

UNIFORM CIVIL CODE: A NEED OR A MYTH

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Abstract

The issue of implementing a Uniform Civil Code (UCC) in India has once again ignited debates among politicians, following the Prime Minister's recent address in Madhya Pradesh. Amidst these discussions, the role of India's cultural richness, diversity, and commitment to secularism has been scrutinized as potential factors hindering the realization of a UCC. While India takes pride in its multitude of cultures and traditions, it lacks a unifying religious identity, resulting in a lack of uniformity. The Constitutional provisions of Article 44 aim to address this disparity by advocating for a UCC that would bring uniformity to matters concerning personal laws across the country.

This paper delves into the complexities surrounding the UCC, exploring whether India's diversity and secularism are indeed the primary obstacles preventing its implementation. To assess the feasibility of implementing a UCC in India, this paper draws comparisons with other secular nations that have successfully adopted similar codes, despite having diverse populations. Through comprehensive research, the author seeks to determine whether a UCC is a genuine necessity in India or an unattainable aspiration. By studying the experiences of other nations and considering India's unique social fabric, this paper offers valuable insights into the feasibility and desirability of a UCC in the Indian context. The objective of this paper is to shed light on the ongoing debate surrounding the UCC in India. By analyzing these experiences, the author seeks to uncover the reasons behind India's struggles in achieving a consensus on the UCC.

Keywords: Uniform Civil Code, India's diversity, Secularism and Consensus on the UCC.

INTRODUCTION

UCC is giving a framework of a standard set of laws that will apply to all the citizens of India regarding marriage, divorce, inheritance, adoption, and succession, which so far have been governed by the personal laws in India. The laws under UCC will apply to the citizens of India irrespective of religion, gender, and sexual orientation. It is not the first time that the demand for implementation of the UCC has come forward. It was, in fact, part of the draft of the Constitution makers, which now is visible as Article 44 of the Constitution. The demand for implementation of UCC both from the legislature and the court has been pending for a long time, but implementing the Uniform Civil Code is a complex issue. The Supreme Court of India was the first to direct the government to frame UCC in *Shah Bano's*¹ case. Then Chief Justice Y.V Chandrachud observed that a Common Civil Code would help cement the cause of national integration. The critics argue that it impinges upon the religious freedom of individuals. However, glimpses of both UCC demand and religious agitation can be seen in the piecemeal implementation of legislation.

As we know, a Criminal Code in India applies to all people irrespective of religion, caste, tribe, and domicile in the country. However, no similar code related to divorce, maintenance, marriage, and succession is governed by personal codified laws based on religion and customs accepted as law.

This is abstract from Shayra Bano's² judgment:

"You must know that the Muslim law covers the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Hindus, be they Muslims. Did the Muslims take exception, and did they revolt against the British for introducing a single system of criminal law? Similarly, we have the law of contracts governing transactions between Muslims and Hindus, between Muslims and Muslims. They are governed not by the law of the Koran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence".

The demographic profile is changing with the pressing need for gender equality, the rise of the LGBTQ community and various movements to recognise the communities' contemporary rights. India is a secular country, and with globalisation, cultural diversity is a standard fabric in most countries.

Complexities Surrounding Uniform Civil Code

¹ Mohammed Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

² Shayra Bano vs. Union of India & Ors, W.P (C) 116 of 2016.

The general population fabric in India is the majority Hindus (966 million), the country's Muslim (213 million) and Christian (26 million) minorities, and tribal communities (104 million) – who follow their own civil laws, influenced by religious texts and cultural customs since independence.

During British rule, the foreign power ruling us avoided areas related to religion and personal customs to maintain peace¹. However, in an independent India, sovereignty rests with the people. Once the leadership passed into Indian hands, the drafting committee of the Constitution felt the need to implement a uniform civil code. Jawaharlal Nehru felt the need for a Uniform Civil Code, but he hesitated in forcing it down upon any community that was not ready then. With a vision of the Parliamentarians to consider the Uniform Civil Code at some point, it was decided to add the implementation of a Uniform Civil Code in Article 44 as a Directive Principle due to staunch opposition. The Directive Principle puts the onus on the state to secure a Uniform Civil Code for the citizens throughout the country, which will replace different codified Personal Laws based on the scriptures and customs of the major religious communities in India. In a way, the impact of its implementation on diversity was the reason for withholding it then and incorporating it as Directive Principle. From time and again there has been pushing need to have Uniform Civil Code and judiciary played a vital role in stressing upon the same even during the silence from political will power to implement it.

Judicial Voice for implementation of the Uniform Civil Code

The demand for implementing the Uniform Civil Code can be seen in the historic judgment passed by the Hon'ble Supreme Court in *the Shah Bano case*². In this case, the maintenance issue of a Muslim divorced wife was raised under Section 125 CrPC. The court held Section 125 CrPC as a religious-neutral provision for a social purpose³. In the judgment, the Honourable Court interpreted the law as strengthening the social fabric by ruling the application of this law to all religions independent of personal law. The court had also expressed displeasure over these piecemeal attempts to bridge the gap as a poor substitute for the uniform civil code. The *Shah Bano's* judgment gave a trailer to much resentment⁴ for it being against the Muslim Laws, with which the government was not ready to fiddle further. Even though *Shah Bano's* case, the court mentioned how UCC can pave the way for national integration. On the other hand, the government was not satisfied with the court's decision. It enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, to nullify the Supreme Court judgement in the *Shah Bano Case* and let Muslim Personal Law prevail in divorce.

Justice Kuldip Singh in *Sarla Mudgal*⁵ case mentioned:

Till the time we achieve the goal - uniform civil code for all the citizens of India - there is an open inducement to a Hindu husband, who wants to enter into second marriage while the first marriage is subsisting, to become a Muslim. Since monogamy is the law for Hindus and the Muslim law permits as many as four wives in India, errand Hindu husband embraces Islam to circumvent the provisions of the Hindu law and to escape from penal consequences.

There has been silence in state politics for the implementation of UCC, but the court has repeatedly asserted the need for a Uniform Civil Code. Suppose we look at the issue of bigamy, which is a punishable offence under Section 494 IPC across all religions in terms of IPC. The *Sarla Mudgal case*⁶ dealt with the conflict between personal laws and freedom of religion while dealing with the offence of bigamy. In this matter, the court held that the apostate husband would be guilty under Section 494 of IPC. The second marriage of an apostate husband under Muslim law was held to be a marriage in violation of the provision of the Act by which he would be continuing his first marriage and against natural justice. Allowing individuals to solemnize their marriage without dissolving their prior marriage after conversion to Islam is arbitrary. It is a straightforward way to circumvent the provision of section 494 of the Indian Penal Code. The court also ruled that the necessity of the Uniform Civil Code (UCC) would stop Indians from trespassing on the personal law of one another. So, UCC must be secured. The dissenting opinion written by Justice R.M. Sahai stated that *Uniform personal law can only be laid down when there is harmony between the people of all religions*.⁷

Diversity has been a roadblock to the successful implementation of the law since the time of its inception.

Need of Hour: for or against UCC

What is the origin of these personal laws? The Hindu law⁸ is not a pure customary law, instead, it consists of a set of norms and laws that have been followed for centuries and are described in various Hindu texts. The law relating to solemnization in India of marriages of persons who professes Christian religion⁹ was spread over two Acts of the English Parliament and three Acts of the Indian Legislature. Indian Christian Marriage Act, 1872 was passed with the object to simplify the existing law on this matter by the consolidation of the different enactments referred to, and at the same time, to amend the law in those matters in which it has been shown to be defective. Hence there has been different sources of personal laws for each religion. The

¹ Uniform Code: Nehru okayed the principle but didn't make it a directive, <https://timesofindia.indiatimes.com/india/uniform-code-nehru-okayed-principle-but-didnt-make-it-a-directive/articleshow/60183225.cms> (August 23, 2017).

² *Id.*

³ 455 *International Journal of Legal Science and Innovation* [Vol. 2 Iss 1; 454, pg.522.

⁴ Case Analysis: *Shah Bano's case*- Mayank, <https://www.latestlaws.com/wp-content/uploads/2018/05/Case-Analysis-Mohd.-Ahmed-Khan-v.-Shah-Bano-Begum.-By-Mayank.pdf>.

⁵ *Smt. Sarla Mudgal, President, Kahyani & ors. v. Union of India*, 1995 AIR 153.1

⁶ *Id.*

⁷ *Sarla Mudgal Case: Is Bigamy an Offence?* <https://blog.finology.in/Legal-news/sarla-mudgal-case>.

⁸ Sources of Law, <https://www.legalserviceindia.com/legal/article-8549-sources-of-hindu-law.html>.

⁹ Christian Law Regarding Marriage and Divorce in India: Indian Christian Marriage Act, 1872, <https://www.legalserviceindia.com/legal/article-1764-christian-law-regarding-marriage-and-divorce-in-india-indian-christian-marriage-act-1872.html>.

primary sources of Muslim law are the Quran, the Sunnat (the way of the Prophet), the Ijma (consensus of Islamic scholars), and the Qiyas (reasoning by analogy). Other secondary sources are judicial decisions, customs, and legislation.¹

Since independence, the general population's fabric follows their civil laws, influenced by religious texts and cultural customs. The Hindu personal laws are- the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoption and Maintenance Act, 1956 (covers Buddhists, Sikhs, Jains, as well as different religious denominations of Hindus) which allows right to divorce and inheritance to women, made caste irrelevant to marriage and abolished bigamy and polygamy. Marriage, succession and maintenance under Muslim law are dealt with within the Muslim Personal Law (Shariat) Application Act of 1937. Divorce is governed by -the Dissolution of Muslim Marriage Act. However, these laws do not cover Muslims marrying under the Special Marriage Act, 1954 and those governed by the Goa Civil Code. The Indian Christian Marriage Act of 1872 governs the personal law of Christians, but the same does not apply in the state of Goa. Therefore, Goa is a model of implementation of the Uniform Civil Code.

It is well-known that women had a lesser role in the law-making process from the ancient to the modern Indian period. Gender inequality in the framing of laws exists in a patriarchal society. However, law grows with the changes in society. The law abolishing criminal punishment against adultery is a typical example. Gender equality is the most likely outcome of enforcing the Uniform Civil Code. The UCC, on the one hand, is an example that will attack gender inequality and, on the other hand, aims to abolish the retrograde practices followed under the framework of personal laws prepared by a patriarchal society. There is a need to reform our social system to do away with inequities and discriminations, which, so far, are not getting addressed through the fragmentary amendments independently for every religion.

Whether diversity is a hindrance to the implementation of UCC?

Personal Laws cover marriage, divorce, inheritance, adoption, and maintenance. Unlike the criminal laws, which are the same for all different communities in India, each religion has its own set of civil laws. So, the issues are decided as coded in the law book as per the religion the person practices, and hence, there is only uniformity if it falls under the protection of secular laws. This may cause the issue of national integration, too.

In a recent Shayra Bano judgment² by the Supreme Court it was held that the practice of talaq-e-biddat or instantaneous triple talaq is unconstitutional. Two years later in July, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019³ which made the practice of talaq-e-biddat a criminal act, punishable with up to three years imprisonment. Various organisations have challenged this Act in separate petitions at the Supreme Court in August 2019 and the Court is yet to begin hearing arguments in the matter. The practice has rendered Muslim women forced out of their matrimonial homes overnight, with many learning that they have been divorced from relatives, by phone or even by a text message.

The priest from Kerala, John Vallamattom,⁴ filed a writ petition in 1997 stating that Section 118 of the Indian Succession Act was discriminatory⁵ against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by Will. The case⁶ has drawn the court's attention towards the unfulfilled obligation of UCC. Section 118 of the Indian Succession Act provided that no man having a nephew or niece or any nearer relative shall have the power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons. Justice Lakshmanan said the Kerala High Court declared it unconstitutional in 1998, but the legislature has not removed it, so the court must declare it unconstitutional. The bench shared another view that matters of marriage succession are secular. They cannot be brought still within the framework of articles 25 and 26 of the Constitution.

The Indian Divorce Act, 1869 that regulates the law relating to divorce of persons professing the Christian religion, even if one of the parties to the proceedings is a Christian. The Act is modeled on the English law of divorce. Part III, Section 10 of the Act provides the grounds on which a husband or a wife may petition for dissolution of marriage. The Indian Divorce Act enacted a century ago contained certain harsh and discriminatory provisions of gender discrimination. Since for obtaining divorce husband only must prove adultery on the part of wife whereas the wife has to prove an additional matrimonial offence like cruelty, desertion, conversion or bigamy along with adultery. Thus, there was a need for reform in the Indian Divorce Act which was long felt by jurists and even the Supreme Court and the Law Commission. The Supreme Court made a strong plea for introducing a change in the archaic law in *Jorden Diengdeh v. S.S. Chopra*. The constitutionality of the controversial Section 10 was again challenged in *Mrs. Zachariah v. Union of India* where the court directed the Union to take a decision towards amending the Act within 6 months. The Kerala High Court in *Ammini E. J. v. Union of India* again not only highlighted the discrimination but struck down certain phrases to give meaningful relief to the petitioners. The court quashed the provision which requires a Christian wife to prove that her husband had been indulging in "incestuous adultery" or "adultery coupled with cruelty or desertion" to obtain divorce. Taking into consideration the above views, the Indian Divorce (Amendment) Act, 2001 was passed by which certain amendments were introduced in the Act. Section 10 of the Act was substituted by new provision and a new Section 10-A was inserted.

The Indian Divorce Act of 1869 regulates the law relating to divorcing each other for parties practising the Christian religion, where one or both the parties to the proceedings is a Christian. The Act is modelled on the English law of divorce. Section 10

¹ Muslim Law, Origin sources and who is a Muslim?, <https://www.legalserviceindia.com/legal/article-2828-muslim-law-origin-sources-and-who-is-a-muslim.html#:~:text=The%20primary%20sources%20of%20Muslim,judicial%20decisions%2C%20customs%20and%20legislation.>

² *Id.*

³ Triple Talaq, <https://www.scobserver.in/cases/shayara-bano-union-india-triple-talaq-case-background>.

⁴ John Vallamattom & Anr. vs Union of India, (2003) 6 SCC 611.

⁵ Uniform Civil Code: A Boon to Indian Women, <https://www.legalserviceindia.com/legal/article-5305-uniform-civil-code-a-boon-to-indian-women.html>.

⁶ Rights of Christian Women Post-Divorce by -Pulkit Taneja, <https://ijalr.in/volume-1/issue-1/rights-of-christian-women-post-divorce-by-pulkit-taneja/>.

of this Act provides the grounds for a husband or wife to file for divorce. The Indian Divorce Act was enacted a century ago and contained specific harsh and discriminatory provisions of gender discrimination. To obtain a divorce, the husband must only prove adultery on the wife's part.

In contrast, the wife has to prove an additional matrimonial offence like cruelty, desertion, conversion, bigamy, and adultery. Thus, there was a need for reform in the Indian Divorce Act, which jurists and even the Supreme Court and the Law Commission had long felt. The Supreme Court made a strong plea for introducing a change in the archaic law in *Jorden Diengdeh v. S.S. Chopra*.¹ The constitutionality of the controversial Section 10 was again challenged in *Mrs Zachariah v. Union of India*, where the court directed the Union to decide on amending the Act within six months. The Kerala High Court in *Ammini E. J. v. Union of India* again highlighted the discrimination and struck down specific phrases to give meaningful relief to the petitioners. The court quashed the provision requiring a Christian wife to prove that her husband had indulged in "incestuous adultery" or "adultery coupled with cruelty or desertion" to obtain a divorce. Considering the above views, the Indian Divorce (Amendment) Act, 2001, was passed by which certain amendments were introduced. A new provision substituted section 10 of the Act, and a new Section 10-A was inserted.

There is a need to identify the inconsistencies of personal laws that prevent national integration and enjoyment of fundamental human rights before implementing the law. As we are carrying out the entire new legislative exercise of UCC, we need to analyze how the personal law in force defeats the purpose of national integration, as that is the most considerable standpoint of the opposition that it will prevent freedom to practice religion. As we have seen, instant triple talaq is now punishable. Whether we need uniformity in rights or a Uniform Civil Code needs to be studied.

A uniform civil code will guarantee the same rights in marriage, divorce, inheritance and adoption to people, especially Indian women and is vital to the progress of the Indian society. Initially, the 21st Law Commission of India examined the subject of the Uniform Civil Code and solicited the views of all the stakeholders. Under the above, overwhelming responses have been received by the Commission. The 21st Law Commission of India issued a consultation paper on the Reform of Family Law on August 31, 2018. Bearing in mind the relevance and importance of the subject and various court orders, the Law Commission of India considered it expedient to deliberate afresh over the subject.

The existing personal laws of all religions are based upon the upper-class patriarchy. Thus, the codification and implementation of the Uniform Civil Code will destroy the sanctity of the patriarchal orthodox people or will oppose it profusely. A secular democratic republic, to provide equal status to its citizens, must have a joint civil and personal law irrespective of their religion, class, caste, gender. The Bhartiya Janta Party (BJP) was the first party in the country to promise the implementation of the Uniform Civil Code if it were to be elected to power.

During the 1970s and '80s, there were widespread conflicts as to the application of Indian laws on the personal affairs of the citizens who were governed by their own distinct personal laws. One such area of conflict was even seen in the applicability of Sec 125 of the Code of Criminal Procedure, 1973 (CrPC) on citizens of the Islamic faith.

A version of the UCC is in place in Goa² as it follows the Portuguese Civil Code of 1867, which means that people of all religions in Goa are subject to the same laws on marriage, divorce, and succession. The Goa Daman and Diu Administration Act of 1962 was passed after Goa joined the union as a territory in 1961, permitting Goa to apply the Civil Code. After independence from Portuguese rule, the state of Goa decided to adopt the Portuguese Civil Code, which was enforced as a UCC for all its citizens. One of the most significant advantages of having a uniform civil code is that all citizens are treated equally before the court of law, whether criminal or civil. Unregistered marriages often lead to the issue of polygamy or bigamy. The civil code in Goa ensures compulsory registration of marriages before a civil authority. Unlike the issue of maintenance crippling the justice system, this code ensures husband and wife can have a pre-nuptial agreement or the wife has an equal rights of inheritance and is entitled to half of the "common assets", including those inherited by her husband in the case of a divorce. The law also doesn't recognise bigamy or polygamy, including for Muslims but grants an exception to a Hindu man to marry once again if his wife doesn't conceive a child by the age of 21³ or a male child by the age of 30. It is compulsory for the parents to share at least half of the property with their children, including daughters. Polygamy is prohibited for Muslim persons who have registered their marriage in Goa. Goa is, therefore, a successful example of the application of UCC.

So, a model of UCC is already in force in one state in India and on a piecemeal basis in legislations like Section 125 CrPC or the Indian Succession Act or by the abolition of the provision of triple talaq. The courts have been pushing for the UCC for a long time; however, due to the diversity and vulnerability of the topic, it needs strong leadership to do it.

The Leadership in favour of UCC

The BJP⁴ has become a party pursuing and executing non-popular agendas like UCC. When the party first contested its Lok Sabha polls in 1984, UCC was not in its election manifesto. The case of Shah Bano of the Supreme Court in 1985 created a stronger urge to implement UCC by the BJP. The 1989 election manifesto prominently mentioned UCC and promised to appoint a Commission to examine the various personal laws. The BJP remained persistent on its stand on UCC in the following years as it had tabled a resolution in the Parliament in 1993 seeking a Commission for framing a law on it. Late BJP MP Bachi

¹ Christian Law Regarding Marriage and Divorce In India: Indian Christian Marriage Act, 1872, <https://www.legalserviceindia.com/legal/article-1764-christian-law-regarding-marriage-and-divorce-in-india-indian-christian-marriage-act-1872.html>.

² A Study: Uniform Civil Code in India, <https://www.legalserviceindia.com/legal/article-10579-a-study-uniform-civil-code-in-india.html>.

³ Goa Civil Code, <https://crackittoday.com/current-affairs/goa-civil-code/> (May 14, 2022).

⁴ Uniform Civil Code was not always on BJP's agenda, <https://www.deccanherald.com/india/uniform-civil-code-was-not-always-on-bjps-agenda-1239361.html> (22nd July 2023).

Singh Rawat in 1996 also introduced the Uniform Marriage and Divorce Bill as a private member bill, which could not see daylight. The BJP continued its efforts to implement UCC till 1998, but when it came to power as an NDA coalition, it kept itself away from issues like UCC. The BJP did not raise the issue in 2004, but post-2009, the momentum for UCC. The Congress party calls it a dividing civil code. Therefore, it is clear that implementing UCC is a challenging process and needs strong leadership with people's participation in the change.

In March 2022, the Supreme Court told the central government to respond to a public interest litigation that sought to implement religion-neutral inheritance and succession laws, called the uniform civil code (UCC).

Diversity and Secularism: Primary obstacles preventing its implementation

There is a need to investigate how the Uniform Civil Code can help maintain secularism and national identity. Does Indian diversity makes it challenging to create a uniform set of rules for personal issues like marriage due to the tremendously diverse cultures in India across religions, sects, castes, states, etc.? Many communities, predominantly minority communities, believe that the Uniform Civil Code encroaches on their right to religious freedom. Will implementing a uniform code tantamount to the interference of the State in personal matters under Articles 25 to 28 of the Indian Constitution provide the Right to Freedom of religion? Will the scope of the freedom of religion will be reduced with the codification of the Uniform Civil Code?

The implementation of the Uniform Civil Code is a sensitive and challenging task because it will bring many changes like issuing judicial pronouncements that ensure gender equality, adopting expansive interpretations on marriage, maintenance, adoption, and succession with a view that one community should ensure benefits from others. The task is very demanding, and the government would be expected to be sensitive and unbiased while dealing with the minority and majority communities; otherwise, the communal violence would turn out to be more disastrous. Thus, sufficient time should be given to instil confidence in the community; otherwise, they will become more insecure and vulnerable to getting attracted towards extremist ideologies.

The enactment of the UCC infringes on the right under the Constitution to practice the religion of one's choice, which makes religious communities vulnerable. Secondly, creating a uniform civil code across India is challenging because of constitutional provisions in some areas of the North-East that protect indigenous family law. Moreover, it was never the intention of the frame makers of the Constitution to practice total uniformity. However, no study could be identified over which the opposition to UCC has been dwelling upon. Even though many BJP-ruled States, including Gujarat, Madhya Pradesh and Assam, have expressed their willingness to follow the UCC, they have yet to adopt it officially.

International Case study

The economy has laid the trajectory of the world to be diverse. India does not have a legally defined concept of secularism, but it is recognised as the fundamental law of the land. According to the Bouchard-Taylor¹ Commission of Canada, the four fundamental principles constituting any model of secularism are the moral equality of persons, freedom of conscience and religion, state neutrality towards religion, and the separation of church and state. Secularism takes on a different meaning depending on the importance of these four principles.² In Canada, neither state neutrality in matters of religion nor the separation of church and state is explicitly affirmed in the Constitution. However, the courts have gradually inferred such principles from freedom of religion and the prohibition against religious discrimination.

The principle of secularism in Singapore is constitutionally ingrained, though unwritten. The Singaporean state believes that the power of religion, if properly harnessed, significantly contributes to social cohesion and stability. It recognized that religions help develop social capital and are valuable partners in supporting the building of state institutions and achieving national integration³. The matrimonial law in Singapore is categorized into civil marriage and Muslim marriage.⁴ The women's charter of 1961⁵ generally provides for the maintenance of wives under any religion.

Valuable insights into the feasibility and desirability of a UCC

Is diversity the real issue, or should we look at the problem from different angles? There are numerous instances where we can see the implementation of the UCC fragmentarily. The Juvenile Justice (Care and Protection of Children) Act is also a small step towards the concept of the Uniform Civil Code mentioned in Article 44 of the Constitution of India. This law entitles adoption by people of any religion, and anyone who does not submit himself to personal law can adopt a child. Goa has 66.08%, Muslims 8.33%, and Christians 25.10% of the Hindu population, and yet has a typical family law, thus being the only Indian state to have a uniform civil code. The 1954 Special Marriage Act allows citizens to marry outside any special religious personal law. Section 125 CrPC, as discussed above, is another example of implementing UCC at the micro level.

It can be read in various sites like Swaddle⁶ that UCC can also help deal with the problem of Honor killings by extra-constitutional bodies like Khap Panchayats, but it still needs to be elaborated on how. The issue of bigamy/polygamy exists across religions; live-in relationships have complicated the relationship issue further, even within Hindu marriages. So, we need

¹ Named as such for the Commission's co-chairs, Gérard Bouchard and Charles Taylor. Its formal title is the Consultation Commission on Accommodation Practices Related to Cultural Differences. https://www.mcgill.ca/law/files/law/jukier_2015_religion_and_the_secular_state.pdf.

² Rosalie Jukier, José Woehrling Religion and the Secular State in Canada: Pg. 558.

³ Musa, M.A. Singapore's Secularism and Its Pragmatic Approach to Religion. Religions 2023, 14, 219. <https://doi.org/10.3390/rel14020219>.

⁴ Civil Marriages Process, <https://www.marriage.gov.sg/civil/marriage-process>.

⁵ Maintenance under Part 8 of the Women Charter https://www.judiciary.gov.sg/docs/default-source/family-docs/2-fjc-casebook---mss.pdf?sfvrsn=b753b9d1_2.

⁶ We asked Six Experts to Explain the Impact of Uniform Civil Code, <https://theswaddle.com/we-asked-six-experts-to-explain-the-impact-of-a-uniform-civil-code-in-modern-india/> (July 17th, 2021).

to boil down the inconsistencies in the existing law and whether the answer will come by replacing it with the Uniform Civil Code. There are chances that many rural and tribal communities may continue to follow their own tribal and customary practices. We also must remember that there needs to be more legal aid in the formal court, and litigating courts is costly and time-consuming. So, a segment of society will continue to follow their customary practices despite the implementation of UCC for quick redressal of disputes through a system with which they are familiar. Above all, religion is a way of life in India. The personal laws give sanctity to practice.

It is also stressed that UCC can bring in consistencies in Tax laws. Like in Hindu Undivided Families, they are exempted from taxes, whereas Muslims are exempted from paying stamp duty on gift deeds.

So, both sides have conflicting opinions on the issue available. There is a need for the legal mind to prepare a framework with the goal of national integration in mind.

To reflect upon the personal laws further. The data published by The Mint from Census 2011¹ shows divorce rates in the two major communities of India. The divorce stock ratio can be defined as the total number of divorced persons in a community to the total number of married persons. The census only tells us stock, but analogically, it is the same as the divorce rate). This ratio is 2.0 for Hindus and 3.7 for Muslims. This statistic means that for every 1,000 married Hindus, two are divorced; for every 1,000 married Muslims, 3.7 are divorced (for India, this value is 2.4). Across the gender, the disparity is wider. Most men remarry, but women cannot; the disparity is quite broad. The ratio states that for every 1,000 married Hindu women, 2.6 are divorced, while of 1,000 married Muslim women, 5.6 are divorced. As for men, this ratio is almost the same (1.5 for Hindu men and 1.6 for Muslim men). According to the Mint newspaper article, this implies that population and marital status adjusted, Muslims are more likely to be divorced than Hindus. About 78.7% of Muslim divorcees are women; for Hindus, this figure is 64.2%.

CRITICAL ANALYSIS: CHALLENGES

The genuine autonomy of society comes from individual autonomy, which cannot be derived from ancient laws drafted with one-sided opinions, and with the transition of the economies into one single global world, the archaic personal laws need attention. Further, the issue of UCC revolves around whether we need new laws or whether we need to filter the laws that prevent national integration and one nation, one law, and how it helps in secularism.

- The right to be let alone in the name of privacy and the fundamental right to practice one own religion cannot be part of any sane government practice as it means the right to be ungoverned for specific issues that can be encountered while practising personal laws and is beyond the scope of religion. The deviation from personal law to uniform law should be weighed in terms of the well-being of the society.
- The controversy dwells around whether a uniform civil code is something in the name of liberalism, infringement of the personal laws and their practice or a greater need for gender equality, national integration, and growth of a progressive society.
- Progressive legal practice must put forward the interpretations that advance the ideals of democracy. After the above study, it needs to be understood how the personal laws providing conformity on specific issues dissolve cultural diversity. Also, such an important issue should not be seen through the lens of a political agenda. We need to realize that it was included in the constitution by the makers themselves, and the apex court of India has time and again highlighted the importance and need of it.
- Several disjointed legislations indicate that diversity is not a roadblock to implementing the Uniform Civil Code. However, it is essential to assess whether we need uniform legislation and, given diversity, what should be the way forward for its implementation if required. All the personal laws originate from ancient sources and the customs, some harsh and one-sided, as women hardly had a role in law-making.
- With society progressing into the next century, the question now is, what can we do with these archaic laws in the present times? There are several legal storms from various communities; we just witnessed the issue of triple talaq, the rise of the LGBTQ community and their rights or issue of living-in relationships, khap panchayat, and polygamy, to count a few, needs serious attention to evaluate the personal laws. Law Commission of India is right in moving toward re-deliberating on the subject.
- The issue needs deliberation from all perspectives- why should we have a new law; what are the possible alternatives for conflicting personal issues that prevent national integration; How the freedom to practice religion of one's own choice ensured, and above all, the confidence of the people needs to be ensured for any smooth transition. Does cultural diversity mean we should have legal diversity to issue similar issues? Whether the religion is retrograde.
- The successful implementation of section 125 CrPC is one example that provides a social justice law across religions to destitute women, children and parents who cannot be defined differently in different religions.
- There has been silence in state politics for the implementation of UCC, but the court has asserted several times the need for a Uniform Civil Code. The court also ruled that the necessity of the Uniform Civil Code (UCC) will stop Indians from trespassing the personal law of one another. So, UCC must be secured. However, the dissenting opinion written by Justice R.M.

¹ Hindu and Muslims, The True Picture of Divorce <https://www.livemint.com/Opinion/ydCWT2mGxmg4d9NXrMaxEI/Hindus-and-Muslims-The-true-picture-of-divorce.html> (July 25, 2017).

Sahai also stated that *Uniform personal law can only be laid down when there is harmony between the people of all religions*¹. UCC was, in fact, part of the draft of the Constitution makers, which now is visible as Article 44 of the Constitution. The demand for UCC has been for a long time, but implementing the Uniform Civil Code is a complex issue. The demand for the implementation of the Uniform Civil Code can be seen in the historic judgment passed by the Hon'ble Supreme Court in the Shah Bano case. In Shah Bano's case, the court mentioned how the implementation of UCC can pave the way for national integration.

- The triple talaq judgment had essential observations:

A further argument has been advanced that enacting a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries has the personal law of each minority been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take, for instance, Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed, or specific laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

- There are bound to be influences when there is an impact between two civilisations or cultures. If there is an opposition to the same, it would be unwise for the legislature to ignore it.

CONCLUSION

Therefore, it would be right, to sum up that Article 44 was inserted by our fathers of the Constitution much before keeping diversity in mind and waiting for the right time when the country can have a Uniform Civil Code to govern itself. Strong leadership is needed for its implementation, which is quite visible in the postponement of the issue to date. Since diversity makes it a sensitive issue and people are firmly attached to religion, there is a need for intellectual debate and consensus among the people to implement it. Further, it cannot be ignored that in dealing with the different issues of personal law, the Hon'ble Supreme Court has repeatedly asserted the need for a Uniform Civil Code and the silence of politics. It would also reduce the burden of the court to entertain the issues of the personal laws governing the people due to the diversity of law. UCC, a myth or reality, will be tested on the legislature's floor and the people's consensus.

¹ Sarla Mudgal Case: Is Bigamy an Offence? <https://blog.finology.in/Legal-news/sarla-mudgal-case>.