UDHR and CEDAW, underscores the importance of ensuring equality and non-discrimination, particularly in civil matters such as those addressed by a UCC. By implementing a UCC that upholds these principles, India can demonstrate its dedication to promoting gender equality, secularism, and human rights for all its citizens.<sup>15</sup>

### **Concept of secularism in India**

Secularism in India is a foundational principle that ensures the state maintains an equal distance from all religions and treats all religious communities impartially. The idea of secularism in India is aimed at fostering harmony among its diverse religious, linguistic, and cultural groups.

The concept of secularism in India is primarily articulated in Article 25 to Articles 28:

Article 25: it ensure the liberty of belief and the rights to openly carry out, profess, and spread one's religion, with the caveat that it must not disrupt public order, morality, or health. It affirms that every person has the liberty to practice and promote their religion without state interference..

Article 26: This article provides every religious group or any part thereof the authority to oversee its religious matters, which encompasses establishing and upholding institutions for religious and charitable objectives, administering its own affairs related to religion, and possessing and obtaining both movable and immovable assets.

Article 27: This article bars the state from mandating individuals to contribute taxes for the advancement or upkeep of any specific religion or religious institution. It

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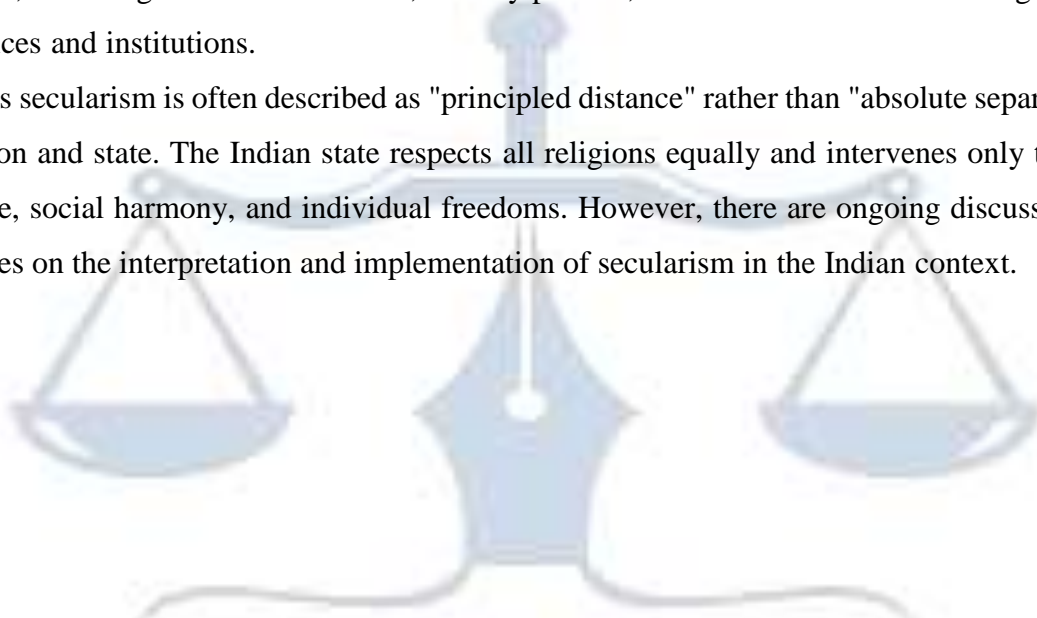
<sup>15</sup> Tanushree , Uniform Civil Code In India: An Analysis, JCIL, 2020

guarantees that the state maintains neutrality towards all religions and refrains from endorsing any particular religion.

Article 28: This article addresses the freedom of religion within educational institutions. It prohibits the state from offering religious instruction in educational institutions that are entirely funded by state resources. However, it permits religious instruction in educational institutions recognized by the state but not financially maintained by the state.

Secularism in India has been a subject of debate and interpretation over the years. While the Constitution guarantees secularism, in practice, challenges arise due to various socio-political factors, including communal tensions, identity politics, and controversies surrounding religious practices and institutions.

India's secularism is often described as "principled distance" rather than "absolute separation" of religion and state. The Indian state respects all religions equally and intervenes only to ensure justice, social harmony, and individual freedoms. However, there are ongoing discussions and debates on the interpretation and implementation of secularism in the Indian context.



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## **CHAPTER 3**

### **NEED FOR UCC IN RESPECT OF PERSONAL LAWS – A SOCIO-LEGAL PERSPECTIVE**

India's legal system recognizes different personal laws based on religious affiliation, customary practices, and community traditions. Major religious communities in India, including Hindu, Muslim, Christian, Sikh, and others, have their own set of personal law governing various aspects of personal and family matters. These personal laws dictate rules related to marriage, divorce, inheritance, adoption, guardianship, and maintenance, among others, and are administered by respective religious authorities or codified in statutes.

Hindu Laws are the major personal laws in India that governs matters related to Hindus, including marriage, succession, adoption, and maintenance. Here's how Hindu Law relates to the concept of a UCC:

Hindu Law applies to individuals who are Hindus by religion, including Buddhists, Sikhs, and Jains, as well as those who have converted to Hinduism. It primarily governs personal matters for individuals belonging to the Hindu community.

Hindu Law encompasses various texts, customs, and statutes, including ancient religious texts like the Manusmriti and the Hindu Succession Act, 1956, which codifies laws related to inheritance and succession amongst Hindus.

Hindu Law has historically been marked by its patriarchal orientation, with provisions that traditionally favored male heirs over female heirs in inheritance and succession matters. However, recent legislative reforms have aimed to advance gender equality and enhance women's rights within Hindu Law. The UCC advocates for a unified set of laws that would apply to all Indian citizens, regardless of their religions, castes, or community. In the context of Hindu Law, the implementation of a UCC would mean unifying personal

laws across religious communities, including Hindus, Muslim people, Christian, Sikh, and others.<sup>16</sup>

The discussion about implementing a UCC in India frequently involves examining Hindu Law and its effects. Supporters of the UCC argue that it would address the inequalities and discrimination present in various personal laws, including those within Hindu Law, thereby advancing equality and secularism. On the other hand, there are concerns about how such a uniform code might affect religious freedoms and cultural identities, especially for minority communities.

While there have been efforts to reform Hindu Law to address issues of gender inequality and promote social justice, the enactment of UCC remains an issue of political dispute and contention in India. Legislative reforms such as the Hindu Succession (Amendment) Act, 2005, which provides equal heritage rights to daughters, reflect ongoing efforts to modernize Hindu Law and align it with principles of equality.

In conclusion, Hindu Law is an integral part of India's legal framework governing personal matters for individuals belonging to the Hindu community. The implementation of a UCC would entail significant reforms aimed at harmonizing personal laws across religious communities, including Hindu Law, to ensure equality and justice for all citizens.

### **Muslim Women (Protection of Rights on Divorce) Act, 1986**

"In pre-Islamic Arabia, marriage, such as Nikah, encompassed various types of sexual relationships between men and women, often influenced by tribal customs. During this time, women were regarded as property, lacking rights to inheritance and dependent on male guardians. It was Prophet Mohammed who brought a profound transformation to the status of women. He established a near-equal status for women, granting them significant legal rights and responsibilities, thus ensuring their equality with men in many aspects of legal and social life."<sup>17</sup>.

Under Muslim Law marriage is considered as a civil agreement. After marriage a lady,

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<sup>16</sup> Taha Ali, Is India Ready for a Uniform Civil Code? SOUTH ASIAN VOICES, 2024

<sup>17</sup> Charles Hamilton, *The Hedaya: Commentary on the Islamic Laws*, 25 (1989).

doesn't lose her independence. She stays a particular individual from her locale, her reality of character isn't converged into that of her significant other. The agreement of marriage in Islamic law gives no capacity to anybody over her individual or property past what the law characterizes. Lady remains unquestionably the proprietor of her individual rights much after marriage she can estrange or move her property in any capacity where in she satisfies with no incidental control of her better half. She can go into restricting agreements with her significant other and continue against him in law courts, if fundamental. The lady appreciates this situation through directives of the Quran<sup>18</sup>.

The Muslim Woman Act is aimed to protect the privileges of Muslim woman in matters of divorce and maintenances. It provides certain safeguards to Muslim women who have been divorced by their husbands through the practices of "triple talaq". Here's how the Muslim Women (Protection of Rights on Divorce) Act, 1986, relates to the concept of a UCC in India:<sup>19</sup> The Act specifically focuses on the entitlements of Muslim women who have been divorced using the practice of triple talaq. It guarantees that they are provided with a just and equitable maintenance arrangement during the iddat period (waiting period) after the divorce. The Act is designed to safeguard the rights of Muslim women by offering financial support during the iddat period, which usually extends for three menstrual cycles or three lunar months following the divorce. This provision aims to ease the financial difficulties experienced by divorced woman in islam community.<sup>20</sup>

The Muslim Women (Protection of Rights on Divorce) Act, 1986, is often cited in discussions related the required for the UCC. Proponents of a UCC argue that uniform laws should govern matters for example divorce, maintenances, and legacy across all religious communities, including Muslims, to make sure impartiality and justice for all citizens. The enactment of the Muslim Woman Act has been subject to debate and controversy. Someone argued that while the Act offers some protection to Muslim woman, it does not fully deal with the discriminatory nature of triple talaq and other

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<sup>18</sup> Aqil Mohammedan Law, 23 rd edition, page 107

<sup>19</sup> Taha Ali , Is India Ready for a Uniform Civil Code? SOUTH ASIAN VOICES, 2024

<sup>20</sup> Huzaifa Aslam, Constitutional Aspects Revolving Around Uniform Civil Code, TSCLD, 2023

practices that disadvantage women within Muslim personal law. Advocates for a UCC argue that piecemeal legislation, such as the Muslim Woman Act, is not sufficient to address the broader issues of gender parity and woman's right in different personal law. They call for comprehensive reforms that would ensure uniformity and equality in all aspects of personal laws across religious communities.

Although this Act offers certain protections to Muslim women divorced via triple talaq, it is considered within the larger discussion on implementing a UCC in India. The Act underscores the complexities and difficulties in aligning religious laws with the principles of equality and justice for every people.

Mohd Ahmed Khan v. Shah Bano<sup>21</sup> Begum is considered as an important judgment in India that raised significant debates regarding the rights of Muslim women in matters of maintenance after divorce. Here's a summary of the case and its relation to the UCC:

Shah Bano Begum was divorced by her husband in 1978. Following the divorce, Shah Bano filed a petition under Sections 125 CrPC seeking maintenance from her husband. Khan argued that his obligation to provide maintenance to Shah Bano had ended after the iddat period as per Muslim personal law.

The case reached the Court, which delivered its judgments in 1985. The Court ruled in favoring Shah Bano, holding that Section 125, which provides for maintenance to wives, including divorced wives, applies to every citizen irrespective of their religion. The Court emphasized the need to provide social justice to Muslim women and upheld Shah Bano's right to maintenance beyond the iddat period. Controversy and Political Response:

The judgment sparked widespread controversy and led to protests from conservative Muslim community who argued that the Court's decision interfered with Muslim personal law. The government, led by Rajiv Gandhi, introduced the Muslim Woman Act, to overturn the Supreme Court's ruling and limit the right to maintenance for divorced Muslim women.

The Shah Bano case reignited discussions on the necessity of a UCC in India. Supporters of a UCC argued that the case exposed the inequalities and injustices within the personal

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<sup>21</sup> 1985 SCR (3) 844.

laws that govern various religious communities. They called for a uniform civil law to apply to all citizens, regardless of their religion, to ensure fairness and justice in issues such as marriage, divorce, and maintenance. In essence, the Shah Bano case was pivotal in highlighting the rights of Muslim women and sparking debates about the need for consistent personal laws across India. The case emphasized the difficulties in balancing religious laws with principles of equality and social justice, leading to renewed discussions about executing the UCC.

Special Marriage Act, 1954

It is a piece of legislation that offers a legal framework for civil marriage ceremonies. It allows individuals of different religions, castes, or creed to marry each other without necessarily renouncing their faith or converting to another religion. The Act is often seen as a step towards the executing UCC in India. Here's how the Special Marriage Act relates to the concept of UCC<sup>22</sup>: The Special Marriage Act allows individuals to marry without reference to their religion or customary rites. Couples can choose to marry under this Act if they wish to have a secular or non-religious ceremony, thereby bypassing the personal laws governed by different religions. The Act provides a uniform legal framework for marriage, divorce, and succession, irrespective of the religious backgrounds of the individuals. It offers a common set of rules and procedures for civil marriages, contributing to the idea of uniformity in personal laws across different communities.

By allowing inter-faith and inter-caste marriages and providing a secular alternative to religious ceremonies, the Special Marriage Act promotes the principles of secularism, equality, and social harmony. It upholds the right of individuals to choose their life partners without any religious or caste-based restrictions.

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<sup>22</sup> Shetreet Shimon & Chodosh Hiram E., Uniform Civil Code, Oxford University,



Despite the provisions of this Act, inter-faith and inter-caste marriages often face social stigma, familial opposition, and legal hurdles in India. Some individuals may still prefer to marry under their respective personal laws due to cultural or social pressures.

The Special Marriage Act is often cited in discussions about the executing of the U.C.C in India. Advocates for a UCC argue that the Act provides a template for a common civil law apply to every person, in spite of of their religious affiliation.

Overall, it plays the central role in promoting secularism, parity, and uniformity in personal laws in India. While it represents a step towards a UCC, challenges remain in ensuring its widespread acceptance and implementation across the country.

### **Bigamy**

In *PEK Kalliant Amma*<sup>23</sup>, the Apex court depended upon the *Principles Of Hindu Law* composed by Jogendra Chunder Ghose expressed that under the first and antiquated Hindu Law, in spite of the fact that polygamy was not permitted by the Hindu law, it was as yet a predominant practice among the Hindus and rehearsed generally, anyway the subsequent spouse couldn't be made piece of strict penances and the subsequent wife was seen as taken not for obligation yet for desire<sup>24</sup>.

It was likewise referred to in the book *Hindu Law of Marriage and Stridhan* by Sir Gooroodas Banerjee, that a Hindu spouse, was allowed to wed again even in the lifetime of his first wife, yet the main condition was that there ought to be a noble motivation. A second marriage without admirable motivation was firmly objected<sup>25</sup>.

The equivalent was likewise expressed in Mr. K.P. Saksenas Commentary on the Marriage Act, 1955, that a Hindu spouse as indicated by Hindu law, has no bar on wedding a second time in the lifetime of his first wife if the reason was advocated. Henceforth the Hindu sages didn't out properly preclude polygamy yet attempted to dishearten the training by endorsing the principal marriage to be of strict character and by allowing the second marriage just when the object of marriage couldn't be satisfied in

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<sup>23</sup> AIR 1996 SC 1963: (1996) 4 S.C.C. 76.

<sup>24</sup> Commentary on Hindu Law, Sixth Edition, Srinivas, page 176

<sup>25</sup> ibi

the primary marriage<sup>26</sup>.

The Apex court held that despite the fact that polygamy was as such was not allowed, from a limited perspective second marriage was not prohibited and was permitted if the principal marriage couldn't satisfy the fundamental object of marriage. Thus, the court held in *PEX Kalliani Amma*<sup>27</sup>, that "Aside from these contemplations, there is nothing in the Hindu Law, as relevant to marriages till the sanctioning of the Hindu Marriage Act of 1955, which made a second marriage of male Hindu, during the lifetime of his past wife void" and saw that "In this way if a subsequent marriage took place, youngsters conceived of such marriage, it was not in any case invalid, were not ill-conceived and in the matter of legacy, they had equivalent rights". As the years progressed, various statures overseeing various groups of Hindus came up. While some precluded Polygamy totally, other allowed it on a specific scale. In any case, as found on account of *PEX Kalliani Amma*, there was no uniformity in the law which was appropriate to various classes of Hindus<sup>28</sup>.

It was right now, because of the distinctions in a similar law applying to various groups of Hindus, the Hindu Code was drafted by the Rau Committee and acquainted with the authoritative Assembly and was additionally alluded to a Select Committee. The Select council presented its report and the code was part and the Act came into power on 18.05.1955<sup>29</sup> furthermore, prompted the formation of the Hindu Marriage Act, 1955.

Section 4 of HMA, expresses that the demonstration will overridingly affect any content, rules, or understanding of Hindu Laws or use that was a piece of Hindu Law preceding the beginning of the demonstration. All laws in power preceding the beginning of the Act, to the extent that they are conflicting with the arrangements of the Act stopped to work from coming into power of the Act<sup>30</sup>.

Accordingly, Section 5, sets out the condition for the Hindu Marriages, in which a

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<sup>26</sup>ibid

<sup>27</sup> Supra, pg 3

<sup>28</sup>Commentary on Hindu Law, Sixth Edition, Srinivas, page 177

<sup>29</sup> ibid

<sup>30</sup>Karuvankandy Narayani v. Nelliadan Aravindakshan, A.I.R. 2006 Ker.26 at pp. 31-32

marriage may be considered as a legitimate marriage if the principal proviso if neither the parties has partners living at the hour of marriages. Thus the idea of permitting a Hindu man to rehearse polygamy which was not essentially restricted by the Hindu Jurisprudence in the prior occasions, was presently expelled and a boycott was set on wedding again in the lifetime of another life partner regardless of whether there was a "legitimate "reason.

It was seen that section 5 came to fruition as a social government assistance measure, and on account of *Srinivas Aiyar v. Saraswati Ammal*<sup>31</sup>, in which it was held that playing out a subsequent marriage, within the sight of the main marriage doesn't in any capacity structure a vital piece of Hindu religion and can't be viewed as working on, claiming or spreading Hindu religion which is ensured under Article 25<sup>32</sup>. Regardless of whether polygamy might be viewed as a fundamental piece of Hindu religions the reprovod ruleis secured under Article 25(b) of Indian constitution<sup>33</sup>.

Therefore, it is overserved that despite the fact that prior a subsequent marriage was notas such denied under the previous Hindu laws, with the happening to the HMA it has been precluded and made an offense. As such section 5 of this demonstration obviously presents the idea of monogamy and makes any marriage which is done while a man/lady has a mate living will be held void abdominal muscle initio under section 11 of the demonstration. Section 17 of the demonstration further proceeds to make plural marriage a culpable offense.

While Hindu law with the happening to the hindu marriage act, prohibited polygamy and carefully presented the idea of monogamy, maariage under Muslim law was extraordinary and prompted the conflict that individuals some portion of one country ought to be exposed to similar rules and guidelines regardless of their religion.

### **Christian Law:**

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<sup>31</sup>A.I.R. 1952 Mad. 193 cited in 1957 A.L.J. 439 at p.444

<sup>32</sup> Article 25, The Constitution of India

<sup>33</sup>Commentary on Hindu Law, Sixth Edition, Srinivas, page 227

Christian marriage in India is considered a sacred covenant, typically officiated by a Minister of Religions authorized under the Indian Christian Marriage Act of 1872.

This Act accommodates marriage in a monogamous structure as it were. Section 60; of the Act sets out the accompanying condition; Section 60(2) neither of the people planning to be hitched will have a spouse or a husband despite everything living. Section 4 states that each marriage between people, either of whom is Christian, will be solemnized as per the arrangements of the following after Section; and all these marriages solemnized, among the Christian people and non-Christian, in any case than as per such arrangements will be void.

This demonstration is appropriate where one of the groups is a Christian. At the end of the day, the non-Christian gathering might be a Muslim, a Hindu or an individual having a place with some other religion. This factor offers ascend to issues concerning struggle of laws, which are relational. For sure it is on indistinguishable lines right now that of the Special Marriage Act, 1954.

Section 5 of this Act solemnization of a marriage: by all individual who has gotten Episcopal appointment. Given that the marriage solemnized by the rules, rituals, functions and customs of the Church of which he is the Ministers; given that these marriages be solemnized by the rule, services and custom of Church; by any Minister of Religion authorized under this Act to solemnize marriages; by or within the sight of the Marriage Registrars selected under this Act; by any individual authorized under this Act to concede authentications of marriages amongst Indian Christian people.

This Act also recommends the customs and rituals like the living and spot for solemnization of marriages very in detail since marriages among the Christians has been viewed as a ceremony or a heavenly association. In this manner, no ground in the Act has been recommended for the wedding reliefs like disintegration and detachment. The Act recommends punishments for the infringement of specific arrangements, which are important to be consented to under Section 6. The age of marriages as per Section 60(2) is 21 years for men and 18 years for the lady. In addition sub Section (2) sets out that neither of the people aiming to be hitched will have a spouse nor husband despite everything living. Section 88 states, "nothing right now be considered to approve any

marriage which the individual law appropriate both of the side prohibits the person in question to enter".<sup>34</sup>

## **Goa Civil Codes**

Goa stands as the sole Indian state to adopt a UCC through the common family law's system. The Portuguese Civil Code, implemented in the 19th century during Goa's colonial era, remains in effect till today, persisting even after its liberation..

### **Key Features**

UCC in Goa represents a progressive legal framework that ensures equal distribution of earnings and properties amongst spouses, as well as among a child regardless of gender. Mandatory registration of births, marriages, and deaths is enforced, while divorce proceedings are subject to various provisions.

Muslim people who registers their marriage in Goa are banned to practice polygamy or utilizing triple talaq for divorce. Throughout the marriage, all property and assets acquired by each spouse are together owned.

In the event of divorce, each spouse is entitled to half of the property, and in case of death, ownership is equally divided between the surviving member. Parents are unable to completely disinherit their child; minimum half of their properties should be passed on to them, and this inherited properties should be uniformly divided amongst the children.

While UCC in Goa aims for uniformity, it does have limitations and is not entirely uniform. For instance, Hindu men are allowed bigamy under certain condition outlined in the Code of Usage and Custom of Gentile Hindus of Goa (such as if the wife does not conceive to age of 25, or if she does not bear boy by the age of 30). However, polygamy is prohibited for other communities under this law.

## **UNIFORM CIVIL CODE IN OTHER COUNTRIES**

<sup>34</sup> <https://lawcorner.in/an-analysis-of-the-uniform-civil-code-mentioned-under-the-directive-principles-of-state->

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## Rome

In ancient Rome, there was no concept of a "UCC" in the modern sense. Roman law established an extensive legal framework that regulated numerous facets of daily life, such as personal status, property rights, contracts, and obligations. This body of law, which developed in ancient Rome, has influenced many contemporary legal systems, especially those based on civil law traditions.

The legal system of ancient Rome was characterized by its codification and development over time. One of the most significant contributions to Roman law was the *Corpus Juris Civilis*, by Byzantine Emperor Justinian-I in 6th century AD.<sup>35</sup>:

**The Digest (or Pandects):** A compilation of jurists' opinions and interpretations of Roman law, serving as a primary source of legal principles.

**The Institutes:** An introductory textbook that provided an overview of Roman law principles, intended for law students and practitioners.

**The Codex Justinianus (Justinian's Code):** A codification of Roman imperial laws issued by Justinian I, organized by topic and intended to streamline and clarify existing legal rules.

**Novels (Novellae Constitutiones):** Later additions and amendments to the *Corpus Juris Civilis* made by Justinian and subsequent emperors.

Roman law covered a wide range of civil matters, including contracts, property rights, marriage, inheritance, and torts. It emphasized principles such as legal equality, protection of property rights, and the enforcement of contracts.

While legal systems of ancient Rome influenced many aspects of modern law, including the expansion of civil law system in Europe, the concept of a "UCC" in the sense of a single comprehensive legal code applicable to all citizens regardless of social status did not exist in ancient Roman times. Instead, Roman law evolved through a combination of legislation, judicial decisions, and legal scholarship over centuries, shaping the legal systems of subsequent societies.

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<sup>35</sup> Friedmann, *Law in a changing society* 24 (Universal Law Publishing Co. 2011)

The foundation of civil law can be traced directly back to the Romans. They formulated doctrines to create a code specific to Roman society, known as Jus Civile, which governed legal matters. This term refers to the rules and principles of law derived from Roman laws and customs, contrasting with jus gentium, which encompassed laws from all known nations, and jus naturale, which encompassed fundamental concepts of right and wrong inherent in human nature. Emperor Justinian, who ascended the throne in 527 CE, played a significant role in shaping this legal code. Despite undergoing interpretations, developments, and adaptations by successive generations of jurists and encountering numerous judicial precedents, Roman law remained influential in many other countries.<sup>36</sup>

## **France**

In France, the concept of a "UCC" (Code Civil in French) refers to a comprehensive legal code that governs civil law matters, including personal status, property, contracts, and obligations. The French Civil Code was originally established in 1804 under Napoleon Bonaparte's rule and has undergone numerous revisions since then.

The French Civil Code provides a unified framework for civil law matters throughout the country, ensuring consistency and predictability in legal matters. It covers a wide range of topics, including:

**Personal status:** This includes law associated with marriages, divorces, parental authority, adoptions, and succession.

**Property law:** The Civil Code regulates property rights, ownership, real estate transactions, and leases.

**Contracts:** It establishes rules governing the formation, interpretation, and enforcement of contracts.

**Obligations and liability:** The Civil Code outlines principles related to civil liability, torts, and damages.

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<sup>36</sup> Ibid



One of the key principles of the French Civil Code is its emphasis on legal equality and uniformity. It seeks to ensure that all citizens are subject to the same legal rule and protections, despite of their social or economic status.

However, it's worth noting that France has undergone societal and legal changes over the years, leading to amendments and updates to the Civil Code. Additionally, certain matters, such as family law issues concerning marriage and divorce, have seen reforms reflecting evolving societal norms and values.

In recent years, there have been discussions and debates about potential reforms to the Civil Code, particularly concerning family law and issues related to gender equality. However, any significant changes to the Civil Code would likely involve thorough deliberation and legislative processes.

## **United States**

In USA, the complexity of diversity resembles that of India, with various layers of legislation applying separately at the national, state, and local levels, as well as within agencies and cities. Each state functions as an autonomous legal entity with its own Supreme Court, adhering to distinct practices and legal conventions. Despite this diversity, there are overarching principles that govern civil laws across states in a manner consistent throughout the nation. Matters of federal significance, such as national security, taxation, and general legal issues, are handled by the Federal Supreme Court.

In the United States, "personal laws" are not typically referred to in the same way they might be in other countries. The idea of personal laws refers to regulations that address issues related to personal matters like marriage, divorce, inheritance, and adoption. In the United States, these areas are predominantly regulated by state laws rather than being governed by a single uniform code nationwide.

Each state has its own set of statutes and regulations concerning these personal matters, leading to variations in laws from one state to another. For example, the requirements for marriage, grounds for divorce, property division upon divorce, and rules regarding inheritance can differ significantly between states.

While there isn't a UCC at the federal level, there are federal laws and constitutional principles that influence personal matters. For instance, the U.S. Supreme Court has issued rulings that impact marriage laws, such as the legalization of same-sex marriage nationwide in the landmark case *Obergefell v. Hodges* (2015).

Efforts to standardize certain aspects of personal laws across states would require significant legal and political considerations, given the principle of federalism that underpins the U.S. legal system and the autonomy afforded to individual states in regulating these matters. As a result, discussions about implementing a UCC in the U.S. context often face complex challenges.

## Turkey

In Turkey, the concept of a "UCC" refers to the system that governs personal status matters, such as marriage, divorce, inheritance, and family relations, in a unified manner. The idea of UCC is rooted in the secular legal reforms introduced by Mustafa Kemal Atatürk and the Turkish Republic's early leaders in the early 20th century.<sup>37</sup>

One of the most significant legal reforms in Turkey was the introduction of the Turkish Civil Code (*Türk Medeni Kanunu*) in 1926, which replaced the Islamic law-based Ottoman Civil Code. The Turkish Civil Code aimed to modernize and secularize family law by introducing principles of equality, individual rights, and legal uniformity.

Key features of the Turkish Civil Code include:

**Marriage and Divorce:** The Civil Code regulates marriage and divorce procedures, including requirements for marriage, grounds for divorce, and property rights upon divorce.

**Inheritance:** It establishes rules governing the distribution of property and inheritance rights among family members, regardless of gender.

**Guardianship and Parental Rights:** The Civil Code outlines provisions related to guardianship, custody, and parental rights concerning children.

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<sup>37</sup> Smith, 'India as a secular state', *Secularism and its Critics*, Oxford University Press, New Delhi, 2008.

The introduction of the Turkish Civil Code represented a significant departure from the traditional Islamic legal system and marked a shift toward secularism and modernization in Turkish society. Subsequent amendments and updates have been made to the Civil Code over the years to reflect changing societal norms and legal developments.

While Turkey has UCC at the national levels, there have been debates and discussions regarding its application and interpretation, particularly concerning issues such as woman's privileges, gender parity, and religious influences on family law. However, the Turkish Civil Code remains a cornerstone of Turkey's legal system, shaping family relations and personal status matters across the country.<sup>38</sup>

### **Lessons for India from other countries**

India's consideration of a UCC draws interest from various legal systems globally. Here are lessons and insights from other countries with UCCs or similar legal frameworks:

The French Civil Code (Code Civil) serves as a model for uniformity in civil law matters. It provides a comprehensive legal framework covering personal status, property, contracts, and obligations. India could study France's experience in implementing and maintaining a UCC, ensuring legal equality and consistency across diverse populations.

Turkey's transition from Islamic law-based regulations to a secular civil code offers valuable insights. India may learn from Turkey's efforts to modernize family law, promote gender equality, and navigate the balance between secularism and religious influences in legal reforms.

Tunisia is another example of a predominantly Muslim country that has implemented a UCC, known as the Code of Personal Status. It abolished polygamy, established legal equality between men and women, and introduced progressive family law reforms. India could examine Tunisia's approach to harmonizing personal laws with modern principles of equality and human rights.

Before the Islamic Revolution of 1979, Iran had a secular legal system influenced by European legal traditions. India might explore Iran's pre-revolutionary legal framework

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<sup>38</sup> <https://organiser.org/2023/07/18/184355/bharat/uniform-civil-code-what-is-the-worlds->

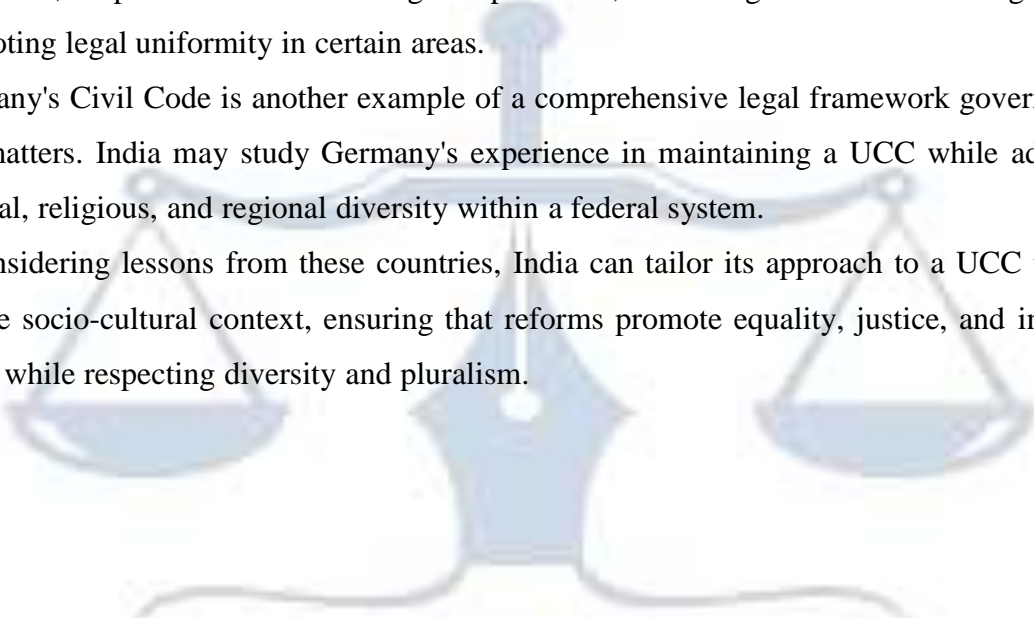
as a reference for integrating secular principles into personal laws while respecting cultural and religious diversity.

South Africa's post-apartheid constitution assures parity and prohibits discriminations based on various grounds, including race, gender, and religion. While South Africa does not have a UCC, its constitutional principles of equality and non-discrimination could inform India's efforts to reform personal laws while safeguarding individual rights and diversity.<sup>39</sup>

Although the U.S. does not have a UCC at the federal level, it provides insights into managing legal diversity within a federal system. India could examine how the U.S. balances federal and state laws, respects cultural and religious pluralism, and safeguards individual rights while promoting legal uniformity in certain areas.

Germany's Civil Code is another example of a comprehensive legal framework governing civil law matters. India may study Germany's experience in maintaining a UCC while addressing cultural, religious, and regional diversity within a federal system.

In considering lessons from these countries, India can tailor its approach to a UCC to suit its unique socio-cultural context, ensuring that reforms promote equality, justice, and individual rights while respecting diversity and pluralism.



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<sup>39</sup> Destha Kiran, Uniform Civil Code In Retrospect And Prospect (Deep & Deep Publication, 2012)



## **CHAPTER 4**

### **APPLICATION OF UNIFORM CIVIL CODE IN CONTEMPORARY**

#### **INDIA**

The requirement for the UCC in India is a subject of debate and contention, with proponents and opponents holding differing views. Here are some reasons often cited in favor of implementing a UCC:

#### **Equality and Justice**

The UCC would ensure equal privileges and treatment for every person, irrespective of their faith, caste, or community. It would address inconsistencies and biases present in various personal laws and advance the principles of equality and justice outlined in the Constitution.<sup>40</sup>

A UCC would ensure equal treatment for all citizens, irrespective of their religion, caste, or gender. Currently, personal laws in India vary based on religious affiliations, leading to disparities and discrimination. Implementing a UCC would eliminate these differences and ensure that all people are subject to the same laws and enjoy equal rights and protections.

A UCC would contribute to social justice by promoting fairness and equity in society. It would ensure that individuals from marginalized and disadvantaged communities are not deprived of their rights due to discriminatory laws based on religion or caste. By establishing a unified legal framework, UCC would support the principles of justice and guarantee that everyone has equal access to legal remedies and protections.<sup>41</sup>

#### **Secularism**

India is considered as a secular nation, and the execution of the UCC would uphold the secular ethos by providing a common civil law valid to every people. It would separate religion from civil matters and promote a more inclusive and cohesive society.

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<sup>40</sup> Rajeev Dhawan, "The Apex Court and Personal Law" The Hindu, 14 March 1997

<sup>41</sup> Tanushree, Uniform Civil Code In India: An Analysis, JCIL, 2020

A UCC would ensure that all citizens are subject to the same set of laws regardless of their religion, caste, or community. This ensures equality before the law and eliminates any preferential treatment based on religious affiliations. By establishing a common civil law applicable to every person, a UCC ensures that personal matters are governed by uniform principles. This reduces the influence of religious authorities in civil matters and promotes a secular legal framework. Implementing a UCC demonstrates the government's commitment to maintaining neutrality in matters of religion. Instead of favoring or privileging any particular religious community, a UCC ensures that everyone is treated similarly under the laws, regardless of their religious beliefs. A UCC fosters social cohesion by promoting unity and commonality among citizens. By providing a common legal framework for personal matters, it reduces divisions along religious lines and encourages integration among different religious communities, contributing to a more cohesive and inclusive society.

Personal laws often contain provisions that discriminate against women based on religious customs and practices. A UCC would uphold principles of gender equality by ensuring that women have the same rights and protection as men in personal matters, regardless of their religious background.

### **Women's Rights**

India's personal laws always contain provisions that discriminate against women. A UCC would ensure equal rights for women in matters of marriage, including consent, age of marriage, and choice of spouse. It would prohibit practices such as child marriage, forced marriage, and polygamy, which disproportionately affect women's rights and autonomy.

Currently, personal laws in India provide different provisions for divorce and maintenance based on religious affiliations, often disadvantaging women. A UCC would ensure that women have equal rights in divorce proceedings and are entitled to fair and adequate maintenance irrespective of their religion or community. In many religious personal laws, women have limited or unequal rights in matters of inheritance and property ownership. A UCC would guarantee women's equal rights to inherit property and assets, empowering them economically and ensuring their financial security.

Personal laws often grant preferential treatment to fathers in matters of child custody and guardianship. A UCC would ensure that custody and guardianship decisions are made in the best interests of the child, taking into account factors such as the child's welfare and the parents' ability to provide care, without discrimination based on gender. A UCC would prohibit discriminatory practices against women, such as triple talaq, halala, and nikah halala, which violate women's rights and dignity. It would provide legal recourse for women subjected to such practices and ensure that perpetrators are held accountable under the law.<sup>42</sup>

### Social Cohesion

India's diversity includes multiple religious communities, each with its own personal laws. Adopting UCC would enhance social cohesion by encouraging unity and shared legal standards among all citizens, regardless of their religious backgrounds. However, this diversity often translates into fragmented legal systems based on personal laws that vary across religious communities. Personal laws in India sometimes perpetuate divisive practices that segregate communities and reinforce social barriers. Implementing a UCC would eliminate such divisive practices by ensuring that all citizens are subject to the same set of laws, regardless of their religious affiliations. This would help bridge the gap between different religious communities and promote social harmony. A UCC would encourage cultural integration by fostering interactions and exchanges among diverse communities. By providing a common legal platform for personal matters, a UCC would facilitate greater understanding and collaboration among citizens from different cultural backgrounds, strengthening social bonds and solidarity.

### Legal Certainty

Personal laws in India are often complex and vary across religious communities, leading to confusion and legal uncertainty. A UCC would provide clarity and consistency in legal principles and procedures, making the legal system more accessible and understandable for all citizens.

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<sup>42</sup> Puniyani, Riya, Uniform Civil Code and Conflicts of Personal Laws, SSRN (2020)



Currently, personal laws in India are diverse and complex, varying across religious communities and leading to ambiguity and confusion. A UCC would establish clear and uniform legal principles, irrespective of their religion, caste, or community, ensuring that everyone understands their rights and obligations under the law. Personal laws often have different procedures and requirements for matters such as marriage, divorce, and inheritance, creating inconsistencies and procedural hurdles. Implementing a UCC would streamline legal procedures and standardize requirements, making the legal system more efficient and accessible to all citizens. A UCC would provide predictability in legal outcomes by establishing uniform rules and guidelines for resolving disputes related to personal matters. Citizens would have confidence that similar cases will be treated similarly, reducing uncertainty and promoting trust in the legal system. The complexity and diversity of personal laws sometimes make it challenging for individuals to navigate the legal system and access legal remedies. UCC would streamline legal procedures and make the legal system more accessible, ensuring that all citizens can effectively exercise their rights and seek redress for their grievances.<sup>43</sup>

#### Modernization and Progress

India is a rapidly evolving society, and its legal system needs to adapt to changing social realities and norms. A UCC would reflect contemporary values and aspirations, contributing to the modernization and progress of Indian society. Personal laws in India are often complex, diverse, and inconsistent, leading to ambiguity, confusion, and delays in the legal system. A UCC would provide clarity, consistency, and predictability in the legal framework governing personal matters, making the legal system more efficient, accessible, and user-friendly. UCC would simplify legal processes, minimize procedural obstacles, and guarantee equal access to justice for all citizens. It would support the fundamental rights and freedoms enshrined in the Constitution, including equality, freedom of religion, and personal liberty. By safeguarding individuals from arbitrary and discriminatory practices, a UCC would ensure that everyone receives equal rights and protections under the law.

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<sup>43</sup> Nilanjana Bhaduri Jha, "Does India really need a Uniform Civil Code?" Times of India, 2020

## Cultural Integration and National Identity

A UCC would encourage cultural integration by fostering interactions and exchanges among diverse communities. By providing a common legal platform for personal matters, a UCC would facilitate greater understanding and collaboration among citizens from different cultural backgrounds, strengthening social bonds and solidarity. Implementing a UCC would reinforce a sense of national identity and belonging among citizens by emphasizing their common rights, responsibilities, and obligations under the law. This would contribute to forging a stronger sense of unity and patriotism among the diverse population of India.

However, it's important to acknowledge that there are objections to implementing a Uniform Civil Code. Critics contend that it might violate religious freedoms, erode cultural identities, and disturb social harmony. The discussion about adopting a UCC in India involves weighing the principles of equality, secularism, and individual rights against concerns about maintaining religious pluralism and diversity. Ultimately, deciding to implement a UCC requires thorough examination of these complex and nuanced factors.

### **PROBLEMS IN IMPLEMENTING UNIFORM CIVIL CODE**

Implementing a UCC in India is a complex endeavor fraught with various problems and challenges:

**Diverse Religious and Cultural Landscape:** India's rich diversity includes various religions and cultures, each with its own personal laws covering issues like marriage, divorce, inheritance, and adoption. Introducing a Uniform Civil Code involves carefully navigating these diverse legal traditions and addressing concerns about cultural and religious sensitivities.

**Religious Opposition:** Many religious communities are strongly attached to their personal laws, which they see as integral to their identity and religious freedom. Implementing a UCC might face resistance from religious leaders and conservative groups who perceive it as an infringement on their religious privileges.

**Political Resistance:** Political parties often exploit religious and cultural identities for electoral gains. Parties representing specific religious or cultural groups may oppose a UCC to maintain their support base, hindering legislative efforts to enact a uniform code.

**Gender Inequality:** Personal laws in India often perpetuate gender inequalities, with different rights and obligations for men and woman in matters. While a UCC aims to ensure gender equality, implementing it effectively to address existing disparities poses significant challenges.

**Enforcement and Implementation:** Even if a UCC is enacted, making sure its effectual enforcement and accomplishment across the vast and diverse Indian population is a formidable task. This requires adequate administrative infrastructure, resources, and mechanisms for awareness, compliance, and enforcement.

**Legal Complexity:** India's legal system is complex, with numerous laws, customs, and judicial precedents governing personal matters. Harmonizing these diverse legal traditions into a single code without causing injustice or discontent among any community is a challenging task.

**Socio-Cultural Resistance:** Certain communities may resist the implementation of a UCC due to concerns about losing their cultural identity or traditional practices. There may be apprehension that a uniform code could undermine the rights and protections provided by their personal laws.

**Constitutional Hurdles:** While Constitution allows for the accomplishment of a UCC under Article 44<sup>44</sup>, any attempt to introduce such a code must carefully navigate constitutional provisions protecting religious freedom and cultural diversity.

**Lack of harmony:** There are no accord amongst policymakers, legal experts, and civil society on the specifics of a UCC. Debates surrounding issues such as marriage, divorce, and inheritance are highly contentious, making it challenging to draft a uniform code that satisfies all stakeholders.

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<sup>44</sup> Article 44, The Constitution of India

**Historical Context:** Historical factors, including colonial-era laws and post-independence developments, have shaped India's legal landscape. Introducing a UCC requires addressing historical injustices and ensuring that the new code reflects contemporary realities while respecting the country's pluralistic ethos.

Despite these challenges, some people argue that a UCC is necessary for endorsing national integration, secularism, and gender justice. However, achieving consensus and addressing the concerns of various stakeholders are critical steps in the process of implementing a UCC in India.

### **Systematic approaches of Implementing a UCC**

Implementing a UCC in India requires a systematic approach and careful consideration of various factors, including legal, social, cultural, and political aspects. Here are some proposed steps to implement a UCC:

**Conduct Comprehensive Consultations:** Begin by conducting extensive consultations with stakeholders, including religious leaders, legal experts, women's rights activists, community representatives, and civil society organizations. Gather input and feedback on the proposed UCC to ensure that it reflects the interests and concerns of diverse groups.

**Drafting Legislation:** Establish a committee comprising legal experts, scholars, and representatives from different communities to draft the UCC legislation. The drafting process should be transparent, inclusive, and based on principles of equality, justice, and human rights.

**Public Awareness Campaign:** Launch a comprehensive public awareness campaign to educate the public about the objectives and benefits of a UCC. Address misconceptions and concerns regarding the UCC's impact on religious and cultural practices, emphasizing its potential to promote gender equality, social justice, and national integration.

**Political Consensus Building:** Engage with political parties across the spectrum to build consensus on the need for a UCC and garner support for its implementation. Highlight

the importance of secularism, equality before the law, and the principle of one nation, one law in promoting social harmony and national unity.

**Legislative Process:** Introduce the UCC legislation in the Parliament or State Assemblies, depending on the jurisdiction. Hold debates and discussions to deliberate on the provisions of the proposed code and address any concerns raised by lawmakers. Seek bipartisan support for the passage of the legislation.

**Safeguarding Religious Freedom:** Ensure that the UCC respects the constitutional guarantees of religious freedom and does not infringe upon individuals' rights to practice their religion. Provide adequate safeguards to protect religious customs and practices while promoting uniformity in civil laws.

**Phased Implementation:** Consider implementing the UCC in a phased manner, starting with less contentious areas such as marriage registration, divorce procedures, and inheritance rights. Gradually extend the scope of the UCC to cover other aspects of personal law, taking into account the complexities and sensitivities involved.<sup>45</sup>

**Capacity Building and Training:** Invest in capacity building and training programs for judicial officers, lawyers, and law enforcement agencies to ensure effective implementation and enforcement of the UCC. Provide resources and support for the judiciary to adjudicate cases related to the new civil code impartially and efficiently.

**Monitoring and Evaluation:** Establish mechanisms for monitoring the implementation of the UCC and evaluating its impact on various segments of society. Collect data on key indicators such as gender equality, access to justice, and social cohesion to assess the effectiveness of the UCC in achieving its objectives.

**Addressing Challenges and Grievances:** Set up grievance redressal mechanisms to address any challenges or grievances arising from the implementation of the UCC. Ensure that marginalized and vulnerable groups have access to legal aid and support services to uphold their rights under the new civil code.

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<sup>45</sup> Salim Akhtar and Ahmad Naseem, *Personal Laws and Uniform Civil Code*, p. 3 (1998).

By following these proposed steps, India can move closer to achieving the goal of implementing a UCC that promotes equality, justice, and social harmony while respecting the country's diverse religious and cultural fabric.

### Succession And Inheritance

Succession and inheritance laws in India are currently governed by various personal laws based on religion, as well as secular laws in certain areas. Implementing a UCC would aim to unify these laws and create a single set of rules governing succession and inheritance across the country. Here's how succession and inheritance laws could be addressed under a UCC framework:

**Equal Inheritance Rights:** The key purpose of the UCC would be to guarantee equal inheritance rights for all individuals, regardless of gender, religion, or other factors. Under current personal laws, inheritance rights can vary significantly based on factors such as gender and religious affiliation. A UCC would aim to eliminate these disparities and ensure that all heirs have equal right to inherit properties from their ancestors.

**Unified Rules:** A UCC would establish unified rules governing succession and inheritance, providing clarity and consistency in matters such as the distribution of property, succession to intestate estates (when there is no will), and rules regarding testamentary succession (when there is a will). This would simplify the legal framework and reduce ambiguity in inheritance matters.

**Protection of Family Property:** Inheritance laws often involve complex issues related to family property, including ancestral property, joint family property, and self-acquired property. A UCC would need to address these issues while ensuring that the rights of family members, including spouses, children, and other heirs, are protected and respected.

**Special Provisions:** Certain communities may have specific customs and practices related to succession and inheritance that are currently governed by their personal laws. A UCC would need to carefully consider these customs and may include special provisions to

accommodate them while ensuring that they are consistent with the principles of equality and justice.<sup>46</sup>

**Transition Period:** Transitioning from the current system of diverse personal laws to a unified inheritance framework under a UCC would require a transition period to allow for adjustment and adaptation. During this period, provisions could be made to address any conflicts or inconsistencies between existing laws and the new unified code.

**Legal Recognition of Wills:** A UCC would likely include provisions for the legal recognition of wills, allowing individuals to specify their wish in regards to the distributions of their property after their death. This would provide individuals with greater autonomy and flexibility in estate planning and succession matters.

**Dispute Resolution Mechanisms:** Inheritance disputes are common and can be complex, often involving issues of interpretation, validity of wills, and competing claims among heirs. A UCC would need to establish effective dispute resolution mechanisms, such as mediation, arbitration, or specialized inheritance courts, to resolve disputes in a timely and fair manner.

**Public Awareness and Education:** Implementing a UCC for succession and inheritance would require public awareness and education campaigns to inform individuals about their rights and obligations under the new legal framework. This would help ensure that citizens understand the changes and are able to navigate the inheritance process effectively.

Overall, implementing a UCC for succession and inheritance in India would require careful consideration of legal, societal, customary and traditional factors, as well as broad consensus and political will to enact meaningful reforms.

### **Legal issues**

Implementing a UCC in India raises several legal issues that need careful consideration. Here are some key legal aspects and challenges associated with the UCC:

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<sup>46</sup> Puniyani, Riya, Uniform Civil Code and Conflicts of Personal Laws, SSRN (2020)

**Constitutional Validity:** The primary legal issue surrounding the UCC is its constitutional validity. Article 44 recommends the enactment of a UCC, but it falls under the Directive Principles of State Policy, which are not enforceable by the courts. Implementing a UCC requires reconciling it with other fundamental rights, especially those related to freedom of religion and minority rights.

**Conflict with Personal Laws:** India's legal system recognizes personal laws based on religion for matters such as marriage, divorce, inheritance, and adoption. Implementing a UCC would require repealing or amending these personal laws, which could face resistance from religious communities and pose constitutional challenges regarding the protection of minority rights.

**Secularism vs. Religious Freedom:** A UCC aims to promote secularism by guaranteeing uniform law in spite of religious affiliation. However, it must also respect individuals' right to freedom of religion guaranteed under the Constitution. Balancing secular principles with religious freedoms is a complex legal issue that requires careful deliberation.<sup>47</sup>

**Gender Equality:** The major goal of UCC is to promote gender impartiality by eliminating discriminatory practices prevalent in personal laws. Addressing issues such as polygamy, unilateral divorce, and unequal inheritance rights requires legal reforms that support principle of fairness and non-discrimination.

**Uniformity vs. Diversity:** Implementing a UCC raises questions about balancing uniformity in laws with respecting and preserving cultural diversity. Legal provisions must accommodate pluralism while promoting common principles of justice and equality.

**Legal Complexity:** Crafting a comprehensive UCC that addresses various personal laws while ensuring coherence, clarity, and enforceability is a significant legal challenge. Resolving legal complexities related to marriage, divorce, adoption, and succession requires thorough legal analysis and drafting expertise.

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<sup>47</sup> Tanushree , Uniform Civil Code In India: An Analysis, JCIL, 2020



**Enforcement and Implementation:** Even if a UCC is enacted, ensuring its effective enforcement and implementation across diverse regions and communities is a practical challenge. Adequate mechanisms for legal education, awareness, and dispute resolution are essential to ensure compliance and access to justice.

**Political Consensus:** Implementing a UCC requires political consensus and bipartisan support. Political parties may have different views based on ideological, cultural, and electoral considerations. Building consensus among stakeholders and overcoming political resistance is crucial for legislative reforms.

**Judicial Review:** Any legislation related to the UCC is based on judicial review by the courts to make sure its compatibility with statutory principles and fundamental rights. Courts play a critical role in interpreting and upholding the legality and constitutionality of UCC-related laws and policies.

**Public Opinions and Social Acceptances:** Public perception and societal acceptance of a UCC also influence its implementation. Consultation with civil society organizations, religious leaders, and the general public is necessary to gauge public opinion, address concerns, and build support for legal reforms.

Addressing these legal issues demands a thorough legal analysis, consultation with various stakeholders, and a balanced strategy that upholds constitutional principles, safeguards individual rights, and fosters social cohesion. It is crucial to engage in informed and inclusive discussions to tackle the complexities of implementing a Uniform Civil Code in India's diverse and pluralistic society.

### **Possible solutions to the issues surrounding UCC**

Implementing a UCC in a diverse country like India requires careful considerations of different lawful, societal, and political factors. Here are some possible solutions to address the challenges associated with the UCC:

**Inclusive Consultation and Dialogue:** Engage in comprehensive consultation with stakeholders, comprising religious leadership, legal experts, society organizations, and members of diverse communities. Foster inclusive dialogue to understand concerns, create harmony, and garner assistance for UCC reforms.

**Gradual Approach:** Adopt a phased approach to implementing the UCC, starting with areas of consensus and feasibility. Prioritize reforms that address gender inequality, protect individual rights, and promote social justice. Gradually expand the scope of the UCC over time, considering societal readiness and acceptance.

**Legal Reforms and Harmonization:** Undertake legal reforms to harmonize personal laws across religious communities while respecting fundamental rights and religious freedoms. Identify common principles and practices that can form the basis of a unified legal framework, while accommodating diverse cultural traditions.

**Constitutional Amendments:** Consider amending relevant provisions of the Indian Constitution, for instance Articles 25-28 (Freedom of Religion) and Article 44, to provide a constitutional basis for the UCC. Ensure that constitutional amendments uphold the principles of secularism, equality, and pluralism.

**Safeguards and Protections:** Incorporate safeguards and protections in the UCC to prevent misuse, abuse, or infringement of individual rights. Include provisions for judicial review, dispute resolution mechanisms, and enforcement mechanisms to uphold the rule of law and protect vulnerable populations.

**Education and Awareness:** Carry out educational campaign and awareness program to inform the public about the goals, advantages, and implication of the UCC. Promote understanding and acceptance of common legal principles that transcend religious and cultural differences.

**Capacity Building:** Invest in capacity building for legal professionals, judicial officers, and administrative officials to effectively implement and enforce the UCC. Provide training on uniform legal procedures, dispute resolution mechanisms, and human rights principles to ensure consistent application of the law.

**Social Reforms and Empowerment:** Complement legal reforms with social initiatives aimed at empowering marginalized communities, promoting gender equality, and combating discrimination. Invest in education, healthcare, and economic opportunities to uplift disadvantaged populations and foster social inclusion.

**Public Participation and Accountability:** Encourage public participation in the UCC reform process through consultations, public hearings, and feedback mechanisms. Ensure transparency, accountability, and responsiveness in the creation and execution of UCC- related policies and laws.

**Adaptability and Flexibility:** Recognize the dynamic nature of Indian society and the need for adaptability and flexibility in legal reforms. Review and revise UCC provisions periodically to reflect evolving social realities, address emerging challenges, and incorporate lessons learned from implementation experiences.

By adopting a holistic and inclusive approach, India can navigate the complexities of implementing a UCC that upholds constitutional values, promotes social justice, and fosters unity in diversity.

### **Way Forward**

To achieve a UCC in India, it's suggested to adopt a gradual approach rather than implementing it all at once. Prioritizing a just code over a strictly uniform one is crucial. It's important to assess the social adaptability of the UCC blueprint, starting with the least contentious areas of personal law such as marriage and divorce. This incremental approach could foster consensus and garner support for the UCC while addressing immediate citizen concerns.

Engaging in discussions and consultations with a wide range of stakeholders is vital. This inclusive process ensures that diverse perspectives and needs are considered, making the UCC perceived as equitable and acceptable by all citizens.

### **Uniform Civil Code favoring arguments**

The UCC in India refers to the proposition of a single set of personal laws applicable to everybody regardless of their religions, replacing the existing personal laws which vary based on religious affiliations. One of the main criticisms favoring UCC is that it promotes equality and justice among citizens by ensuring that laws apply uniformly to everyone, irrespective of their religious beliefs.

UCC is considered a crucial step toward achieving true secularism in India. It supports secularism by separating religion from personal laws, ensuring equal treatment of all citizens regardless of their faith. Proponents argue that a UCC would enhance gender equality and women's rights, as existing personal laws—particularly those related to marriage, divorce, and inheritance—are often seen as discriminatory against women in certain communities. A UCC would rectify these disparities and provide equal rights to women across all religions.

Given India's rich diversity and numerous religious communities, having separate personal laws for each can sometimes foster divisions. A UCC is thought to encourage national integration by promoting a shared sense of identity and unity among everybody.

Uniform laws can contribute to socio-economic development by streamlining legal processes and reducing complexities associated with multiple legal systems. This can facilitate easier access to justice and contribute to a more efficient legal system overall.

The existing personal laws in India are often criticized for being archaic and out of sync with contemporary values and principles. Introducing a UCC would provide an opportunity to modernize the legal framework and bring it in line with the evolving societal norms and values. Implementing a UCC in India would bring the country in alignment with international standards and best practices in legal jurisprudence.

Having sets of law administering individual matters can lead to administrative efficiency and reduce the burden on the judiciary. It would simplify legal procedures and reduce the complexity associated with adjudicating cases involving different personal laws.

The proponents argue that a Uniform Civil Code is not only a matter of legal reform but also a crucial step towards upholding the principles of equality, secularism, and justice in a diverse and democratic society like India.

### **Arguments Against UCC**

Opponents of UCC in India present several arguments against its implementation. Critics contend that enacting UCC could compromise the rights of religious minorities by imposing the norms of the majority on them. India's diverse array of religious communities each has unique cultural practices and traditions. Enforcing a uniform set

of laws might be seen as an infringement on the autonomy and rights of these distinct communities.

Opponents argue that a UCC could violate the principle of religious freedom enshrined in the Indian Constitution. Personal laws are deeply intertwined with religious beliefs and practices, and imposing a uniform code could curtail the freedom of individuals to practice their religion as per their beliefs, particularly in matters like marriage, divorce, and inheritance.

Religious institutions and leaders often oppose the idea of a UCC, viewing it as a threat to their authority and influence over their respective communities. Any attempt to impose uniform laws could face significant resistance from these institutions, leading to social and political unrest. Introducing a UCC could trigger social unrest and communal tensions, particularly in sensitive regions with a history of inter-religious conflicts. Critics fear that attempts to impose uniform laws could exacerbate existing fault lines and lead to polarization along religious lines.

India's diversity extends beyond religious differences to encompass regional, linguistic, and cultural variations. Critics argue that a one-size-fits-all approach may not adequately address the diverse needs and aspirations of India's population. Any attempt to impose uniform laws should take into account these multifaceted aspects of diversity. Some critics argue that the debate over a UCC diverts attention and resources away from more pressing social and economic issues facing the country, such as poverty, education, healthcare, and infrastructure development. They contend that the government's focus should be on addressing these urgent challenges rather than engaging in contentious debates over personal laws.

Introducing significant changes to personal laws, which are deeply ingrained in societal norms and practices, could disrupt social structures and relationships. Critics warn against the unintended consequences of hastily implementing a UCC without adequate consultation and consensus-building among stakeholders. They advocate for a more nuanced approach that respects the autonomy of religious communities while striving for equality and justice for all citizens.

Moreover, there are concerns that a Uniform Civil Code might not adequately address the diverse needs and traditions of India's varied population. Enforcing a single set of laws could dilute the cultural and religious practices that are central to many communities' identities. This could provoke opposition from those who perceive such a measure as an infringement on their cultural and religious freedoms. The discussion highlights a broader conflict between creating a unified legal system and honoring the pluralistic character of Indian society.



## CHAPTER 5

### UNIFORM CIVIL CODE- JUDICIAL APPROACH

The judicial approach to UCC has been characterized by a cautious and balanced perspective, reflecting both the potential for legal reform and the need to respect the country's diverse cultural and religious practices. Indian courts have historically advocated for the UCC as a means to promote equality and streamline personal laws, emphasizing that such a code would enhance legal uniformity and protect fundamental rights. However, the judiciary has also recognized the complex social dynamics at play and has approached the UCC with a degree of sensitivity, acknowledging the need for careful deliberation and gradual implementation. Courts have encouraged legislative action to address personal law disparities while also respecting the autonomy of religious communities, thereby underscoring the importance of balancing legal reforms with cultural respect.

Mohd Ahmed Khan vs Shah Bano Begum<sup>48</sup>

This case is one of the most significant in the background of the UCC debate. The Court ruled that Muslim women are entitled to maintenance beyond the iddat period, under Section 125 of CrPC, irrespective of the personal law governing them. However, this decision sparked controversy and led to protests from conservative Muslim groups, ultimately resulting in the government's intervention through the Muslim Women Act, 1986, which sought to override the Supreme Court's judgment.

Shah Bano Begum, a Muslim woman, was divorced by her husband, Mohd. Ahmed Khan, in 1978 after 43 years of marriage. Shah Bano sought maintenance under Section 125 from her husband. Khan argued that the Muslim Personal Laws administered their divorce and maintenance, and he was not obligated to pay maintenance beyond the iddat periods denoted by Muslim laws.

Key Issues:

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<sup>48</sup> 1985 AIR 945 1985 SCR (3) 844

The case brought to light the tension between religious-based personal laws and the principles of gender equality and social justice. It underscored the disparity between the maintenance provisions of Section 125 of the CrPC, which applies equally to all citizens, and the more restricted rights available to Muslim women under Muslim personal laws.

Judgment:

The Court ruled in favor of Bano, holding that Muslim woman is entitled to maintenance beyond the iddat period under S.125, irrespective of the Muslim Personal Law. The Court emphasized the principle of gender equality and require to offer communal justice to Muslim woman who are economically vulnerable after divorce.

Impact:

The judgment received widespread attention and triggered debates on the reform of personal laws and the enactment of a Uniform Civil Code. It was celebrated as a victory for women's rights and gender equality however, it also encountered resistance from conservative Muslim groups who saw it as an intrusion into religious affairs..

The judgment led to political controversy and pressure from conservative Muslim leaders, ultimately prompting the government to pass the Muslim Women Act. It efficiently nullified the Court's decisions by restricting the right to maintenance for Muslim women to the iddat period only, as prescribed by Muslim Personal Law.<sup>49</sup>

Debate on Uniform Civil Code:

The case reignited the discuss on the need for the UCC to ensure equality and justice in personal laws across all religions. Proponents argued that a UCC would eliminate disparities and offer the common legal frameworks, irrespective of their religious affiliation. Opponents raised concerns about religious freedom and cultural diversity, arguing that a UCC could undermine religious traditions and practices.

It highlighted the tensions between personal law relied on religion and constitutional principles of equality and justice. While the case underscored the need for legal reform, particularly in matters concerning women's rights, the legislative response underscored

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<sup>49</sup> Friedmann, *Law in a changing society* 24 (Universal Law Publishing Co.



the challenges in enacting significant changes to personal laws in the varied and devotedly pluralistic civilization such as India.

Sarla Mudgal v. Union of India<sup>50</sup>

In this case, the SCI addressed the problem of bigamy under Hindu personal laws, specifically concerning Hindu man converting to Muslim to marry a second time without legally divorcing their first wife. The court apprehended that such conversion and subsequent marriage amounted to illegal bigamy under Hindu law. The judgment highlighted the need for a UCC to address inconsistencies and discriminatory practices in personal laws.

The case arose from a petition filed by Sarla Mudgal, a Hindu woman, seeking action against her husband, who had married another woman after converting to Islam. Sarla Mudgal argued that her husband's second marriage amounted to bigamy under Hindu law, and she sought legal remedies to annul the second marriage and hold him accountable for bigamy.

Key Issues:

The case questioned the conflict between religion-based personal laws and the principles of gender equality and social justice.

It highlighted the loophole in Hindu personal law that allowed Hindu men to convert to Islam to marry a second time without legally divorcing their first wives, thereby circumventing the law against bigamy.

Judgment:

The Court said that the Hindu man who converts to Islam to marry a second time without legally divorcing his first wife continues to be governed by the HMA, and cannot escape prosecution for bigamy. The Court emphasized that personal laws cannot be used to evade legal obligations and that the principles of equality and justice must prevail over religious considerations.

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<sup>50</sup> AIR 1995 SC 1531

The judgment highlighted the necessity of a Uniform Civil Code to provide consistency and parity in personal laws. The Court noted that the lack of a UCC results in disparities and discrimination, especially against women, and urged the government to work towards implementing a UCC.

Impact:

The judgment received widespread acclaim for upholding the principle of gender parity and communal justice. It rekindled the debate on the need for legal reforms and the enactments of UCC to identify inconsistencies and discriminatory practices in personal laws.

The case sparked discussions and debates in political and social circles, with proponents advocating for the enactment of a UCC to guarantee fairness and justice for all citizens. However, the issue remains politically contentious, with opposition from conservative religious groups and political parties citing concern related to religious liberty and cultural diversity.

Sarla Mudgal case underscored the importance of legal reform and the enactment of a UCC to ensure uniformity, equality, and justice in personal laws across all religions. The case highlighted the challenges and complexities in achieving reform in the diverse society similar to India.

Shah Bano Case Revisited (2001)

The Supreme Court revisited the Shah Bano case in 2001 in *Daniel Latifi & Anr v. Union of India & Anr*. The court reaffirmed the principles laid down in the original Shah Bano judgment regarding Muslim women's right to maintenance under Section 125 of the CrPC. The judgment reiterated the importance of gender equality and examined the necessity for implementing UCC to guarantee uniformity and equality in personal laws.

*John Vallamattom v. Union of India*<sup>51</sup>

This case dealt with the issue of Christian personal laws regarding divorce. The Supreme Court held that divorce granted by ecclesiastical tribunals, such as Christian churches,

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<sup>51</sup> (2000) 6 SCC 224

could not be considered valid under Indian law unless registered under the Indian Divorce Act, 1869. The court viewed the necessity for UCC to address inconsistencies and provide a uniform legal framework for divorce across all religious communities.

The case stemmed from a petition filed by John Vallamattom, a Catholic priest, challenging the validity of divorce decree granted by ecclesiastical tribunal (church courts) under Canon Law. Vallamattom argued that divorce decrees granted by ecclesiastical tribunals should be considered valid under Indian law, even if not registered under the Indian Divorce Act, 1869.

#### Key Issues:

The case raised questions about the recognition of divorce granted by religious institutions under Indian law. It highlighted the conflict between religious personal laws and secular laws, particularly in matters of marriage and divorce.

#### Judgment:

The Court pointed out that divorce decree granted by ecclesiastical tribunal under Canon Laws are not valid under Indian law unless registered under the IDA. The Court emphasized the primacy of secular laws over religious personal laws in matters of marriage and divorce, stating that ecclesiastical tribunals have no jurisdiction to grant divorce that is legally recognized in India.

#### Implications:

The judgment clarified the legal status of divorce decrees granted by ecclesiastical tribunals, ensuring uniformity and consistency in divorce laws across all religious communities.

It underscored the principle of legal supremacy and the importance of secular laws in regulating marital matters, regardless of religious affiliations. While the case did not directly address the issue of a UCC, it highlighted the need for a common legal framework to govern personal laws across all religions. The judgment emphasized the challenges and complexities arising from the coexistence of diverse personal laws and

the importance of harmonizing them under a UCC to ensure fairness and equity for everybody.<sup>52</sup> The case reignited discussions on the need for legal reforms, including the implementation of UCC, to address inconsistencies and disparities in personal laws. Advocates for reform argued that a UCC would establish a unified legal framework for all citizens, ensuring equality before the law and upholding fundamental rights.

*Vallamattom v. UOI* emphasized the primacy of secular laws over religious personal laws in matters of marriage and divorce. Although the case did not directly tackle the issue of a UCC, it highlighted the challenges presented by diverse personal laws and underscored the need for legal reforms to achieve uniformity, equality, and justice for all citizens.

*Shayara Bano v. Union of India*<sup>53</sup>

It is a landmark case that addressed the legal power of the practicing of instant triple talaq among Muslim men in India. The analysis of the case in the situation of the UCC are:

*Shayara Bano*, filed a petition challenging practices of instant triple talaq, where the Muslim husband can divorce his wife by uttering "talaq" thrice in speedy successions, without any judicial intervention or consideration for reconciliation.

*Bano* argued that instant triple talaq violated her basic privileges to parity, self-respect, and non-discriminations.

Key Issues:

The case raised questions about the constitutionality of instant triple talaq and its compatibility with fundamental rights guaranteed under the Indian Constitution. It highlighted the need to reconcile personal laws with constitutional principles of equality and justice, particularly concerning gender rights and religious freedoms. The Court emphasized that instant triple talaq was arbitrary and discriminatory, and it struck down the practice as being incompatible with constitutional principles.

Implications:

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<sup>52</sup> Uniform Civil Code in India <https://www.crpc.in/images/uniform-civil-code.pdf>

<sup>53</sup> *Shayara Bano vs. Union of India* (2017) 9 SCC 1

The judgment provided relief to Muslim women who had been vulnerable to arbitrary divorce through instant triple talaq, ensuring their right to dignity, impartiality, and non-discriminations. It underscored the importance of constitutional principles in regulating personal laws and ensuring that religious practices comply with fundamental rights.

While the case did not directly address the issue of U.C.C, it reignited the debate on the requirement for legal reform, including the enactment of a UCC, to ensure uniformity, equality, and justice in personal laws across all religions. The judgment highlighted the problems and issues posed by the coexistence of varied personal laws and underscored the importance of harmonizing them under a common legal framework to uphold constitutional values.

The case sparked discussions and debates on the reform of Muslim law and the broader issue of execution of UCC in India. Proponents of legal reform argued that a UCC would provide a common legal framework for all people, ensuring equality before the law and upholding fundamental rights, whereas critics raised concern related to religious freedom and cultural diversity.

It was a significant case that addressed the constitutional validity of instant triple talaq and highlighted the want for reform to ensure equality in personal laws. While the case did not directly address the issue of a UCC, it underscored the challenges posed by diverse personal laws and the importance of harmonizing them under a common legal framework to uphold constitutional values.

Ishrat Jahan v. Union of India<sup>54</sup>

Ishrat Jahan case is another significant case related to the issue of instant triple talaq(talaq-e-biddat) and its constitutionality. Here's an analysis of the case:

Background:

Ishrat Jahan, a Muslim woman, filed a petition challenging the practice of instant triple talaq after her husband divorced her by pronouncing "talaq" three times in quick succession through a phone call and a written message. Jahan argued that instant triple

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<sup>54</sup> Writ Petition (C) No. 665 of 2016

talaq violated her privileges to impartiality, self-esteem, and nondiscrimination guaranteed under Constitution.

#### Key Issues:

The case raised similar questions as Shayara Bano v. Union of India regarding the constitutional validity of instant triple talaq and its compatibility with fundamental rights.

It also highlighted the dilemma of Muslim woman who was subjected to arbitrary and unilateral divorces with no legal recourse or due processes.

#### Judgment:

The Supreme Court, in its judgment delivered along with in this case declared the practices of immediate triple talaq unconstitutional. The Court held that instant triple talaq violated Muslim women's fundamental rights under Articles 14 (rights to equality), 15 (prohibitions of discriminations), and 21 (rights to life). The Court emphasized that instant triple talaq was arbitrary, discriminatory, and against the principles of gender equality and justice.

#### Implications:

The judgment provided relief to Muslim women like Ishrat Jahan who had been victims of instant triple talaq, ensuring their right to dignity, equality, and non-discrimination.

It marked a significant step towards gender justice and the protection of fundamental rights for Muslim women in India.

This case reignited the debate on the need for legal reforms, including the enactment of a UCC, to ensure uniformity, equality, and justice in personal laws across all religions. The judgment highlighted the challenges posed by the coexistence of diverse personal laws and the importance of harmonizing them under a common legal framework to uphold constitutional values.

The case further fueled discussions and debates on the reform of Muslim personal laws and the broader issue of implementing a UCC in India. Proponents of legal reform argued that a UCC would provide a common legal framework for all citizens, ensuring equality

before the law and upholding fundamental rights, while opponents raised concerns about religious freedoms and cultural diversity.

In summary, *Ishrat Jahan v. Union of India* another pivotal case examined the constitutionality of instant triple talaq and highlighted the need for legal reforms to promote gender equality and justice within personal laws. Although the case did not directly address the issue of a Uniform Civil Code (UCC), it emphasized the difficulties posed by varied personal laws and the necessity of unifying them under a common legal framework to uphold constitutional principles.

*Naveen Kohli v. Neelu Kohli*<sup>55</sup> is a landmark case in India that dealt with the issue of matrimonial disputes and highlighted the need for reforms in family laws, including the possibility of a UCC. Here's an analysis of the case:

The case involved a matrimonial dispute between Naveen Kohli and Neelu Kohli, who were married under Hindu law. Neelu Kohli filed the petitions under Section 9 HMA, looking restitutions of conjugal right against her husband Naveen Kohli. The case raised questions about the adequacy of existing family laws and the need for reforms to address matrimonial disputes more effectively.

**Key Issues:**

The case highlighted the challenges faced by individuals in resolving matrimonial disputes under existing family laws, which are often complex, time-consuming, and adversarial. It underscored the need for legal reforms to streamline the adjudication of matrimonial disputes and promote the welfare of spouses and their children.

**Judgment**

The judgment acknowledged the shortcomings of existing family laws in addressing matrimonial disputes and called for reforms to ensure the speedy and effective resolution of such disputes. The Court pointed out the significance of encouraging reconciliations and preserving the institution of marriage while also protecting the right and interest of spouses and their children.

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<sup>55</sup> AIR 2006 SC 1675,

Implications:

It also highlighted the necessity for reform in family law to address the growing incidence of matrimonial disputes and provide adequate mechanisms for their resolution. It emphasized the importance of promoting ADR mechanism, like mediations and counseling, to facilitate amicable settlement and reduce the adversarial nature of matrimonial litigations. The judgment highlighted the challenges posed by the fragmented nature of personal laws and the benefits of harmonizing them under a common legal framework to ensure uniformity, equality, and justice in family matters.

*Naveen Kohli v. Neelu Kohli* contributed to the ongoing debate on legal reforms in India, particularly in the realm of family laws. It spurred discussions on the possibility of enacting a UCC to address the disparities and inconsistencies in personal laws and provide a more coherent and equitable legal framework for family matters. In summary, *Naveen Kohli v. Neelu Kohli* was a significant case that underscored the need for reforms in family laws and highlighted the potential benefits of enacting a UCC in India. But the case didn't openly talk to the problem of a UCC, it contributed to the broader discourse on legal reforms and emphasized the importance of ensuring uniformity, equality, and justice in family matters.

In *Panalal Bansilal v. State of A.P.*<sup>56</sup>, It was emphasized that while the uniform laws is highly desirable, implementing it all at once could potentially undermine the unity and integrity of the nation. Instead, gradual and progressive changes should be introduced over time.

In *Prabhakar v. Shanti Bai*<sup>57</sup>, The parties were married in 1955 but have not lived together since 1958, with no cohabitation occurring for the past 49 years. The court issued a divorce decree, citing the irretrievable breakdown of the marriage and concluding that continuing with such a marriage was futile..

The Law Commissions and Court has advised the legislature to establish irretrievable breakdown of marriages as an independent basis for divorce. Continuing to uphold a

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<sup>56</sup> AIR 1996 SC 1023

<sup>57</sup> *Prabhakar vs Shanti Bhai* 2008 HLR 250



legally intact marriage that has practically ceased to exist serves no meaningful purpose. If Parliament does not act on this suggestion, it's conceivable that certain state legislatures in India may take the initiative, utilizing their power as per entry 5 of the concurrent lists in the seventh schedules.

### **Daniel Latifi & other Vs. Union Of India.**<sup>58</sup>

The legal case, the constitutional legitimacy of the Muslim Women Act 1986 was challenged. The SCI ruled that section 3(1-a) do not confine the husband's accountability to offer maintenance solely for the iddat periods; rather, he is obligated to make arrangements for the wife's support throughout her life until she remarries.

Furthermore, it was noted that section 3(1-a) mandates the husband to ensure essential provisions for the wife, such as shelter, along with the payment of maintenance, which involves monetary support.

The case also emphasized that the Act of 1986 is applicable only to divorced women; hence, a woman still in a subsisting marriage cannot seek relief under this Act. Instead, she must file her application either under personal law or CrPC

### **Sarla Mudgal Vs. Union of India**<sup>59</sup>.

The case concerned a husband who married again after converting to Islam, without first ending his initial marriage. The issue at hand was whether this subsequent marriage was considered valid under HMA.

The SCI resolved the matter by stating that in cases of conflict between two personal laws, the law that serves the purpose best should prevail. Thus, it was determined that conversion to Islam does not automatically dissolve the marriages performed in Hindu laws.

### **Khursheed Ahmad Khan v. State of U.P. and Others**<sup>60</sup>

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<sup>58</sup> AIR 2001 7 SCC 740

<sup>59</sup> AIR 1995 SC 1531

<sup>60</sup> Civil Appeal No. 1662 of 2015

The SCI affirmed the validities of the rules that prohibit second marriages during the existence of the first marriage without government permission, stating that this provision does not unfairly impact the rights of Muslims. Consequently, if direct laws for the UCC haven't been enacted by the legislature, the Judiciary has taken a positive step by interpreting secular laws to aid in its implementation. While it's commendable that the Judiciary has intervened, legislative action holds its own importance. While the case of *Khursheed Ahmad Khan v. State of UP* doesn't directly relate to the UCC, the issues raised in the case, particularly concerning women's rights and protection from domestic violence, could intersect with discussions around the implementation of a UCC.

Therefore, legislation must of necessity be made to execute the UCC. Tahir Mahmood<sup>61</sup> has done the influential appeal for shaping the UCC for everybody in India. He argues that, in line with the goal of secularism, the State should cease administering religion- based personal laws. While he believes the majority community should take the initiative, he asserts that, regardless of this, the State must take action on its own.

It is essential for law to be separated from religion. The implementation of UCC would enhance secularism, reduce the current divisions and separations among different religious groups, and help India become a more unified and integrated nation.<sup>62</sup> Our judiciary has also recognized the significance of the Uniform Civil Code and has repeatedly stressed the need to implement it. In **Sarla Mudgal Case**<sup>63</sup>, the Court has J. Kuldeep Singh highlighted that UCC is crucial for safeguarding the rights of the oppressed and fostering national unity and solidarity. He expressed regret that, despite 47 years of independence, the Indian government had yet to implement a UCC. Justice Singh underscored the importance of establishing a UCC not only to protect marginalized groups but also to promote a cohesive and unified nation, “reflecting a long-standing need for legal reform to bridge gaps and ensure equality” for everybody. The same was held in **Lily Thomas vs Union of India**<sup>64</sup>.

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<sup>61</sup> Muslim Personal Law, 1997 Ed., at 200-202<sup>62</sup> Indian Constitutional Law, 5th Ed., at 1386.<sup>63</sup> AIR 1995 SC 1531

<sup>64</sup> (2000) 6 SCC 224

The judiciary has frequently emphasized the importance of implementing a UCC to uphold the principles of secularism and national integration. Judges have articulated that personal laws based on religious doctrines often perpetuate inequalities, particularly affecting women and marginalized communities. By urging the government to act on the need for a UCC, the judiciary aims to foster a legal environment where all citizens are treated equally, irrespective of their religious affiliations. This ongoing judicial advocacy reflects the courts' role in shaping public discourse and influencing legislative action towards achieving a uniform and just legal system.



## CHAPTER 6 CONCLUSION AND SUGGESTIONS

### **CONCLUSION**

Executing UCC in India represents an important and multifaceted legal reform with far-reaching implications. The UCC, envisioned as a single legal framework governing individual subjects such as marriage, divorce, inheritance, and adoption, seeks to unify the disparate family law that at present vary across different religious communities. While the UCC aimed to encourage parity and a cohesive national identity, its implementation must be approached with careful consideration of India's socio-cultural fabric.

One of the primary benefits of a UCC is its potential to foster national integration and legal uniformity. By replacing several personal laws with single code, the UCC could simplify the legal landscape, reducing inconsistencies and ambiguities. This would lead to a more predictable and transparent legal process, which could enhance trust in the legal system and ensure that all citizens are subject to the same legal standards. Moreover, a UCC could eliminate discriminatory practices present in some personal laws, promoting gender equality and human rights by guaranteeing that every individual, despite of their religious backdrop, are treated equitably under the law.

Implementing UCC faces numerous obstacles due to India's rich cultural and religious diversity, where personal laws are deeply ingrained in the social fabric. A uniform legal framework might be seen as an imposition that overlooks the cultural and religious autonomy of different communities. This perception could lead to substantial resistance from those who view the UCC as a threat to their traditional practices and identities. Such opposition has the potential to heighten communal tensions and create further divisions, counteracting the unity that the UCC seeks to promote.

To mitigate these challenges, the implementation of a UCC would require a nuanced and inclusive approach. Engaging with various stakeholders—including religious leaders, community representatives, and legal experts—would be crucial to address concerns and

ensure that the UCC respects the diverse cultural contexts within India. A phased implementation, accompanied by educational campaigns and dialogue, could help in easing the transition and fostering greater acceptance among communities. This approach would allow for gradual adjustments and accommodations, helping to balance the principles of uniformity and respect for diversity.

Additionally, the successful implementation of a UCC would necessitate robust mechanisms to address and rectify any potential grievances that arise during its application. Establishing clear procedures for judicial review and providing avenues for appeal would be essential to ensure that the UCC does not inadvertently perpetuate injustices or overlook the specific needs of different groups.

To conclude, while the UCC hold the promise of greater legal coherence and equality, its execution in India must be handled with sensitivity and care. The UCC embodies a vision of a unified legal framework that upholds the principle of equality before the law, yet it must be reconciled with the country's rich tapestry of cultural and religious diversity. A successful UCC would require a delicate balance between legal uniformity and cultural respect, achieved through inclusive dialogue, phased integration, and vigilant oversight. By navigating these complexities thoughtfully, India can advance towards a legal system that reflects both its commitment to equality and its respect for diversity, fostering a more cohesive and just society.



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## SUGGESTIONS

- In the execution of UCC in India would have profound implications for the country's legal and social landscape. A UCC aims to replace the myriad personal laws governing issues like marriage, divorce, inheritance, and adoption—based on religion—with a single, secular set of laws applicable to everyone. This could foster greater national integration by promoting a unified legal framework, thereby reducing legal ambiguities and disparities across different communities. The adoption of a UCC might also streamline the judicial process, making it simpler and more predictable, which could enhance legal transparency and efficiency.
- However, the transition to a UCC would also involve complex challenges. India is characterized by its rich tapestry of diverse cultures and religious practices, and a uniform legal framework might be perceived as undermining the personal laws that many communities consider integral to their identity. Such a shift could provoke resistance from groups who view the UCC as an imposition on their traditional practices and values. This resistance could lead to social friction and exacerbate communal tensions, highlighting the need for sensitive implementation strategies.
- Furthermore, the process of drafting and enforcing a UCC would need cautious considerations of the diverse needs and concerns of different communities. Ensuring that the UCC respects the pluralistic nature of Indian society while maintaining legal uniformity would be a formidable challenge. Effective stakeholder engagement, extensive consultations, and phased implementation might be essential to address these concerns and facilitate a smoother transition.
- Recognize that transitioning to a UCC may be a gradual and iterative process, requiring phased reforms and incremental changes over time. Prioritize areas of consensus and feasibility, such as inheritance rights, marriage registration, and adoption procedures, before addressing more contentious issues.
- Encourage political parties and policymakers to rise above partisan interests and ideological differences to prioritize the national interest and the welfare of citizens. Foster bipartisan cooperation and consensus-building efforts to advance legislative reforms and policy initiatives related to the UCC.
- Seek guidance and expertise from constitutional scholars, jurists, and legal experts to ensure that the formulation and implementation of the UCC adhere to constitutional principles,

fundamental rights, and the spirit of democracy. Uphold the supremacy of the Constitution and the independence of the judiciary in safeguarding the rule of law.

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