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**SCOPE FOR THE IMPLEMENTATION OF UNIFORM CIVIL CODE
IN CONTEMPORARY INDIA: A SUGGESTION**

MEGHA OJHA

**Assistant Professor of Law, SVKM's NMIMS (Deemed-to-be University),
Navi Mumbai Campus.**

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Abstract

Indian Constitution provides provision for the implementation of Uniform Civil Code (UCC) in India. Article 44 of the Indian Constitution gives direction to the State to implement it, but the UCC could not be implemented in India due to various conflicts in personal laws. The Supreme Court of India in various cases has given direction to the government to implement UCC but due to lack of political determination, it could not be achieved. Significantly, requirement of UCC had been raised repeatedly before independence too, but nothing could be achieved even after 73 years of independence. Thus, the question is that whether India is ready to implement UCC to fulfil requirement of modern world and its citizens. Juristically, socially and probably politically it is well understood that UCC is the need of the hour; and therefore, it should be implemented in India, but at this point uncertainty is that, whether it has to be implemented in India step by step by increasing awareness about it or it should be implemented in India forcefully. In this research paper, the researcher will be primarily distillate on various dimensions of Uniform Civil Code. The research paper shall attempt to establish that why Indians can expect now for effective implementation of UCC by the Indian Government.

Introduction

**Justice to all is a far more satisfactory way of dispensing justice
from case to case.¹**

¹ Chief Justice of India (J. Chandrachud) stressed on the need of UCC in India. See Mohd. Ahmed Khan vs. Shah Bano Begum and Ors. AIR 1985; <https://indiankanoon.org/doc/823221/> (last visited on 13-03-2021)

Diversity exists in India because of various cultural, social, religious backgrounds and communities that follow different laws, practices and customs. In Personal Laws too diversity exists though India is a secular nation.

The debate on Uniform Civil Code has again get momentum due to various petitions, filed in the Supreme Court and several High Courts in India. Moreover, due to the judgement of Shayara Bano² in which the practice of triple-talaq was declared unconstitutional, the debate has again started on the need to implement the UCC in India. Most importantly, various Muslim women's organizations have also come forward and they are now seeking for justice in family law related matters. A study report submitted by **Bharatiya Muslim Mahila Andolan** in which many issues regarding Muslim personal laws have been highlighted and other issues related to socio-economic-educational status of Muslim women have also been discussed.³

The principle of Uniform Civil Code essentially connected with the question of contemporary secularism of India. Thus, this secularism is required to be analyzed at great length, because this secularism can be interpreted in various ways. However, the visualization of the visionaries of India reflected by understanding the spirit of the Indian Constitution, which talks about various cultural, social, religious rights of Indian citizens.

The Constitution of India enshrines the value of justice, equality and democracy, and it is providing various safeguards to protect interests of vulnerable sections of Indian societies. In this context, it has crucial importance to understand that for giving protection to women in personal matters, implementation of UCC is mandatory.

As per provision of Article 44 of the Indian Constitution, the legislative authority has to ensure a Uniform Civil Code for Indians.⁴ The Uniform Civil Code means that all sections of the society irrespective of their religions shall be treated equally according to a common civil code, which shall be applicable to all uniformly. As per this elucidation, the idea of UCC is well understood, but here it is essential to understand that how India can implement UCC.

Due to present socio-political conditions and polarization in India, it is actually difficult to ascertain that in what manner the UCC can be implemented in India. Thus, here the doubt is that whether India can implement Uniform Civil Code in its concrete rationality. Unquestionably it is complex to comprehend at this stage. Suppose, if India implement Uniform Civil Code in its accurate sense, then it would undoubtedly cover areas like marriage ceremonies, divorce, maintenance, inheritance, adoption and succession of the property in one uniform code, but in this condition the question is difficult to answer that, whether diversity in personal laws can also get protected by establishing appropriate connection between religion and law in modern civilization through effective implementation of uniform civil code.

Article 44 of Indian Constitution

Article 44 corresponds with directive principles of State policy which state that "State shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of

² Shayara Bano vs. Union of India and Ors. AIR 2017; <https://indiankanoon.org/doc/115701246/> (last visited on 13-03-2021)

³ See Dr. Noorjehan Safia Niaz Zakia Soman, Seeking Justice within Family: A National Study on Muslim Women's Views on Reforms in Muslim Personal Law, Bharatiya Muslim Mahila Andolan, OMEGA PUBLICATIONS (March 2015); <http://wunrn.com/wp-content/uploads/BMMA-See-king-Justice-Final.pdf> (last visited on 19-03-2021)

⁴ See the judgement of Mohd. Ahmed Khan vs. Shah Bano Begum and Ors. AIR 1985; <https://indiankanon.org/doc/823221/> (last visited on 29-03-2021)

India". According to Article 44 legislative authority has to ensure implementation of UCC in India.⁵

This fact must be accepted that India do not have UCC till today because India could not implement it, inspite of many attempts before and even after independence. In India, common criminal code is applicable to all citizens irrespective of religion, race, caste and habitation, but this situation is not same in personal matters. As the personal laws in India are dealt as per religions and customs; however, modern secular civilization has nothing to do with religion, especially in public matters. Although, modern civilization is based on law, but then again in India it is far reaching dream because Indian society mainly trust on their religion/s to settle their personal laws related matters.

India has diverse civil societies and these societies have strong faith in their religions on which their personal laws are also based, but these laws are discriminatory and not uniform. Therefore, the main objective for the implementation of UCC is to provide law to govern the personal matters of all the citizens in India, irrespective of their religion and without any discrimination and prejudice.

In India, Personal Laws are not based on equality, and therefore, discrimination exists in society. There have been instances where the Personal Laws are completely biased and actually repudiating the equal rights of women. Thus, to secure equality for all in personal matters it is the need of the hour to implement Uniform Civil Code in India.

Background of Uniform Civil Code and Controversies

Unlike the west, India is far from being a homogenous nation-state and is a home to one of the most diverse and variable *mélanges* of a population. It is ethnically diverse, linguistically diverse, culturally and religiously diverse, these not being water-tight categories either. Thus, they mingle up and create a mash up of an extremely vibrant but difficult to handle populace.⁶

Moreover, in India, people have strong faith in religion, but mostly religious beliefs and religion based personal laws are biased against women, particularly Muslim personal law.

Indian societies are pluralistic, and majority of family perceived an approach where male members of the family are controlling the whole family, and undeniably it gives them advantageous position to control on the family assets and personal matters. From chronicled investigations too, it can be followed out that pluralistic nature of the Indian society could be the major reason for opposing Uniform Civil Code in India.

Most importantly, it is evident that people of India have hearty confidence in their respective religious beliefs, practices or customs that always include as an essential part of their religion. To such strong religious beliefs and faiths respect was always given by rulers because no Indian politician / ruler had ever tried to instigate feeling by changing them.

Moreover, it can be followed out from chronicled investigations that, the Mughals had cut out an enormous domain and built up an efficient criminal equity framework, though they had also abstained from offering a uniform family code. Many Mughal rulers those came in India, obliterated Hindu temples and trampled Hindu's rights; however, it was rarely evident that they interfered with Hindu personal laws.

⁵ Id.

⁶ Shambhavi, Uniform Civil Code: The Necessity and the Absurdity, Vol. I, Summer Issue 2017, ILI Law Review, 12, 12-29; <https://ili.ac.in/pdf/paper 217.pdf> (last visited on 021-03-2021)

Mughal Emperor Akbar, who attempted to declare his new religion, “**Din-i-Ilahi**”,⁷ did not alter the Hindu personal law. For instance, he even permitted the act of Sati⁸ to proceed, however, it was ethically offensive and additionally prohibited in Shariah⁹, as per which the practice added up to suicide and in this way, was not admissible in Islam.^{10&11}

Though, instead of this Mughal History, essentially, the UCC has its origins in colonial India when the British government issued a report in year 1835 that emphasizing the need for uniformity in the codification of Indian law. As per the report, the laws relating to offences, evidence, and contracts, needed to be codified, but the report explicitly recommending that personal laws of Hindus and Muslims have to be left out of such codification because Britishers were aware about the fact that it can instigate sentiments.

However, in year 1941, the British government formed B. N. Rau Committee to prepare a report on the requirement for the codification of Hindu personal laws in India. It was given task to determine whether or not common Hindu laws are necessary in India. In the report, the Committee recommended that codification of Hindu law is required and equal rights should be given to Hindu women. Thereafter, Hindu laws and practices were examined by the Committee, and after examination, the Committee proposed that Hindus should have a civil code of marriage and succession.

In year 1951, the report of the Committee was presented to a Select Committee, chaired by B. R. Ambedkar, for discussion and/or debate. During debates on the report (Hindu Code Bill), the Bill was actually lapsed but later it was re-introduced in year 1952. In accordance to re-introduced Bill, the Hindu Succession Act was passed in year 1956 that governs intestate or unwilled succession among Hindus, Buddhists, Jains, and Sikhs. This Hindu Succession Act 1956 made great changes in Hindu personal laws by giving property rights to the Hindu women. This Act granted women ownership of their father’s properties like son.

In year 2005, the Hindu Succession Act was amended to add few other categories of descendants, and the amendment also elevated females to Class-I heirs. Accordingly, in succession law, equal rights and / or shares have also been given to the daughters that were actually given to the sons in Hindu family as per preceding laws, customs and practices.

Challenges in implementation of Uniform Civil Code in India

In democratic and secular country like India, implementation of UCC is compulsory to protect marginalized groups, such as women, children and religious minorities. UCC is also desirable to foster nationalistic fervour through unity. However, in a pluralist society like India,

⁷ The Mughal emperor Akbar introduced the *Din-i-Ilahi*, set of religious beliefs in 1582 CE. His plan was to incorporate features of Christianity, Zoroastrianism, and Jainism into a single religion. In year 1575, he established the *Ibadat Khana*, a theological university where representatives from all major faiths could convene to examine theological issues. As a result of listening to these conversations, Akbar came to the conclusion that no single religion could contain all of the truth, and that they should instead be merged. For more details see <http://ringmar.net/irhistorynew/index.php/welcome/introductin-5/3-1-vedic-india/classical-india/33indianization/3-4-the-mughal-empire/din-i-ilahi/> (last visited on 07-03-2021)

⁸ “*Sati*” was a historical Hindu practice in which a wife immolating herself on her dead husband’s funeral pyre or in some other manner soon after his death. In year 1829 the Sati practice was legally abolished in India.

⁹ The Arabic word “*Shariah*” literally means “the way to water”. Shariah is a religious phrase that means “righteous way” or “god’s road.” Shariah can also be informally translated as “Islam”. Shariah also refers to Islam’s religious principles.

¹⁰ The word “*Islam*” literally means “submission to God’s will”. Islamists want to live a life by making themselves completely obedient to Allah.

¹¹ Joydip Ghosal, Understanding Uniform Civil Code and its Problem in Implementation; https://www.researchgate.net/publication/342503863_Uniform_Civil_Code_in_India_A_sociolegal_perspective (last visited on 24-03-2021)

people trust their beliefs or doctrines that based on their religion; therefore, it is difficult to implement UCC in India. Most specifically, the founders of the Constitution of India also faced major problems to unite the religion; and definitely it was the main reason due to which it became impossible to implement the UCC in India even after independence.

The framers of Constitution of India also tried to unite and integrate the different religious faiths, but they could not accomplish it; though, they provided a secular constitution for Indians. Guiding principles of Indian Constitution recognize diversity while attempting to encourage uniformity among citizens of various denominations. Those who are in support for the implementation of UCC argue that the UCC would make complicated laws easier that related to marriage, inheritance, succession and adoptions, to understand and applicable to all. The UCC would also simplify personal laws in India which are currently divided on the basis of religious values and customs.

In India, there are different sets of personal laws such as Hindu personal laws, Shariat law, Parsi law, Christian law etc. Thus, in modern India, a uniform set of personal law is highly desirable and detrimental to the nation's unity and dignity, but implementation of it is highly debatable and controversial because religious minorities are opposing it. According to the opponents of Uniform Civil Code, personal laws are derived from religious values, therefore it is not required to interfere in them, because this might lead to hostility and friction between different religious groups.

In India, those who are challenging Uniform Civil Code are also argue that, India is a secular republic nation and freedom of religion is also fundamental right in India; besides that, Article 29 and 30 guaranteeing minorities to practice their own faith, culture, and customs, therefore, UCC should not be implemented in India. Thus, by understanding both point of view, it is well understood that for the implementation of Uniform Civil Code, a strong political will is needed besides a sense of tolerance for other religion and mutual respect for each part of India is also essential for it.

Uniform Civil Code and Conflicting Role of Indian Judiciary

In *Mohd. Ahmed Khan vs. Shah Bano Begum* (1985),¹² the Supreme Court took the strongest position on the need for a Uniform Civil Code. In *Shah Bano* case, a clear discrepancy between Muslim personal law and Indian criminal law regarding obligation of Muslim husband to provide maintenance to his divorced wife, was involved. In this case, the S.C. held that a Muslim wife is entitled for maintenance under Criminal Procedure Code. The S.C. rejected the husband's claim that *Mahr*,¹³ or the money and / or property paid / given by the groom to the bride / wife at the time of the Muslim marriage, was equal to the sum payable by the husband to his wife upon divorce. Thus, *Shah Bano* case judgement was decided in favour of the Muslim divorced woman and this decision was based on equality that actually broke down some religious barriers by enabling all Muslim divorced women to get maintenance under Criminal Procedure Code, 1973. But later to nullify the decision of the *Shah Bano* case, the Muslim Women (Protection of Rights on Divorce) Act 1986¹⁴ was passed. According to this Act, a divorced Muslim woman is entitled to have a reasonable and fair provision of maintenance to be made and paid to her

¹² AIR 1985, 1985 SCR (3) 844; <https://indiankanoon.org/doc/823221/> (last visited on 15-03-2021)

¹³ According to Muslim personal law, *Mahr* is a money / gift that the husband owes to his wife upon their marriage, either by mutual-consent or by operation of law.

¹⁴ The Muslim Women (Protection of Rights on Divorce) Act 1986 was a controversially named historic legislation, that enacted by the Indian Parliament in year 1986 to protect the rights of Muslim women those who have been divorced by their husbands or have won divorce from themselves.

during her *iddat* period¹⁵ only by her former husband. However, later, the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act 1986 was challenged in the case of *Danial Latifi vs. Union of India*.¹⁶

*Danial Latifi vs. Union of India*¹⁷ is a landmark case since it decided for the first time that a Muslim husband is still liable to provide maintenance to his divorced wife even after expiry of her *iddat* period.¹⁸ By striking a balance between Muslim and Christian practices, it was also held in this case that Muslim women can enjoy the same privileges as Hindu and Christian women are enjoying as per provision of Section 125 of Criminal Procedure Code, 1973, and therefore, right to get maintenance from former husband by Muslim women lasts till, she remarries.

In *Union of India vs. Sarla Mudgal*,¹⁹ the court held that “the second marriage would be void, if it was solemnized before declaration of the first marriage null and void by court or by cancellation of marriage by decree of divorce as per provision of the Hindu Marriage Act 1955”. In the case, the husband converted to Islam from Hinduism and practiced polygamy, and therefore, his wife filed a case against him for polygamy. Though, polygamy is permissible according to Muslim personal law, but the court interpreted Section 494 of Indian Penal Code and held that, “when Hindu married man converted to Islam for second marriage, then such marriage is void.”

In *John Vallamattom vs. Union of India*,²⁰ a priest from Kerala filed a writ petition, claiming that Section 118 of the Indian Succession Act is discriminatory and it is against Christians because it imposes unfair limits on donation of property for religious or charitable purposes at will; and thus, it was declared by the Court that “Section 118 of the Indian Succession Act is unconstitutional.” In this case, the S.C. also strike on the requirement of Uniform Civil Code in India and said that “Article 44 states that the government will work to ensure that all people in India have access to a uniform civil code, but it has not been implemented, which is a major disappointment”.

The requirement of uniformity in marriage related laws was presented before the S.C in the case of *Ms. Jordan Diengdeh vs. S.S. Chopra*.²¹ In this case, the S.C. noted that laws relating to marriage, such as judicial separation and divorce are not uniform in India, and therefore, the S.C. stressed on importance and requirement to enact uniform marriage related laws such as irreversible dissolution of marriage and mutual consent for divorce to all situations, regardless of religion. Here in this case, the S. C. stressed the need for a Uniform Civil Code for marriage and divorce and ordered that a copy of its judgment be submitted to the Ministry of Law and Justice for implementation.

In another case by filing a petition the requirement of UCC was again addressed to the S.C. on the basis that, statutes cover matrimonial related provisions for Hindus only viz. their maintenance and residence related women’s rights in matrimonial disputes situations, but in matrimonial related Christian’s cases, parties are left with no option to resolve and settle

¹⁵ After a marriage dissolved then a Muslim woman is required to observe *Iddat*. During *Iddat* time, a woman must remain in seclusion and refrain from marrying another person. In simple words, she is barred from marrying again after her first marriage has ended during her *Iddat* period as per Muslim personal law.

¹⁶ AIR 2001 SC SCC 740; <https://indiankanoon.org/doc/410660/> (last visited on 27-03-2021)

¹⁷ Id.

¹⁸ Supra Note 15.

¹⁹ AIR 1995, 1995 SCC (3) 635; <https://indiankanoon.org/doc/733037/> (last visited on 29-03-2021)

²⁰ *John Vallamattom & Anr vs. Union of India* AIR 2003; <https://indiankanoon.org/doc/122853559/> (last visited on 09-03-2021)

²¹ AIR 1985, 1985 SCR Supl.(1)704; <https://indiankanoon.org/doc/569459/> (last visited on 09-03-2021)

their disputes due to unavailability of any peculiar law. Therefore, in India there is a need for the implementation of Uniform Civil Code.²²

In India, an undesirable situation resulting due to lack of UCC, therefore requirement of UCC was highlighted repeatedly by filing cases before various courts. Jordan case brought to light that in India there is an urgent and pressing need for a common civil code.²³ After referring to the observations made by the S.C. in the case of Mohd. Ahmed Khan vs. Shah Bano Begum and Ors., the Hon'ble Judge (Justice Kuldeep Singh) invited the Government of India through the Prime Minister of the country to take a fresh look at Article 44 of the Indian Constitution.²⁴

In Ahmedabad Women Action Group case,²⁵ the Muslim inheritance rules (both Shia and Sunni laws) were challenged because these rules were discriminatory towards female children. In this case Muslim personal law was also challenged due to consenting the practice of polygamy and unilateral talaq. Moreover, a few provisions of the Hindu Succession Act had also been questioned in this case, but the Court refused to hear the petition on the ground that amending Statutes is not the obligation of the judiciary.²⁶

Most importantly, not only in Ahmedabad Women Action Group case, where the petition was rejected,²⁷ but also the S.C. of India rejected many petitions which were filed due to various complication in personal laws. The personal law related issues which were challenged in S C. of India, are as follows:

- a) For declaration of Muslim personal law void because it permits polygamy, as it violates Articles 14 and 15 of the Indian Constitution.
- b) Muslim personal law gives absolute right to husband to divorce his wife without her permission and without recourse to the judicial process; and thus, it violates Articles 13, 14, and 15 of the Indian Constitution, but such petitions were rejected by the S.C. of India.
- c) To declare that having more than one wife by a Muslim husband is an act of cruelty. Such petitions were also rejected by the S.C. of India.
- d) To declare Sections 2(2), 5(ii) and (iii), 6, and the Explanation to Section 30 of the Hindu Succession Act, 1956, null and void, as they violate Articles 14 and 15 read with Article 13 of the Indian Constitution, but petition was also rejected.

In all such petitions, the S. C. of India declared very clearly that such petitions did not warrant a hearing on the merits because these issues are subject to policy and the S.C. would not normally be concerned with the matters which are subject of policy. Therefore, by understanding limitations and issues, it must be understood that Uniform Civil Code is the need of the hour in India.

²² Agnes Alias Kunjumol vs. Regeena Thomas AIR 2010; <https://indiankanoon.org/docfragment/1366320/?formInput=Uniform%20Civil%20Code> (last visited on 12-03-2021)

²³ Ms. Jordan Diengdeh vs. S. S. Chopra AIR 1985; <https://indiankanoon.org/doc/569459/> (last visited on 09-05-2021)

²⁴ Lily Thomas, Etc. Etc. vs. Union of India & Ors. AIR 2000; <https://indiankanoon.org/docfragment/80351/?formInput=Uniform%20Civil%20Code> (last visited on 09-03-2021)

²⁵ Ahmedabad Women Action Group vs. Union of India AIR 1997; <https://indiankanoon.org/doc/1743680/> (last visited on 14-03-2021)

²⁶ Id.

²⁷ Id.

Conclusion and Suggestions

In India, implementation of UCC is only one way to secularize and integrate India in personal matters too. Therefore, it is mandatory to implement Uniform Civil Code in India. A Uniform Civil Code would guarantee gender equality and equal status for all people, regardless of their community of origin and / or religions.

Most especially, as religion based personal laws are misogynistic; and therefore, UCC is required because it will give equal rights to the women in India. UCC should be adopted as a measure to promote gender equality, and for the implementation of UCC both religious and personal laws should be examined and the best features from all religions as well as from the personal laws of other countries should be collected and implemented, but it should be based on broad consultations.

UCC will transform centuries-old customs and practices that have no place in today's modern society because women should be granted equal rights and must be treated equally, as equal as men, as per the rules of modern civilized societies. "Uniform Civil Code will help the case of national integration by removing disparate loyalties to laws which have conflicting ideologies".²⁸

The following recommendations should be considered to implement Uniform Civil Code in India.

- People should be encouraged to have a progressive and open-minded view in order to understand purpose for the implementation of UCC in India.
- Education, knowledge, and sensitization programs should be organized to educate people about UCC.
- Draft of Uniform Civil Code should be prepared by keeping in view the best interests of all religions in mind and to ensure uniformity. A committee of eminent jurists should be established to prepare the draft on UCC.
- Care must be taken not to hurt the feelings of religious communities. For effective implementation of UCC, it is preferable if the initiative comes from the religious groups and Indian society.

Thus, it can be concluded that in India a uniform civil code is an absolute requirement on which no compromise can be made in the pursuit of national unity and solidarity; and definitely Indian Muslim community should take initiatives to reform their personal laws.²⁹

²⁸ Hon'ble S. C. of India stressed on UCC in the case of Mohd. Ahmed Khan vs. Shah Bano Begum and Ors. AIR 1985; <https://indiankanoon.org/doc/823221/> (last visited on 24-03-2021)

²⁹Id.

