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UNIFORM CIVIL CODE: EXAMINING THE OBSTACLES TO PUTTING UCC INTO EFFECT

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I. ABSTRACT

In India, there is a lot of discussion and debate about the Uniform Civil Code (UCC). It touches on issues of gender equality, religious freedom, and social harmony. The UCC proposes a common set of laws governing private matters such as marriage, divorce, inheritance, and adoption, regardless of a citizen's religious identity. This essay critically investigates the UCC's historical roots, constitutional foundation, and current applicability in India. The study looks at how personal laws changed during British control, setting the stage for today's legal pluralism, and how these historical changes have influenced the ongoing discussion about the UCC. To provide India some perspective, it also looks at other countries that have standardized their civil codes and assesses the successes and challenges they have faced.

The research highlights the potential benefits of a UCC, such as promoting gender equality and simplifying the legal system, while also addressing the concerns of those who fear it could undermine religious and cultural rights. This paper offers a thorough analysis of the UCC's possible effects on Indian society by looking at court rulings, legislative actions, and public opinions. The research also takes into account the legal and social initiatives taken to adopt a UCC as well as the challenges that have impeded its application.

The results imply that although a UCC would aid in modernizing and national integration, its effective implementation would necessitate a careful balancing act between individual rights and cultural variety. This study adds to the larger conversation on legal reform in India by illuminating the challenges of establishing consistency in a multicultural society.

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II. KEYWORDS:

Uniform Civil Code (UCC), Legal Pluralism, Gender Equality, Religious Freedom, Judicial Pronouncements

III. INTRODUCTION

"Religion is not in doctrines, in dogma's, nor in intellectual argumentation, it is being and becoming it is realisation." -Swami Vivekand

Geographical and socioeconomic variety, including a wide range of religions and civilizations, contribute to India's unique identity. While unity in variety is encouraged in Indian culture, political unity hasn't always resulted from this attitude. Historically, India was divided into smaller political entities, which resulted in foreign rule. Partition followed independence in 1947. The founders of the Indian constitution gave national unity and integrity great weight in light of this history.² While the second-most populated nation in the world, India, is a lively mix of many languages, faiths, and cultural traditions. The country is united by a core principle notwithstanding its diversity. The Indian politics has been greatly impacted by every religion and language, resulting in a distinctive synthesis that captures the spirit of unity in diversity.³ India is a highly diverse country, home to the largest Hindu population, the second-largest Muslim population, and sizeable groups of Buddhists and Christians. This thriving multicultural community is a prime example of the long-standing legacy of intercultural peace and religious tolerance. Some of the groups that make up this diverse and vibrant social fabric are Sikhs, Jains, Zoroastrians, and other groupings.

Article 44 of the Indian Constitution is part of the Directive Principles of State Policy (DPSP), which outlines certain ideals and goals for the government to strive towards. Specifically, **Article 44** mandates that *the State should work towards securing a Uniform Civil Code (UCC) for all citizens across India.*⁴ The goal of the Uniform Civil Code (UCC) is to harmonize personal laws among India's various religious sects. The UCC aims to

²Dr. Ranjan Kumar- 'The need for a uniform civil code- 2017 at p. 16-17

³St. Xavier's college society v. State of Gujarat, AIR 1974 SC 1389.

⁴J N PANDEY, CONSTITUTION OF INDIA

guarantee justice and equality for all people, regardless of faith, by establishing a single body of laws governing property, marriage, divorce, inheritance, and other situations. Due to its status as a Directive Principle, the UCC cannot be enforced in the same manner as other laws, but it still marks an attempt to establish a more equal legal system in a nation recognized for its wide range of religious beliefs.⁵

The government has taken a progressive stand by revising the Hindu Succession Act⁶ in situations where the use of a Uniform Civil Code (UCC) may significantly impact men's legal rights and societal standards. Women now have equal rights to their father's property because to this modification. By ensuring that women receive a fair share of inheritance and increasing their knowledge of their legal rights, this amendment promotes gender equality and gives women more influence.

IV. RESEARCH OBJECTIVES:

1. To analyse the Impact of Implementing a Uniform Civil Code on Social Harmony, Gender Equality, and Religious Freedom in India.
2. To Examine the Historical Evolution and Comparative Effectiveness of Uniform Civil Codes in Various Countries.

V. RESEARCH QUESTIONS

1. How has the historical development of personal laws in India influenced the debate over the implementation of a Uniform Civil Code?
2. What are the potential social, legal, and political impacts of implementing a Uniform Civil Code in India, particularly in relation to gender equality and religious freedom?
3. How do the experiences of other countries with Uniform Civil Codes compare to India's challenges in implementing such a code, and what lessons can India learn from these international examples?

⁵ Ayush Kumar, 'Constitutional Aspects Revolving Around Uniform Civil Code: A Critical Analysis'- TSCLA

⁶ Enforced 17 June 1956

VI. RESEARCH HYPOTHESES

The implementation of a Uniform Civil Code in India will enhance gender equality and secularism by providing a consistent legal framework across all communities, while also challenging religious and cultural practices that may conflict with constitutional principles of equality and justice. However, it may also lead to resistance from minority communities, fearing the erosion of religious and cultural autonomy.

VII. RESEARCH METHODOLOGY

This paper employs a strictly doctrinal research methodology, which is also known as library-based research. Doctrinal research involves a detailed examination and analysis of existing legal sources, including statutes, case law, and academic literature. This approach is particularly suited to investigating the theoretical underpinnings and conceptual frameworks of the law. By systematically organizing and presenting legal doctrines and principles, this method facilitates a comprehensive understanding of the legal issues at hand. The research draws on primary sources such as legislative texts, judicial rulings, and recognized legal commentaries, as well as secondary sources like scholarly articles, critiques, and legal analyses. The research process includes identifying relevant materials, collecting data, and critically evaluating these sources to develop coherent legal arguments. Ultimately, the paper seeks to offer a well-rounded and cohesive interpretation of the legal framework pertinent to the subject matter under investigation.

VIII. LITERATURE REVIEW

The Indian Constitution contains several provisions that are relevant to the discussion of personal laws, particularly in the context of the Uniform Civil Code (UCC). These provisions include Article 44, Article 25, and Article 26.

IX. MEANING OF UNIFORM CIVIL CODE

A set of uniform laws that regulates personal matters such as *marriage, inheritance, divorce, and adoption* applies to all religious organizations. This is known as the **Uniform Civil Code (UCC)**. It aims to replace the numerous personal laws that different religious groups now utilize to regulate private matters.

A UCC strives to foster social harmony, gender equality, and secularism by removing disparate legal systems based on religion and community. Such a code attempts to ensure that rules are uniform not only between communities, but also inside them. On the other hand, opponents contend that implementing a UCC could infringe upon religious freedom and cultural practices, potentially alienating minority communities. They contend that personal laws have to be upheld since they are an integral component of Indian society's distinctive fabric and have their roots in religious traditions.

It is impossible to exaggerate the UCC's significance in India. It stands for an ongoing discussion about the constitution and society that aims to find a middle ground between tradition and modernity, individual and community rights, and uniformity and variety. Deeper exploration of these complexities will be provided by this critical analysis of the constitutional aspects surrounding the UCC, which will cover the historical background, constitutional framework, legal and ethical implications, political and social factors, comparative perspectives, case studies, and prospects and challenges related to this significant issue in India.

X. HISTORICALLY ORIGIN OF THE CONCEPT OF UCC IN INDIA

The National Planning Committee, formed by the federal government, proposed a Uniform Civil Code in 1940, which sparked a national political discussion. In its August 1940 report, a subcommittee on women's duties in a future independent India called for the UCC.⁷The historical background of the Uniform Civil Code is tied to the history of personal laws in India. During ancient and medieval times, laws in civil, criminal, and commercial matters were based on religion and customs, making the

⁷A Parashar, women and family law reform in India, 1992, PP 230-235

legal system complex and outdated. The British rulers sought to modernize India's legal framework by codifying secular criminal and procedural laws. However, they chose not to interfere with personal laws, avoiding the creation of a comprehensive and secular civil code, adhering to a policy of non-interference in religious matters,⁸ where the history of Indian legal development shows that after establishing political control, the British aimed to introduce a systematic and progressive legal system. They implemented various justice administration schemes, gradually replacing the existing Mughal judicial system with British-established courts. This shift created a challenge for the British in determining which laws the courts should apply in different types of cases.⁹

Before British rule, the legal system in India was primarily based on religious laws. Mughal courts applied Islamic law for crimes, evidence, and procedures, while in non-Muslim regions, ancient Indian laws and customs prevailed, making religious law the basis for legal decisions.¹⁰The British found India's religion-based laws to be complicated and outdated, leading them to reform the legal system. They gradually replaced religious criminal laws with a secular criminal code and introduced the Evidence Act and Civil Procedure Code. However, political considerations prevented them from enacting a comprehensive secular civil code, as they were cautious not to anger religious communities by imposing such laws universally.¹¹The British, aware of potential political repercussions, avoided enacting a comprehensive civil code, focusing instead on non-personal civil areas.

They enacted piecemeal legislation like the Contract Act of 1872 and the Transfer of Property Act of 1882. Warren Hastings' judicial plan of 1772 recognized personal laws for Hindus and Muslims, marking the first authoritative policy declaration by the British regarding religious laws¹²The British generally did not favor comprehensive codification of personal laws in India. Despite initial hopes from the first law commission in 1833, subsequent commissions, including the second in 1853 and the

⁸Ibid

⁹Dr. Ranjan Kumar - The need for a uniform civil code 2017 - p. 61-62

¹⁰ Ibid

¹¹M. Rama, - Legal and constitutional history of India, universal law publishing co. pvt. ltd Delhi 2009.

¹²Tahir Mahmood, 'Muslim personal law- role of the state in the subcontinent', 1977, p. 6

fourth, recommended against it. Instead, the British opted for piecemeal reforms to maintain law and order and focus on profit-making from India.

XI. COMPARISON WITH OTHER COUNTRIES:-

Only eight nations – *the United States, Pakistan, Bangladesh, Malaysia, Turkey, Indonesia, Egypt, and Ireland* – among the 193 members of the UN have a *Uniform Civil Code*. There are no distinct rules for any one religion or community in any of these nations; instead, all religions are governed by a single set of personal laws. Furthermore, several nations, such as France, Germany, and Japan, have universal civil codes that apply to all of their citizens, regardless of their religious or personal convictions. Only *Goa* had a Uniform Civil Code in India prior to the recent laws enacted in *Uttrakhand*. The Portuguese had instituted the code in 1867, and it remained in effect until 1961.¹³ Let's we discuss those countries where UCC has been successful implemented:-

- **France:** Introduced in 1804, the French Civil Code, commonly referred to as the Napoleon Civil Code, unified and superseded more than 300 municipal laws in France. It created a thorough legal framework that addressed property, contracts, succession, and other topics. It also balanced equality and privilege and brought customs and legal requirements into harmony. One of the most significant civil law systems in the world today is this code.
- **United state of America:** The legal system in the United States is complicated, with several legal frameworks that apply at the federal, state, and municipal levels. Every state has its own Supreme Court that adheres to its own set of rules and laws, making it a separate legal body. Despite this, all of the nation's civil laws are based on similar ideas. The Federal Supreme Court deals with cases pertaining to general law, taxes, and security that have an impact on the entire country.
- **Islamic countries:** Sharia law, which is based on religious precepts and is interpreted by jurists, is customarily applied in many Islamic nations. Nonetheless, several of these laws have been modified or superseded in the present age by statutes that were impacted by European models. Islamic

¹³ A.K. MERCHANT, 'An interfaith perspective on Uniform Civil Code', 2024

nations that are progressive seek to update their legal frameworks while preserving their historic roots. On the other hand, efforts are being made to fully reinstate Sharia-based legal systems in nations that are going through an Islamic resurgence.

As a result, civil laws in countries like Saudi Arabia, Nigeria, Turkey, Pakistan, Egypt, Malaysia, and Turkey are frequently a fusion of Sharia and contemporary legal systems.

XII. IMPORTANCE OF UNIFORM CIVIL CODE IN PRESENT ERA

Despite its modern approach, India nevertheless faces challenges with a complex web of personal laws based on community, ethnicity, and religion. These laws regulate many aspects of peoples' life, including as marriage, divorce, inheritance, and adoption. The variety of personal laws has frequently resulted in differences and contradictions, sustaining unfairness and inequity.

Benefits of UCC and Personal Laws in India:-

a) Equality and Justice for All

The fundamental justification for a uniform civil code is found in the Indian Constitution's stipulations about equality and fairness. A UCC for its citizens is something that the state is mandated by Article 44 of the Constitution to provide. A cohesive set of rules that ensure fair treatment regardless of gender, caste, or religion will advance a more equitable society.

b) Women's Rights and Empowerment

The protection and advancement of women's rights is one of the strongest arguments in favour of a UCC. Personal laws frequently discriminate against and exploit women, especially when it comes to marriage, divorce, and inheritance. Women would have equal rights and opportunities under a consistent code, enabling them to live with respect and dignity..

c) Harmonizing Legal Frameworks

There is confusion and complexity when there are several personal laws and a secular legal system coexisting. By streamlining processes and fostering legal certainty, a uniform civil code would harmonize the legal environment. This would improve access to justice for all residents, regardless of background, and expedite the legal system

d) Promoting National Integration

India's greatest strength is its unity in diversity, yet it also presents obstacles to national cohesion. Deepening societal divisions might result from disparate legal systems based on race and religion. Notwithstanding differences in culture or religion, a Uniform Civil Code would encourage a feeling of shared identity and belonging among all residents.

e) Modernization and Progress

Personal rules that are outdated might be a hindrance to advancement in the fast-paced world of today, when societal conventions and values are changing quickly. A Uniform Civil Code would match legal frameworks with the values of a forward-thinking, modern society by mirroring societal standards and goals of the present day. It would make social reforms easier to implement and open the door to a society that is more just and inclusive.

XIII. OBJECTION RELATING TO THE UNIFORM CIVIL CODE:

Uniform Civil Code being a controversial idea has faced innumerable objections ever since its concept has been introduced.

A. The Uniform Civil Code is Against the Freedom of Religion:-

In India, during British rule, most civil and criminal laws were codified, but personal laws were left unchanged to avoid upsetting religious communities, which saw these laws as integral to their faith.¹⁴ Muslim members opposed the Uniform Civil Code, arguing it would infringe on religious freedom. Supporters, however, viewed it as a path to equality, gender justice, and national unity. They argued that the State has the right to control personal laws because they are not essential to religion. The debate

¹⁴ Asghar Ali Engineer, 'The right of women in Islam' 1992, pp. 167-169

over the right to freedom of religion and the need for a Uniform Civil Code has not been settled even after 73 years of Indian independence. It looks like the nation is as divided as it was on August 15, 1947. Defenders of religious liberty are still used by opponents of the Uniform Civil Code.¹⁵

B. The Uniform Civil Code is Against the Cultural Right:-

A Uniform Civil Code (UCC) in India is opposed on the grounds that it could destroy cultural heritage and drive groups away, pointing to Article 29¹⁶, which safeguards cultural rights. They contend that enforcing uniform regulations would clash with minorities' varied cultural customs, particularly those of Muslims. Supporters of the UCC contend that since culture is dynamic, legislation must change to reflect societal changes. They argue that since the Indian Constitution and judiciary already offer strong protections for religious and cultural freedoms, the UCC would not jeopardize cultural identity. A proposed revision to Article 29 could allay worries by making it clear that the UCC would permit social transformation without interfering with cultural rights.

C. The Religious Laws are Immutable:-

Opponents of the Uniform Civil Code (UCC) argue that religious personal laws are divine and unchangeable, especially within the Muslim community, which has resisted changes. In contrast, supporters like Shri Munshi and Dr. Ambedkar believe that personal laws should be separate from religion, citing examples from countries like Turkey and Egypt where civil codes apply universally, regardless of religious affiliation.

XIV. UNIFORM CIVIL CODE VS. COMMON CIVIL CODE:-

Article 44 suggests a unified civil code in place of a common one. Although the phrases "*uniform*" and "*common*" are often used interchangeably, they have different meanings. The word 'common' means shared among several¹⁷ 'Uniform', on the other

¹⁵ Sarabjee soli, "Should Secular law be a personal choice"? Express magazine, 29th June, 1996

¹⁶ " **Article 29** gives guarantee to protect the interests of minority groups.", M P JAIN, CONSTITUTION OF INDIA

¹⁷ Henry Campbell Black, 'Black's Law Dictionary' (6th edn, West Publishing Co., 1995)

hand, refers to following a single rule that is the same everywhere, regardless of location, and that applies to every individual within a class.¹⁸

In Article 44 of the Indian Constitution, the term "Uniform" refers to the goal of implementing a single, cohesive Civil Code applicable to all citizens, as opposed to multiple personal laws based on different community practices. *S.P. Sathe's* interpretation, suggesting that "uniform" means applying concepts of social and gender justice consistently across personal laws, reflects a more progressive approach but diverges from the original intent. The *Constituent Assembly debates* and *Dr. B.R. Ambedkar's* arguments make it clear that the framers envisioned a uniform Civil Code with consistent content and nationwide applicability.

A statute is uniform in its operation, according to Black's Law Dictionary, when it applies equally to all parties who are brought within the relationships and circumstances specified; when all parties are treated equally under the same conditions and in the same circumstances; and when the classification is reasonable and inherently inherent in the subject matter.¹⁹ The word "uniform" as applied to laws have a meaning contrary to special or discriminatory laws.²⁰ Women's dignity is violated by practices including polygamy, triple talaq, widow burning, unequal inheritance for male and female heirs under Parsi law, unequal shares in property under Mitakshara Hindu law, and reluctance to support a divorced wife. Article 51A, the Preamble of the Constitution, and the non-discrimination guarantees found in Articles 15(1) and 14 can all be violated by participating in or opposing the implementation of Article 44, which calls for the creation of a standard Civil Code.²¹ Personal laws pertaining to particular religions that discriminate are superseded by principles of equality, justice, and non-discrimination.

By putting in place a Uniform Civil Code, national laws will be applied consistently and without bias, upholding the Fundamental Right to Equality.

¹⁸ *Ibid.*

¹⁹By Black's Law Dictionary

²⁰ *Ibid.*

²¹ Durga Das Basu, *Commentary on the Constitution of India* vol. 3 (8th edn, Lexis Nexis 2008) 4132.

A. The Social and Legal Effort to Adopt the Uniform Civil Code

Through its rulings, the judiciary has emphasized the need of enacting a *uniform civil code* for the benefit of the nation and all of its residents. The legislative body has received advice from the judicial branch to begin the process of drafting a common code governing marriage, divorce, inheritance, adoption, and maintenance.

Some of the abuses in the Muslim community are polygamy and triple talaq, as they completely deny Muslim women their rights. The importance of Uniform Civil Code was first highlighted in the landmark judgement "*Mohammad Ahmed Khan v. Shah Bano Begum*,"²² popularly known as **Shah Bano's case**, the Apex Court held that "it is also a matter of regret that Article 44 of our Constitution has remained a dead letter."²³ Many Muslims did not agree with the Supreme Court's ruling, and the state government changed the Muslim Women's (Protection of rights on Divorce) Act 1986 in response to pressure from Muslim minorities. This amended law explicitly prohibited Muslim women from claiming maintenance under section 125 of the Criminal Procedure Code.

Kuldip Singh J in the case of *Sarla Mudgal v. Union of India*²⁴ stated that, With over 80% of the population already subject to codified personal law, there is absolutely no reason to continue delaying the implementation of a universal civil code for all state residents of India. "But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression," R.M. Shahi, J. wrote in a concurring judgment.²⁵

In *Ahmadabad Women's Action Group (AWAG) v. Union of India*,²⁶ a Public Interest Litigation was filed by challenging the provisions which are gender discriminatory in Muslim, Hindu and Christian law. The Supreme Court held that the matter of removal

²² (1985) 2 SCC 556

²³ Uniform Civil code-a need for the hour, SHODGANGA, <http://shodganga.inflibnet.ac.in/bitstream/10603/54472/11/11_chapter%204.pdf>

²⁴ AIR 1995 SC 1531

²⁵ Ronjoy Sen, Articles of Faith-Religion, Secularism and The Indian Supreme Court 144 (1st Ed. 2010)

²⁶ AIR 1997 SC 3614

of gender discrimination in personal laws "involves issues of State policies with which the court will not ordinarily have any concern."

Gender discriminating provisions are also present in Christian communities. For example, a Christian woman must establish additional accusations such as cruelty and abandonment in order to win a divorce from her husband on the basis of adultery. Judiciary took progressive steps to eradicate the gender discriminatory provisions in "*Swapana Ghosh v. Sadananda Ghosh*"²⁷, the Calcutta High Court said that section 10 and section 17 of the Indian Divorce Act, 1869, should be declared unconstitutional. In 1995, the Kerala High Court in *Ammini E.J. v. Union of India*²⁸, and Bombay High Court in *Pragati Verghese v. Cyrill George Verghese*²⁹, struck down that section 10 of Indian Divorce Act, 1869 are violative of gender equality.

C.J. Khare in the case of *John Vallamattom v Union of India*³⁰ said that, "Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India. The fact that Parliament has not yet moved to draft a national civil code is deeply regrettable. The implementation of a unified civil code would facilitate national unity by eliminating ideologically-based discrepancies."

In landmark case, *Seema v. Ashwani Kumar*³¹, which brought about registration of marriage compulsory, the Supreme Court stated that "It is past time that we reexamined the whole range of Central and State laws pertaining to marriage and divorce registration in order to determine whether or not these laws are consistent across the nation at the level of social development and, if not, what legislative changes would be required to simplify and enhance the current framework."

Justice R.M. Sahai has stated that, "India is a democratic country that is secular. Religion freedom is fundamental to culture; even a small departure from it erodes societal cohesion. However, religious practices, human rights and dignity abuses, and the sacred stifling of fundamental civil and material liberties are oppression rather

²⁷ AIR 1986 Cal. 1

²⁸ AIR 1995 Ker 252

²⁹ AIR 1997 Bom 349

³⁰ 2003 (6) SCC 611

³¹ 2006 (2) SCC 578

than autonomy. As a result, a unified code is essential for fostering national cohesion and solidarity as well as for protecting the downtrodden."

It is clear from the precedent-setting rulings described above that many religious practices discriminate against women. These practices affect both the majority and minority communities. According to reports, the Hindu community accounts for 90% of dowry death cases, with minority communities accounting for the remaining 10%. Therefore, the Uniform Civil Code does not force the practices of the dominant group on the minority.

The most hotly contested issue, the Uniform Civil Code, was opposed on the grounds that, as a secular nation with numerous cultural and religious customs, India would lose its unique identity if it implemented the law.

India is a civilized and progressive country. While culture and religion play significant roles in a secular state such as India, they should not infringe upon the fundamental human rights guaranteed to its residents by the Indian Constitution. Currently, regardless of a person's gender or faith, offenses are governed by a standard criminal law. As a result, it prioritizes individual rights over religious observance. Similar to this, a Uniform Civil Code for all religions does not intend to abolish cultural norms; rather, it solely seeks to do away with practices and regulations that violate people's fundamental human rights as well as statutory and non-statutory laws that discriminate against women.

XV. CONCLUSION, SOLUTIONS, SUGGESTIONS & RECOMMENDATIONS

India faces both opportunities and difficulties in implementing the Uniform Civil Code (UCC). It is advised to take a methodical, phased approach to navigating these challenges, starting with the codification of laws that enjoy wide community support and moving on to more contentious subjects through prolonged discussion and public education. The goal of solutions should be to protect fundamental rights while honouring cultural variety. One possible way to do this would be to incorporate certain cultural customs into a more comprehensive legal framework that guarantees

equality. To guarantee that the UCC is open, transparent, and considerate of the concerns of all communities, the government and the courts must work together. A multi-stakeholder committee to develop the UCC is suggested, as are frequent meetings with religious and community leaders and the adoption of best practices from nations that have effectively enacted comparable codes. By implementing these policies, India can advance toward a UCC that preserves the Constitution's tenets of justice and equality while fostering national cohesion.

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