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THE NEED OF A UNIFORM CIVIL CODE

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ABSTRACT

Any citizen, regardless of their religion, nationality, or gender, is subject to the same set of laws that regulate personal concerns including but not limited to weddings, divorce, wills, and adoption under a universal civil code. The implementation of a uniform civil code has been a topic of discussion and controversy in many nations, including India. A uniform civil code, according to supporters, is essential to ensuring social justice, equality, and peaceful coexistence among varied cultures. However, opponents worry that it would have an adverse effect on people's cultural and religious practises. The necessity for a uniform civil code will be discussed in this article, along with its potential advantages in advancing equality, safeguarding basic rights, guaranteeing gender justice, and encouraging national unity. We will also go into the difficulties and ramifications of enforcing a consistent civil code in a multi-ethnic and heterogeneous nation like India.

1. INTRODUCTION

Meaning: Article 44 addresses the universal civil code. However, it does not define UCC; it just states that. The government must do everything in its power to ensure that all citizens of India are subject to the same civil law.² All Indian citizens, regardless of their gender or religious affiliation, would be subject to the same set of rules governing personal law matters like marriage, maintenance, divorce, and property rights under a uniform civil code. It is a body of civil law that is separate from the law of persons.

It tends to separate personal laws from religion while also ensuring national integrity and unity. Simply expressed, the personal rules of all religions should be codified into a single codified civil law that governs all citizens equitably.

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² Constitution of India - <https://legislative.gov.in/sites/default/files/COI-updated.pdf>

India is well-known for its capacity to preserve unity in the face of variety. This is something we are proud of, but what about the variety of relevant law? Since the first petition for a Uniform Civil Code (UCC) was submitted in 2019 with the goal of promoting national integration and gender justice, equality, and women's dignity, this has been a controversial subject. The UCC approach would abolish competing personal and religious rules, uniting all people, regardless of faith or gender, under one law. The Constitution of India, in Article 44, states that "the State shall endeavour to ensure for its citizens a uniform civil code throughout the territory of India." Part IV of the Constitution is devoted to Directive Principles of State Policy (DPSPs), and the provision is contained there. The UCC does not apply here even though it appears to do so in our constitution. Specifically, Article 37 of the Constitution states that the DPSP "shall not be enforceable by any court" but are "fundamental to the country's governance." It's similar to giving advice to the entire country.

Uniform Civil Code is a separate set of regulations that protects the basic rights and Constitutional rights of Indian citizens by focusing on personal affairs without regard to religion. DPSPs are the state's overarching goals and values upon which it has based its policies to improve the lives of its citizens. Citizens can't compel the government to adhere to DPSPs, but they should be taken into account when lawmakers craft new statutes. In this piece, we'll try to explain why the UCC is so important for India right now.

A uniform civil code (UCC) is a legal framework designed to supplant personal laws based on religious or community customs with a single set of civil laws applicable to all citizens, regardless of religion, gender, or community.³ Numerous nations, including India, have debated, and discussed the necessity of a UCC for various reasons.

Initially, a UCC promotes equality and social justice by ensuring that all citizens are subject to the same set of laws, without religious or community-based discrimination. This eliminates the existing disparities and discrepancies in personal laws that frequently lead to unequal treatment of individuals, especially women, in matters such as marriage, divorce, inheritance, and property rights. A UCC can level the playing field for all citizens and advance gender equality, addressing discrimination issues and fostering social harmony.

³ Uniform Civil Code in India, <https://www.ncib.in/pdf/uniform-civil-code.pdf> (last visited on August 30, 2023)

By promoting a common civil law that transcends religious boundaries, a UCC promotes national integration and strengthens the secular fabric of a nation.⁴ Personal laws based on religious customs frequently lead to social fragmentation and communal tensions by fostering a sense of separation between communities. Respecting the diverse cultural and religious traditions of citizens, a UCC can foster a sense of national unity, integrity, and a shared national identity.

A UCC promotes legal certainty and simplifies the legal system by replacing the complex network of disparate personal laws with a unified legal framework. Personal laws based on religious customs are frequently intricate and convoluted, causing confusion, disputes, and delays in the legal system. A UCC can expedite legal processes, promote transparency, and guarantee equal access to justice for all citizens.

Fourthly, a UCC can promote social reforms by confronting potentially regressive personal law practises. Numerous personal laws are out of step with contemporary principles of justice, human rights, and gender equality. A UCC can facilitate the revision and reform of such practises and the promotion of progressive values within the legal system.

A uniform civil code is a necessary legal reform that can promote equality, social justice, national integration, legal certainty, and social reforms, to conclude. It can establish a legal system that upholds the principles of justice, equity, and equality for all citizens, regardless of religion or community.

2. BACKGROUND

UCC is a relatively new concept, but it has been hotly contested for decades, especially since independence when the British colonists stopped using their divisive divide-and-rule tactic. As evidence, we can look at the October 1840 Lex Loci Report, which emphasised the importance of keeping concepts like UCC on the periphery. In addition, the Queen's 1859 Proclamation made a commitment not to meddle in matters of faith. This was in contrast to the viewpoint of India's supporters, as important figures like Jawaharlal Nehru and Dr. B.R. Ambedkar advocated

⁴ What Is Uniform Civil Code, Available At <https://www.business-standard.com/about/what-is-uniform-civil-code> (last visited on April 10, 2022)

for a unified civil code throughout the formulation of the constitution after independence.⁵ Nonetheless, the UCC was included in the DPSP's Article 44 in order to circumvent opposition from religious extremists and a general lack of knowledge about the topic at the time.

Several important pieces of legislation, including the Hindu Code Bill to update Hindu law, the Hindu Succession Act 1956 amendment on September 9 to grant daughters inheritance rights, the Hindu Marriage Act, the Minority and Guardianship Act, the Adoptions and Maintenance Act, and the Special Marriage Act for civil marriages outside of any religious personal law, all contributed to the development of UCC.

3. WHY IS THERE A NEED FOR A UCC?

In many nations, including India, the implementation of a uniform civil code (UCC) has been a sensitive and divisive subject. Having a single set of laws that apply equally to all people, regardless of their religion, nationality, or gender, to handle personal concerns like marriage, divorce, inheritance, and adoption is the idea of a UCC. A UCC, according to some, is required to uphold equality, social justice, and national integration; yet other people are worried about how it may affect cultural and religious practises. With a focus on the Indian context, we will explore the necessity for a uniform civil code in this article, looking at its possible advantages and difficulties via examples and case studies.

3.1. PROMOTING SOCIAL JUSTICE AND EQUALITY

One of the main justifications for a standard civil code is that it may advance social justice and equality. Personal laws are often founded on religious or customary practises in many nations, which may result in the treatment of specific groups unfairly, especially women and marginalised populations. A UCC may assist in eradicating discriminatory practises and advancing equality by offering a single set of rules that apply equally to all people, regardless of their religion or cultural background.

⁵ <https://timesofindia.indiatimes.com/india/uniform-code-nehru-okayed-principle-but-didnt-make-it-a-directive/articleshow/60183225.cms>

For instance, triple talaq, which allows a Muslim man to unilaterally divorce his wife by saying "talaq" (divorce) three times, has been a divisive topic in India. Muslim women have been accused of being discriminated against by the practise, which permits an instantaneous, unilateral divorce without their agreement and leaves them defenceless and at a disadvantage in marriage and divorce proceedings. The Muslim Women (Protection of Rights on Marriage) Act, which was approved by the Indian government in 2017, made the triple talaq practise illegal and gave Muslim women legal protection against arbitrary divorce. This action, which attempted to guarantee that Muslim women had the same rights and safeguards in issues of marriage and divorce as women from other groups, was considered as a step towards fostering gender equality and social justice.

Similar to how inheritance and property rights, which are often handled by personal laws in various nations, may be addressed by a universal civil code. In rare circumstances, personal laws may discriminate against women by restricting their inheritance rights or preventing them from owning any property at all. Regardless of gender, faith, or community, a UCC may make sure that inheritance and property rights are founded on egalitarian principles, advancing social justice and gender equality.

3.2. PROTECTING FUNDAMENTAL RIGHTS

The defence of basic rights is a vital component of the demand for a uniform civil code. In many nations, the constitution protects fundamental rights, which are seen to be intrinsic to human dignity. These rights include the right to equality, the freedom of religion, and the freedom of conscience. These basic rights, however, may sometimes be violated or infringed upon by personal laws based on religion or customary practises.

A UCC may provide a framework for personal laws that is uniform and guarantees the preservation and protection of basic rights. For instance, the Shah Bano case, in which an Indian Muslim lady was refused support by her ex-husband following their divorce, aroused concerns about the tension between private law and basic rights. In its historic ruling in the Shah Bano case, the Supreme Court of India determined that Muslim women are entitled to maintenance under the Code of Criminal Procedure, a secular law that is applicable to all citizens, regardless

of their faith. The ruling emphasised the need of safeguarding basic rights and making sure that personal laws do not infringe upon them.

Similar restrictions on freedom of religion or conscience may be found in many nations, especially for those who want to marry someone from a different faith or cultural background or want to convert to a different religion. A UCC may guarantee that people are free to marry or practise their faith without obstacles based on religion or culture. By enabling people to practise their rights without fear of prejudice or pressure, this may assist safeguard the basic right to freedom of religion and conscience.

3.3. GENDER JUSTICE ASSURANCE

A uniform civil code is essential, and gender justice is a key component of it. Many nations' personal laws may include discriminatory clauses that restrict women's rights in relation to marriage, divorce, inheritance, and other personal issues. A UCC can provide a framework that fosters equality for men and women and guarantees gender justice.

Personal laws in various nations may discriminate against women by giving them little or no rights to inherit property, as in the case of inheritance laws. Because of this, women may not get their fair part of family assets, which may result in discrimination and inequality on the basis of gender. By guaranteeing that inheritance laws are founded on equality principles, regardless of gender, religion, or community, a UCC may guarantee that women have the same rights to inherit and possess property as men.

Similar to this, personal laws in certain nations may permit behaviours that are discriminatory towards women in marriage and divorce, including polygamy or a unilateral divorce without the wife's agreement. Regardless of gender, religion, or community, a UCC may guarantee that marriage and divorce laws are founded on the values of equality, mutual consent, and justice. This may support gender justice, safeguard women's rights, and provide them an equal voice in marital and family law problems.

3.4. ENCOURAGEMENT OF NATIONAL INTEGRATION

Personal laws based on religion or cultural norms may sometimes cause fragmentation and separation along religious or communal lines in nations with varied populations. Social conflicts may result from this, which might impede national integration. A UCC may promote national unity and a feeling of common citizenship by establishing a collection of rules that are universally applied to all people, regardless of their religion, race, or gender.

For instance, the adoption of a uniform civil code has been considered as a means of promoting national unification and social cohesion in India, a varied nation with a variety of religious and cultural practises. It is said that a uniform set of rules that all residents must abide by, regardless of their religious or cultural background, may foster a feeling of harmony, shared citizenship, and togetherness among many populations. This may aid in closing gaps between various groups and fostering social peace, both of which are crucial for the general growth and advancement of the nation.

4. IMPLEMENTING A UNIFORM CIVIL CODE: CHALLENGES AND CONSEQUENCES

While there are many reasons why a universal civil code is necessary, there are also difficulties and consequences that come with implementing one, especially in different and heterogeneous countries. Some of the major issues and ramifications include:

4.1. CULTURAL AND RELIGIOUS SENSITIVITIES

Navigating the religious and cultural sensitivities of many populations is one of the biggest difficulties in putting a uniform civil code into place. Any effort to modify or replace personal laws with a standard civil code may encounter hostility from religious or cultural groups who see it as an infringement on their traditions and beliefs since personal laws are sometimes strongly founded in religion or customary practises. It may be difficult to strike a balance between the requirement for consistency and respect for religious and cultural diversity.

4.2. LEGAL AND ADMINISTRATIVE DIFFICULTIES

Putting in place a standard civil code may also be difficult from a legal and administrative standpoint. Personal laws are often intricate and distinctive to each community, making it difficult to harmonise them into a uniform body of regulations without considerable judicial and administrative changes. It may be a challenging task to make sure the UCC is complete, understandable, and feasible to apply.

4.3. POLITICAL ASPECTS

Political factors may also have an impact on whether a uniform civil code is adopted. With several political parties and organisations having differing viewpoints and interests, the idea of a UCC may become divisive and polarising in nations with varied political landscapes. Political factors, such as coalition dynamics, vote bank politics, and electoral calculations, may influence the decision-making process and timetable for putting a UCC into effect. The adoption of a standard civil code might be complicated by the need to balance political concerns with the demands of social change and justice.

4.4. SOCIAL ACCEPTABILITY AND PUBLIC OPINION

Obtaining social acceptability and public support is another difficulty in putting into practise a uniform civil code. People may have diverse opinions, convictions, and cultural practises, therefore acceptability of a UCC may differ amongst various social groups. It may be difficult to win over disparate groups and the broader public to a single civil code and to generate support for it.

4.5. EFFECTS ON MINORITY COMMUNITIES

The implementation of a uniform civil code can have effects on minority communities. Concerns may exist regarding the potential impact of a UCC on the rights and freedoms of minority communities in nations with distinct religious or cultural practises. It is essential that the civil liberties of marginalised groups be protected and upheld throughout the process of adopting a uniform civil code.

4.6. LEGAL AND JUDICIAL CHALLENGES

The legal and judicial challenges associated with implementing a uniform civil code can also be substantial. Harmonizing personal laws that have evolved over time and are founded on various legal principles may necessitate thorough consideration of legal and judicial factors. Conflicting provisions, ensuring conformity with constitutional principles, and addressing legal complexities are just a few of the issues that can arise during the implementation of a uniform civil code.

Despite these obstacles, the implementation of a uniform civil code can promote social justice, individual rights, and national integration to a significant degree. Several nations have already enacted or are in the process of enacting a uniform civil code, and their experiences can shed light on the opportunities and challenges associated with this reform.

5. CASE STUDIES: EXAMPLES OF UNIFORM CIVIL CODE IMPLEMENTATION

The civil codes and legal systems of countries like Japan, Spain, France, Russia, and Germany are all superior to those of the United States. We can see that those countries share a non-discriminatory civil law system. Some nations adhere to the German civil code, whereas others adhere to French law.

5.1. INDIA

India is one of the nations where the debate over a uniform civil code has raged for decades. Personal laws based on religion govern issues such as marriage, divorce, and inheritance in India, which has a diverse population with multiple religions and cultural traditions. Proponents of a unified civil code in India argue that it can advance gender justice, individual rights, and national integration, while opponents raise concerns about the impact on religious and cultural diversity.

Due to religious sensitivities, political concerns, and legal complexities, the adoption of a uniform civil code in India has been a contentious issue. Personal laws based on religion continue to govern marriage, divorce, inheritance, and other personal matters in India, despite

constitutional provisions calling for a uniform civil code. There have been calls for reform and implementation of a uniform civil code in India to ensure equality, justice, and social harmony.

5.2. TURKEY

Turkey is another nation that has adopted a standardised civil code. In an endeavour to modernise and secularise its legal system, Turkey underwent significant legal reforms in the early 20th century under the leadership of Mustafa Kemal Atatürk. As part of these reforms, a civil code was enacted in 1926, replacing the existing Islamic-based laws.

It sought to promote gender equality and social justice. It outlawed practises like polygamy and permitted civil marriage and divorce regardless of religion or ethnicity. The adoption of a unified civil code in Turkey marked a significant milestone in the country's efforts to modernise and secularise its legal system, and its effects can still be felt today.

5.3. TUNISIA

Tunisia, a predominantly Muslim country in North Africa, implemented a uniform civil code as part of its legal reforms following its independence from French colonial rule in 1956. The Tunisian civil code, also known as the Code of Personal Status, replaced Islamic-based laws with a progressive and modern legal framework.

The purpose of the Tunisian civil code was to promote equality between the sexes, individual liberties, and social justice. It included granting women the right to vote, outlawing polygamy, and recognising the right of women to initiate divorce. In addition, the code guaranteed women's inheritance rights, abolished the concept of dowry, and set the legal marriage age for both men and women at 18 years old.

The implementation of a uniform civil code in Tunisia was met with obstacles, including opposition from conservative elements of the society. Nonetheless, the code was ultimately enacted and has had a substantial impact on the status of women and family law in Tunisia. It has been lauded as a forward-thinking and effective model of a uniform civil code that protects the rights of all citizens and recognises their inherent dignity regardless of their cultural or religious background.

6. INFERENCES FROM CASE STUDIES

The opportunities and challenges associated with this reform are illuminated by the experiences of nations that have implemented a uniform civil code. The following are some important principles that can be drawn from these case studies:

6.1. SOCIAL AND POLITICAL CONTEXT MATTERS

A uniform civil code is significantly influenced by the social and political climate of a country. The population diversity, cultural practises, and religious sensitivities of a country can influence the adoption and implementation of a uniform civil code. Political factors, including vote bank politics and coalition dynamics, can also impact the decision-making process.

6.2. GENDER EQUALITY AND INDIVIDUAL RIGHTS

A uniform civil code can be an effective instrument for promoting gender equality and individual liberties. Reforms that aim to eliminate discriminatory practises and promote equal rights for all citizens, regardless of religion, gender, or ethnicity, can contribute to positive social change and the empowerment of marginalised groups, especially women.

6.3. LEGAL AND JUDICIAL DIFFICULTIES

Harmonising personal laws that have evolved over time and are founded on various legal principles can present legal and judicial difficulties. Addressing conflicting provisions, ensuring constitutional principles are adhered to, and traversing legal complexities can require careful consideration and expertise.

6.4. SOCIAL ACCEPTANCE AND PUBLIC OPINION

In order to implement a uniform civil code, it is essential to gain social acceptance and public opinion. Education, engagement, and dialogue among diverse communities and the general public can contribute to the success of the reform by fostering consensus and generating support.

6.5. MINORITY RIGHTS

The rights and interests of marginalised groups must be safeguarded during the process of adopting a standardised civil code. Ensure the rights and liberties of minority communities are safeguarded and protected to advance social harmony and inclusion.

7. INDIAN JUDICIARY ON UCC

In the past, the following precedent-setting cases in India have addressed the importance of a Uniform Civil Code (UCC):

7.1. SHAH BANO CASE(1985)

Also known as "Mohd. Ahmed Khan v. Shah Bano Begum,"⁶ the case contended whether a Muslim woman was entitled to maintenance from her spouse under Muslim personal law or secular law. Unlike under Muslim personal law, the Supreme Court of India ruled that the Muslim widow was entitled to maintenance under India's Code of Criminal Procedure (CrPC), a secular law. Overturning the Supreme Court's decision in this case was the goal of the Muslim Women (Protection of Rights on Divorce) Act of 1986. This case sparked a nationwide debate on the need for a UCC.

7.2. SARLA MUDGAL CASE (1995)

In this case, also known as "Sarla Mudgal, President, Kalyani & Others v. Union of India & Others", the Indian Supreme Court looked into the legality of converting to Islam for the express purpose of getting married twice. The court ruled that India needs a UCC to end gender bias and promote parity for all citizens.

7.3. JOHN VALLAMATTOM CASE (2003)

This case, also known as "John Vallamattom v. Union of India," dealt with the question of whether Christian clerics and nuns can be deemed employees entitled to labour law benefits. The

⁶ Mohd. Ahmed Khan v. Shah Bano Begum [AIR 1985 SC 945]

Indian Supreme Court looked into the matter and came to the conclusion that a UCC is necessary in India to advance national integration and gender justice.

7.4. TRIPLE TALAQ CASE (2017)

In this case, also known as the "Shayara Bano v. Union of India & Others" case⁷, the Indian Supreme Court has declared that the practise of triple talaq is unconstitutional, a form of immediate divorce in Muslim personal law, is unconstitutional and null. The court ruled that triple talaq violates the constitutionally protected fundamental rights of Muslim women, including human rights, including the right to equality and respect. The ruling sparked discussions about the need for a UCC and the revision of India's personal laws.

7.5. DANIEL LATIFI CASE

This situation exemplifies the principle that a just secular law should take precedence over an unjust religious one. The Muslim Women's Act (MWA) was challenged in this case on the grounds that it violated Articles 14, 15, and 21 of the Constitution. During the iddat period, the amount paid was the source of the most contention. In upholding the constitutionality of the act, the Supreme Court interpreted it in accordance with Section 125 of the Criminal Procedure Code, which states that a wife's iddat alimony must be adequate to support her until she remarries or for the rest of her life, whichever comes first.

8. IMPLEMENTATION OF UCC IN INDIA

The purpose of a universal civil code is to guarantee that all citizens are bound by the same set of civil laws. The issue is if it is being implemented across India. With the exception of Goa, India does not have a uniform civil law system. The state of Goa in India has the country's only unified civil code. Since Goa was a Portuguese colony, its legal system is based on that country's. Following Goa's accession to India and the amendment of the act, Goa has a uniform set of laws known as the Goa Civil Code or Goan Family Law.

The following are legal norms established by the Goan Penal Code:

⁷Shayara Bano v. Union of India & Others (2017) 9SCC 1

- It establishes marriage is a legally binding contract.
- All property acquired by either spouse during the marriage is considered community property and must be divided equally in the event of a divorce. Prenuptial agreements are permitted by law in these circumstances.
- Boys and girls have the same legal rights to own property.
- A parent cannot legally refuse to leave any inheritance to a child.
- Polygamy and triple talaq are not permitted for Goan Muslims.

It's also unclear whether or not the Goan civil law is applied uniformly. The act cannot become a uniform code in the truest sense because it is subject to a number of expectations. Only Hindus are permitted to practise monogamy, while members of other cultures are not. Illegitimate children have different privileges than legitimate offspring. This underlines the reality that it is not implemented consistently and without prejudice to all of its residents. This code has several flaws.

9. CONCLUSION

In numerous nations, the concept of a uniform civil code has been the subject of debate and discussion, with proponents advocating for its implementation as a means to advance social justice, individual rights, and national cohesion. In addition to religious sensitivities, political considerations, social acceptance, legal and judicial complexities, and minority rights concerns, implementing a uniform civil code can present obstacles.

Several nations have effectively instituted a uniform civil code despite these obstacles, resulting in positive social change, gender equality, and individual liberties. The experiences of countries such as Turkey, India, and Tunisia are instructive for other nations contemplating or implementing similar reforms.

In conclusion, the implementation of a uniform civil code necessitates cautious consideration of numerous factors, including social, political, legal, and cultural considerations. The successful implementation of a uniform civil code requires striking a balance between the need for social reform and justice, religious and cultural diversity, and protecting the rights of all citizens. To create consensus, generate support, and resolve concerns, it is necessary to actively engage

diverse stakeholders, including religious leaders, community representatives, legal experts, policymakers, and civil society organisations.

Despite the fact that a uniform civil code can bring about positive changes in promoting gender equality, individual rights, and social justice, its implementation must be approached with sensitivity and inclusiveness. Respect must be shown for the cultural and religious diversity of a nation, as well as the protection of minority rights. To safeguard the rights and liberties of all citizens, regardless of religion, gender, or ethnicity, adequate measures should be taken.

Public education and awareness raising can play a crucial role in fostering acceptance and comprehension of a uniform civil code. Public discourse, engagement, and participation can cultivate a sense of ownership and inclusiveness, as well as dispel misconceptions and address concerns.

In the implementation of a uniform civil code, legal and judicial obstacles should also be thoroughly addressed. Harmonising personal laws, traversing legal complexities, and ensuring constitutional principles are adhered to requires careful consideration and expertise. Reforms to the law should be well-drafted, exhaustive, and consistent with international human rights norms.

The need for social reform and justice should not be eclipsed by political considerations. Politicians and policymakers should put the rights and welfare of citizens ahead of vote bank politics and coalition dynamics. The implementation of a uniform civil code should be guided by a long-term plan based on the principles of equality, justice, and individual rights.

A uniform civil code can be an effective instrument for advancing social justice, gender equality, and individual liberties. It has been implemented in numerous nations, each with its own set of difficulties and achievements. Despite the complexity and difficulty of implementing a uniform civil code, it is possible to strike a balance between social reform and religious diversity by engaging in meaningful dialogue, establishing consensus, and protecting the rights of all citizens. A uniform civil code can contribute to a just and equitable society by advocating inclusivity, respecting diversity, and prioritising the welfare of all citizens.

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