



Cover Page



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IS IT RIGHT TIME TO INTRODUCE UNIFORM CIVIL CODE IN INDIA?

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Abstract:

Recently, some political parties in India are asking to introduce Uniform Civil Code (UCC) in the country. This paper tries to evaluate whether UCC will affect any religious rights given under Indian constitution. Is it right time to go for UCC in India and how? For achieving faster economic growth rate and sustainable economic development of India, we need judicial reforms and one part of this reform is introducing UCC. The pending court cases and judicial inefficiency is costing our country almost 1.5 % to 2 % of national income^[i]. We are third largest economy in the world in terms of Purchasing Power Parity (PPP) of national income in 2022, but sixth largest economy in the world in nominal national income (GDP (GROSS DOMESTIC PRODUCT) – Nominal: \$2.66 trillion, GDP per Capita: \$1,877, GDP – Purchasing Power Parity (PPP): \$8.68 trillion in 2022)^[ii]. The Centre for Economics and Business Research (CEBR) has predicted that India will regain sixth position from France next year and become the third-largest economy in 2031^[iii].

Keywords: UCC – Uniform Civil Code, SC – The Supreme Court of India, PPP – Purchasing Power Parity.

Introduction

In October 2015, the Supreme Court of India said that a Uniform Civil Code is essential in the country. It said, “This [separate laws for different communities] cannot be accepted.” Otherwise, every religion will say it has a right to decide various issues as a matter of its personal law. Justice Y V Chandrachud observed in the Shah Bano case, 1985, that a ‘common civil code’ will help the cause of national integration by removing desperate loyalties to laws that have conflicting ideologies. Goa has a version of what we may see as a UCC though not in perfect form. In fact, it is the only state in India to follow a common law for all its citizens. Since no major change was made since its liberation from the Portuguese in 1961, the state continued to follow a common law as per the Portuguese Civil Code. UCC was one of the key poll planks of the BJP under Atal Bihari Vajpayee during the 1998 elections and again in 2019 elections. One of the reasons for the high pendency of court cases is lack of UCC. Cost of pendency of cases could be as high as 1.5% of GDP according to Harish Narasappa (Bengaluru-based DAKSH's Co-founder)^[iv]. It has been estimated that if court decisions were quick and delays reduced, economic growth could receive a boost to the tune of 1-2% of gross domestic product. Speeding up the process will also help the poor. In fiscal year 2022, the Gross National Income at current prices in India was estimated to amount over 230 trillion Indian rupees^[v]. Even if we consider cost of pendency of cases as low as 1 % of GDP then also 2.3 trillion Indian rupees will be huge cost to our nation.

The objective of Article 44 of the Directive Principles in the Indian Constitution was to address the discrimination against vulnerable groups and harmonize diverse cultural groups across the country. Dr. B R Ambedkar, while formulating the Constitution had said that a UCC is desirable but for the moment it should remain voluntary, and thus the Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made^[vi]. The origin of the UCC dates to colonial India when the British government submitted its report in 1835 stressing the need for uniformity in the codification of Indian law relating to crimes, evidence, and contracts, specifically recommending that personal laws of Hindus and Muslims be kept outside such codification. The UCC aims to provide protection to vulnerable sections as envisaged by Ambedkar including women and religious minorities, while also promoting nationalistic fervour through unity.

What is the Hindu Code Bill?

The draft of the B N Rau Committee report (1941) was submitted to a select committee chaired by B R Ambedkar that came up for discussion in 1951 after the adoption of the Constitution. While discussions continued, the Hindu Code Bill lapsed and was resubmitted in 1952. The bill was then adopted in 1956 as the Hindu Succession Act to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act reformed the Hindu personal law and gave women greater property rights, and ownership. It gave women property rights in their father's estate (2005 amendment).



Cover Page



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Difference between civil laws and criminal laws

While the criminal laws in India are uniform and applicable equally on all, no matter what their religious beliefs are, the civil laws are influenced by faith. Swayed by religious texts, the personal laws which come into effect in civil cases have always been implemented according to constitutional norms.

What are personal laws^[vii]?

Laws that apply to a certain group of people based on their religion, caste, faith, and belief were made after consideration of customs and religious texts. The personal laws of Hindus and Muslims find their source and authority in their religious ancient texts. In Hinduism, personal laws are applicable to legal issues related to inheritance, succession, marriage, adoption, co-parenting, obligations of sons to pay their father's debts, the partition of family property, maintenance, guardianship, and charitable donations.

The Hindu code is divided into 4 bills:

- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956
- The Hindu Minority and Guardianship Act, 1956
- The Hindu Adoption and Maintenance Act, 1956

Muslim laws

In Islam, personal laws apply to matters relating to inheritance, wills, succession, legacies, marriage, wakfs, dowry, guardianship, divorce, gifts, and pre-emption taking roots from Quran. The Muslim personal law is not codified per se, but it is based on religious texts. The Shariat law of 1937 governs the personal matters of all Muslims in India. Certain aspects of their religious texts are also recognized in the Dissolution of Muslim Marriages Act, 1939.

Christian marriages and divorces are governed by the Indian Christian Marriages Act, 1872 and the Indian Divorce Act, 1869, while Zoroastrians are subject to the Parsi Marriage and Divorce Act, 1936.

The preamble of the Constitution states that India is a secular democratic republic. This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. Articles 25 and 26 guarantee the right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess practice and propagate religion. But this right is subject to public order, morality, and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate or restrict any economic, financial, political, or other secular activity, which may be associated with religious practice and to provide for social welfare and reforms.

Need for UCC: The Shah Bano case of 1985^[viii] was a landmark judgment as it showed the progressive character of Muslim women and other sections of Muslim society while highlighting their plight and challenging religious orthodoxy. It led to the passage of The Muslim Women (Protection of Rights on Divorce) Act, 1986, nullifying the Supreme Court order^[ix]. The second instance in which the Supreme Court again directed the government of Article 44 was in the case of Sarla Mudgal v. Union of India^[x]. In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnize second marriage. The Court held that a Hindu marriage solemnized under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and Marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnized after converting to Islam would be an offence under Section 494 of the Indian Penal Code^[xi]. Justice Kuldeep Singh also opined that Article 44 must be retrieved from the cold storage where it has been lying since 1949. The Supreme Court's latest reminder to the government of its Constitutional obligations to enact a UCC came in July 2003 when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. Under the UCC a Hindu will not be compelled to perform a nikah or a Muslim will not be forced to carry out saptapadi. But in matters of inheritance, right to property, maintenance and succession, there will be common law.

Succession and inheritance: This area throws up even more intractable problems. In Hindu law, there is a distinction between a joint family property and self-acquired property which is not so under the Muslim law. The Hindu Undivided Family (HUF), formed under the Hindu law, run businesses and own agricultural lands. Under the UCC, this institution of HUF, peculiar to the Hindus, must be abolished. There are also fetters imposed on the extent to which one can bequeath property by will under the Muslim law. Considering all this, the UCC should include:



Cover Page



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(I) Equal shares to son and daughter from the property of the father, whether self-acquired or joint family property. There should be no discrimination based on sex in the matters of inheritance. The provisions of the Hindu Succession (Maharashtra Amendment) Act, 1994 can be taken as guiding principles wherein the daughter of a coparcener shall by birth become the coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive the right to claim by survivorship and shall be subject to same liabilities and disabilities as the son.

Uniform Civil Code in Goa: Chief Justice of India (CJI) S. A. Bobde alluded to UCC of Goa when he was inaugurating the new building of the high court of Bombay at Goa on March 27, 2021. Goa is the only state in India that has uniform civil code regardless of religion, gender, caste. Goa has a common family law. In Goa Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession. When the Goa became the part of union territory in 1961 by the virtue of the Goa Daman and Diu administration act 1962 the parliament authorized the Portuguese civil code of 1867 to Goa and shall be amended and repealed by the competent legislature. In Goa marriages is a contract between two people of different sex with the purpose of living together and constitute the legitimate family which is need to be register before the office of civil registrar. Muslim men^[xii], who have their marriages registered in Goa, cannot practice polygamy. Also, there is no provision for a verbal divorce.

Goa succession, special notaries and inventory proceeding Act, 2012: The distribution of property amongst the heirs is equal. The male and female heirs both have the right to inherit the property and no distinction is made. Muslim community people that have register their marriage in Goa cannot take more than one wife according to this act and during the marriage time all the property and wealth owned by the couple each spouse have right in the property the share half –half of the property and if spouse dies the half share of the property were goes to the other. And the other half property was divided between the children in the same ratio. However, in Goa, this act applies differently. Goa’s Uniform Civil Code^[xiii] (UCC) is neither uniform nor exactly a shining example of a progressive law, given the fact that it discriminates based on gender, even in allowing polygamy for Hindus, amongst other things. At best, it can be called a quasi-uniform code as Dr. Dario Moura Vicente, professor of law, the University of Lisbon suggests.

Special Marriage Act, 1954: This form of marriage act provides a civil marriage of two person of different sex irrespective of their religion. This law prevailed in Indian to have their marriage outside the customs of their personal law. This law is applied in all over the India. Under this act polygamy was illegal and the system of succession would be governed by Indian succession act even the system of divorced is also governed by this law.

Secularism v/s Uniform Civil Code: In the spin of controversy, we live in a secular state and according to preamble of the Indian constitution state that the India is a “secular democratic republic.” This means that there is no state religion a secular state should not intervene with the customs of others religion and make discrimination against other community people on the grounds of their religion which means there should not any intervention with other community people rights. Uniform civil code is not opposed to secularism and not against to article 25 and 26. Article 44 is that religion, their customs their personal laws can prevail. Marriage, succession, and other matters related to the secular nature of the state. The purpose of uniform civil code is not to interfere with the customs and their tradition the basic purpose behind id equality that should be given to each citizen of India.

Chief Justice of India S A Bobde^[xiv] appreciated the uniform civil code (UCC) in Goa, the only state to have one. This brought the spotlight back on the UCC debate, although the Law Commission had concluded in 2018 that a UCC is neither desirable nor feasible. No expert committee on the lines of the Hindu Law Reforms Committee of 1941 has ever been constituted, nor has any blueprint for a UCC been prepared. A UCC is desirable, but in a piecemeal manner. Goa’s Civil Code has four parts, dealing with civil capacity, acquisition of rights, right to property, and the breach of rights and remedies.

States & different laws^[xv]

In fact, not all Hindus in the country are governed by one law. Marriage amongst close relatives is prohibited by the Hindu Marriage Act, 1955 but is considered auspicious in the South. The Hindu Code Bill recognizes customs of different Hindu communities. Even the Hindu Succession Act, 1955 could not make the daughter a coparcener until 2005. There is no uniform applicability of personal laws among Muslims and Christians either. The Constitution protects the local customs of Nagaland, Meghalaya, and Mizoram. Even land laws in several states are discriminatory, and daughters do not inherit landed properties in the presence of sons. Let the secular laws first be made gender-just before the country undertakes reforms in religious laws. Piecemeal reform rather than enactment of the UCC in one go is the only way forward. In fact, a just code is preferable to a uniform code.



Cover Page



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Suggestions for UCC

1. UCC should be introduced in first phase in some of the small and homogenous states of India like Goa. Recently, Uttarakhand wants to introduce UCC, let us see how much it will be successful there and other such states in India.
2. Initially some of the personal laws which are not justifiable should be scrapped and need to be modified as per humanitarian grounds.
3. Most literate states can introduce UCC. As a literate population can be easily convinced about the importance of UCC. States like Kerala can introduce it and it can be studied.
4. Initially, Citizens should be given options that they should be governed by either UCC or their own irrational personal laws. It may be a little risky to completely phase out personal laws immediately.
5. The process of making an acceptable Uniform Civil Code should be started soon and national level discussions and debate should take place on the pros and cons of such law.
6. First, we must see that Equal Opportunity has been provided to the marginalized sections of society. Like gender equality, equal opportunity should be provided to marginalized caste, physically disabled and economically weaker sections of the society.
7. Wide spread national level awareness should be created in favour of UCC. Pros and Cons of personal laws versus UCC should be discussed.
8. Initially UCC should be optional to be adopted by the different religious person. Let the citizens themselves come forward to adopt UCC. Incentives for adopting UCC and disincentives for continuing irrational personal laws can be given.
9. UCC should be applicable if a person wants to solve their civil dispute through court. If they are happy out of court settlement through their personal laws without harming the opposite party then the state should not interfere in such matters.
10. National and international level deep research should be done to identify the best, rational, logical, and acceptable Uniform Civil Code for our country.

Conclusion: We must accept that initially there will be strong opposition for UCC from some of the religious groups. Hence, central government should not be in hurry to introduce UCC at all India level. Smaller states, homogeneous states and most literate states should first introduce acceptable UCC and its effect should be studied. Before the UCC, we must bring equal opportunity to the marginalized sections of female, SCs (Scheduled Caste), STs, OBCs (Other Backward Caste) and economically weaker sections of the society. UCC should not be compulsory to everyone initially; they should have choice between UCC and personal laws. Introduction of UCC also will reduce judges to population ratio as they need not required to interpret multiple personal laws. The law commissions in its 120th report and apex court through its judgment has examined the problem of under staffing of judiciary and recommended 50 judges per million of population instead of existing 10.5 per million population^[xvi]. The Judge-Population ratio in India is the lowest in the world. Far worse is the fact that out of the existing sanctioned strength of judges, 25-30% of the posts are normally lying vacant at any point in time. Late President of India, Mr. Pranab Mukerjee^[xvii] has rightly said that it is very urgent that we need judicial reforms unless there will be huge monetary losses, social and political unrest. Forget about becoming the third largest economy in the world, we may end up without judicial reform to one of the backward economies in the world. Introduction of UCC in step-by-step manner is one of the solutions for judicial reform in India.

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Cover Page



DOI: <http://ijmer.in.doi./2022/11.05.21>

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