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Personal law and gender justice and its controversy perspective of uniform civil code in India

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Abstract

A Uniform Civil Code (UCC) is a single set of civil laws that replaces personal laws, which derive from customs or religious scriptures, for all citizens of a country. Personal laws cover matters like adoption, maintenance, divorce, marriage, and inheritance. However, the implementation of a UCC has been contentious for years, often used as a political tool rather than a genuine development agenda. One major concern with the UCC is the lack of equal rights for women under personal laws, which historically stem from patriarchal structures. Efforts to reform these laws have been limited and incremental. This raises questions about whether India is prioritizing gender justice or preserving traditional personal laws. In India, family law, or personal law, governs various aspects of family life including marriage, dowry, divorce, custody, and inheritance. These laws are closely linked to religion, with different religious communities following their distinct laws. While some laws are codified by the Indian Parliament, others, like Muslim law based on Sharia, remain uncoded. Despite constitutional provisions for gender equality, religious freedoms sometimes take precedence, leading to challenges in achieving complete gender equality in family laws. The purpose of this research is how the UCC will be applied. And how to strike a balance between personal law and the UCC that will establish fair rights for all? Especially the rights of women.

Keywords: Uniform civil code, persona laws, gender equality, religious scriptures, patriarchal structures, codified laws, gender justice

Introduction

“The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India.” Article 44, Directive Principles of State Policy, Indian Constitution. The idea behind a Uniform Civil Code (UCC) is to ensure that everyone, regardless of their religion, is treated equally under a single national law concerning marriage, divorce, maintenance, and inheritance. However, implementing this uniformity clashes with the current diverse ways relationships are organized through personal laws, which are often based on interpretations of religious customs rooted in patriarchy. Advocates of the UCC see it as the solution to various issues stemming from religion-based personal laws in India. Placed under Article 44 of the Directive Principles of State Policy, the UCC aims to replace the fragmented personal laws currently governing civil matters. However, these principles are not enforceable by courts, though they are fundamental in governance, leaving the UCC without constitutional backing. Despite this, courts view it as a step towards national unity. Critics argue that the UCC may infringe on fundamental rights like freedom of religion and the rights of minorities, sparking debates and criticism. Given this debate, the question arises whether the Uniform Civil Code will apply to society. Is uniformity in law good for women? How will women benefit? Is uniformity tantamount to equality? Do polygamy and gender discrimination affect only Muslim women? The answers to all these questions are far from clear or categorical (Dahiya, R. 2021) [8]. This idea has sparked debates because it's tricky to balance religious beliefs with fairness for everyone. India's constitution allows different religions to have their own rules for personal matters. Some people think a UCC would make things fairer for everyone, especially women, and bring people together. But others worry it might interfere with religious rights and traditions. So far, the Indian government hasn't put a UCC into practice, and people are still talking about it. India's approach to religion and the government is interesting because it tries to respect both religious beliefs and fairness for everyone. The Indian constitution says everyone should be treated equally, regardless of

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religion. India has found ways to let religion and government coexist peacefully. For example, some religious practices, like cow slaughter, are prohibited, even during religious events. The courts also play a role in making sure religious and secular interests are balanced. India also supports religious activities like pilgrimages and recognizes different religious communities, showing how religion and government are connected (Mahmood, 2006) ^[18]. B.R. Ambedkar, in 1955, discussed the importance of having a Uniform Civil Code (UCC) in India as part of social reform. He argued that having a common set of laws applicable to all citizens, regardless of their religious backgrounds, would promote equality and social justice. Currently, India has personal laws based on religious traditions, which often perpetuate inequalities, especially in matters like marriage, inheritance, and family rights. Ambedkar believed that implementing a UCC would create a fairer and more just society. This discussion also extended to other crucial aspects of nation-building, such as the role of education in reducing social disparities, the challenges of integrating diverse communities, and the need to uplift marginalized sections of society (Ambedkar, 1955) ^[1]. India is a diverse country with many religions and ethnic groups. The legal system includes specific laws based on religion, called personal laws. There have been ongoing debates among leaders about creating a common personal law for all religions. The Uniform Civil Code, a significant aspect of the Indian Constitution, aims at secularism and equal rights. It proposes that everyone, irrespective of religion, should be treated equally under a national civil code. This code would cover various aspects like marriage, divorce, inheritance, adoption, and property succession, with the idea that religion should have no bearing on legal matters. The discussion on the Uniform Civil Code has historical roots dating back to the colonial period. Efforts to bring uniformity to Indian law were made before independence, but personal laws for Hindus and Muslims remained separate. Post-independence, leaders like Jawaharlal Nehru and B.R. Ambedkar advocated for a UCC, which faced opposition from religious fundamentalists and was included in the Directive Principles of State Policy (Byjus, January 5, 2024) ^[4]. When the Indian Penal Code (IPC) was brought in by the British in 1862 to cover all substantive aspects of criminal law the IPC did not apply to matters such as marriage, divorce, inheritance, adoption and succession. These were governed by personal laws of different religions. As decades went by, a need was gradually felt for a set of laws to cover these matters. In the 1930s, an All India Women's Conference sought equal rights for all women---no matter from which religion---in marriage, divorce, inheritance, adoption and succession. After India became independent in 1947, the Jawahar Lal Nehru government accelerated the process of reforming religious laws through a common code, but only for all Hindus. The idea was to modernise Hindu society and forge national unity. However, the term Hindus was soon to be defined expansively to also include Jains, Buddhists and Sikhs. Staying true to his "secular and pluralistic" credentials, Nehru followed the British who didn't usually interfere in the religion-based personal laws of other communities, including Muslims, Christians and Parsis, giving them some kind of autonomy and protection because of their minority status. But it's also no secret how the British thrived in India through their divide-and-rule policy. Be that as it may, the two competing

desires were manifested even when the Indian Constitution, which came into effect in 1950, said the State shall endeavour to secure for all citizens a Uniform Civil Code (UCC). The idea of a UCC referred to laws that apply to everyone in India, replacing religion-based personal laws governing matters such as marriage, divorce, inheritance, adoption and succession. However, the Constitution clarified that UCC was non-enforceable through courts. In the 1950s, the Nehru government passed, following initial resistance, several laws to codify and reform Hindu personal laws, a process which was started during the British rule of India. The country had many new laws such as the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act. But the demand for a UCC never died down. Nehru's first Law Minister was BR Ambedkar, a man who played a crucial role in drafting the Indian Constitution, and who is revered by those championing the causes of plurality, secularism and social justice, particularly for the Dalits. Even Ambedkar had backed a UCC and faced Muslim opposition. The courts have been quite clear about a UCC. In the 1985 Shah Bano case, the Supreme Court, after two similar orders in the past, batted for a common civil code for greater national integration, and said the Muslim Personal Laws couldn't be cited to deny Muslim women maintenance from their husbands after divorce. Muslim clerics protested and the Rajiv Gandhi government used his parliamentary mandate to overturn the court order through a law. The Supreme Court again called for a UCC in 1995 and 2017. However, in 2018, four years after Narendra Modi became the prime minister, India's Law Commission said a UCC is neither necessary nor desirable at this stage. The Law Commission called for preserving the diversity of personal laws while ensuring that personal laws do not contradict fundamental rights. It surprised many because a UCC has always been part of the BJP's election manifesto, and leaders like former Prime Minister Atal Bihari Vajpayee made impassioned speeches in Parliament over the issue. Several BJP-ruled states have, from time to time, talked about bringing a UCC. Uttarakhand is already in the process of framing its common code. Goa has a UCC. Things went back to looking "more normal" in 2022 when the Law Commission found it expedient to deliberate afresh over the subject (Singh, Jun 29, 2023) ^[24].

Personal law in different religions

A Uniform Civil Code (UCC) is one where a common set of civil laws replace personal laws i.e. laws that find their authority from customs, religious scriptures etc., for citizens of a country. Personal law deals with issues of adoption, maintenance, divorce, marriage and inheritance. UCC has been a point of contention for several decades, having emerged as a political tool to fuel election campaigns rather than a truly acted-upon development agenda. While highly politicised debates surround it, a key issue that has emerged in the UCC is the submergence of equal rights for women under personal laws. Personal laws stem from highly patriarchal structures and women have historically not been engaged in their formation. While some effort has been made to bring greater uniformity and reforms in personal laws, the efforts remain in the form of piecemeal offerings. Here, we ask and assess if India is sacrificing gender justice at the altar of preserving personal laws. A common contention by those factions opposed to demands for a UCC

is their argument that a Uniform Civil Code only seeks to reform Muslim laws in India; however, in practice, such reform would extend to personal laws of all religions to form a Uniform Civil Code that applies equally to all citizens of India. Talk on UCC has become more of a political tool and means of minority appeasement. Those who oppose the UCC have also not been able to account for the needs and processes to ensure gender justice without a UCC. Examples of how personal laws negatively affect women in some of the religions practised in India are:

Parsi personal law: If a Parsi woman marries someone who isn't a Parsi, their children are not accepted as part of the Parsi community. However, this does not apply to a Parsi man marrying outside the Parsi community. A non-Parsi woman who is married to or is the widow of a Parsi man cannot inherit on his death though their children can inherit.

Hindu personal law: If a married woman dies without having any children, her property, under the Hindu Succession Act, is inherited by the heirs of her husband and not her own. Section 6(a) of the Hindu Minority and Guardianship Act gives the father the status of the natural guardian in the case of a legitimate child. The need for equality of rights of natural guardianship between both parents is ignored. Hindu men are also allowed to practise bigamy under certain conditions in Goa, although Goa claims to be the only State to have a Uniform Civil Code in place.

Muslim personal law: The practice of Talaq-e-bidet (triple talaq) allows for a Muslim man to divorce his wife instantaneously by uttering the word talaq three times in one sitting, a Muslim woman must follow a legal procedure after obtaining her husband's consent to be able to get a divorce. Allows for a Muslim man to have multiple wives. The practice of Nikah Halala determines that a Muslim woman is not allowed to remarry the husband who has divorced her unless she first marries another man and consummates that marriage.

The issue with personal laws in India, highlighted by various examples, underscores their regressive and unequal nature, rooted in patriarchal structures. These laws often overlook measures necessary for the empowerment of women and marginalized groups, creating gaps that hinder gender equality. While advocating for a Uniform Civil Code (UCC) to address these disparities, it's crucial to acknowledge and rectify these gaps. The UCC should not merely compile gender-just provisions from existing laws but should strive to encompass and reform personal laws comprehensively across all states. Women's rights movements, including those from minority communities, have long demanded UCC reforms, echoing concerns raised by the judiciary about the discriminatory impact of personal laws. While court judgments have occasionally addressed discriminatory practices, the need for codification through a UCC remains paramount to ensure clarity and accessibility to justice for women. Relying solely on case verdicts, rather than enacting a UCC, risks prolonging legal battles and delays in realizing women's rights. Thus, the call for step-by-step reforms within existing personal laws falls short of addressing the urgent need for comprehensive legal reform to promote gender equality and empower women effectively (India Foundation, May 1, 2017) ^[11]. In matters of adoption,

Section 8 of The Hindu Adoptions and Maintenance Act, 1956, requiring women to obtain their living husband's consent to adopt is viewed as discriminatory, failing the constitutional standards of morality. This provision contradicts Article 14, Article 15, and Article 21 of the Indian Constitution, as it creates an unjust gender-based classification. While Hindu males can adopt freely without spousal consent, women face a restriction solely based on their gender, undermining individual dignity. The Hindu Minority and Guardianship Act, of 1956, designates the father and, subsequently, the mother as the natural guardian of a boy and unmarried girl. In the *Githa Hariharan v. Reserve Bank of India* case, the court emphasized the paramount consideration of the minor's best interests in disputes over guardianship between parents. The Law Commission, through various reports, has recommended amending sub-clause (a) of the Hindu Minority and Guardianship Act, 1956 to ensure equal rights (Kumar, April 25, 2021) ^[13].

UCC and Women's Right

Personal laws in India don't treat women equally; they often prioritize men. We want everyone to recognize that women are essential human beings deserving respect. Gender justice and the Uniform Civil Code (UCC) are debated topics. Before implementing the UCC, understanding its concepts is crucial to avoid unintended consequences. While women's empowerment is discussed, personal laws differ, especially in tribal communities. Article 44 suggests a UCC for India, but current laws vary based on religion. UCC aims for uniformity, addressing discrimination. Implementing UCC with necessary modifications is proposed for uniformity in India, considering the diverse issues present in personal laws for marriage, adoption, succession, inheritance, and guardianship among different religious groups (Naik and Battu, 2018) ^[21]. Archana Parashar, an Indian academic advocating for a common legal code, criticizes the language used in personal laws. She contends that labelling customs and social practices as law shields them from scrutiny, allowing anti-women aspects to persist and institutional discrimination to thrive. Scholars, including Parashar, supporting a Uniform Civil Code argue against a system based on personal laws, deeming it problematic for equality. They view religion-based laws as regressive, imposing outdated practices on women. Reforms like the Hindu Marriage Act 1956 and Muslim Women's Act 1986 are seen as progressive steps toward gender equality. The Portuguese Civil Procedure Code 1939, applicable in Goa, serves as a model for just and equal laws, hindering practices like Triple Talaq. Parashar's stance challenges the acceptance of legal pluralism, questioning Article 44 of the Directive Principles of State Policy, which urges the state to introduce a uniform code (Dahiya, 2021) ^[8]. In most personal laws, women are given lower status compared to men. Before the codification of Hindu Law, women did not have equal rights. Polygamy was common among Hindus, and Hindu women couldn't own property, except for stridhanam. Their estate passed to male heirs on their death, and they couldn't adopt a child independently. Despite codification, discriminatory provisions still exist in Hindu Law. In Islam, the Quran grants equal rights to men and women, but certain aspects make Muslim women, especially wives, feel insecure and inferior. Muslim men can have up to four wives, and divorce procedures disadvantage women.

Inheritance laws favour Muslim males, with brothers getting double the share of sisters. Maintenance for divorced Muslim wives is only required during the 'Iddat' period. The controversy over maintenance led to the Muslim Women (Protection of Rights on Divorce) Act in 1986. lately, the Muslim Women (Protection of Rights on Marriage) Bill, 2018 was introduced but faced challenges. It aims to criminalize instant triple talaq, with imprisonment of up to three years. The bill also addresses bail, compounding offences, allowances, and child custody. In Christian and Parsi laws, similar gender disparities exist, highlighting the lack of uniformity in personal laws based on religion and gender (Kumar, 2019) ^[14]. Article 25 of the Indian Constitution protects the practice of triple talaq, stating that everyone has the right to follow and share their religious beliefs. This article recognizes the authority of 'personal laws' in all religions, allowing individuals to express and promote their religious beliefs as long as it doesn't violate public order, health, morality, or other constitutional provisions. The state can impose restrictions for the benefit of social welfare. The Supreme Court, in cases like *Daniel Latifi v. Union of India*, tried to balance Muslim women's rights without questioning the constitutionality of gender and religious discrimination in personal law. Articles 25 and 26 protect not only religious doctrines but also actions related to religion. The court decides what is an essential part of a religion based on the community's perception. The judiciary can only interfere with personal law within the limits of Article 25. Regarding 'talaq-e-biddat,' constitutional protection is upheld unless it violates public order, morality, health, or constitutional provisions. Challenges can be made if the practice infringes on Articles 14, 15, and 21 of the Constitution, addressing issues of gender discrimination. Achieving social democracy and economic justice align with the preamble's goals. The Constitution emphasizes gender equality, condemning discrimination based on gender, and promoting the dignity of women. Article 51A (e) urges the state to eliminate practices that degrade women's dignity (Mishra and Banerji, 2017) ^[20]. Different personal laws create conflicts in private laws and can lead to unequal treatment. Some laws allow practices that are not good for society. For example, while bigamy is a crime for Hindus, Buddhists, Jains, Sikhs, Parsis, and Christians, Sharia law permits Muslim men to have up to four marriages without the need for consent from existing wives. This can encourage husbands from other communities to abandon their families by converting to Islam. In a significant case, a Jew who converted to Islam wanted a divorce under Islamic law, but the court ruled in favour of the marriage's original law. Another case involved a Zoroastrian converting to Islam for a divorce. Justice Bhadani criticized the chaos caused by personal laws, questioning why one person can impose their new law on another party. In another case, the court addressed whether a Hindu converting to Islam could have a second marriage while the first marriage continued. The court ruled that conversion doesn't automatically dissolve the previous marriage, suggesting a need for legislation to prevent such abuses. Marriage is considered a secular institution, and the obligations should be the same for all religions. However, India's separate personal laws create inequalities, especially regarding polygamy in Muslim law, putting many women at risk of abandonment unless such practices are eliminated (Bhattacharya and Shandilya, 2017) ^[3].

Judicial Interventions on Persona Law

The Shah Bano case, also known as *Mohd. Ahmed Khan v. Shah Bano Begum*, stands as a pivotal moment in Indian legal history, particularly in the context of Muslim women's rights. In 1985, the Supreme Court of India ruled on this case, which revolved around Shah Bano Begum, a Muslim woman seeking maintenance from her husband after their divorce. Shah Bano invoked Section 125 of the Code of Criminal Procedure, 1973, which grants maintenance to wives who are unable to support themselves. However, the case sparked controversy when it reached the Supreme Court, as it involved conflicting interpretations of Muslim personal law and secular law. The Court ruled in favour of Shah Bano, upholding her right to maintenance under Section 125, emphasizing the principles of justice and gender equality. Nevertheless, the judgment faced vehement opposition from conservative Muslim groups, leading to legislative changes. The Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act in 1986, nullifying the Supreme Court's decision and restricting Muslim women's rights to maintenance. Despite this setback, the Shah Bano case remains significant for highlighting the tension between personal laws based on religion and constitutional principles of equality and justice. It serves as a reminder of the ongoing struggle for gender justice within the Indian legal system (The Indian Express, August 23, 2017) ^[26]. However, the judgment encountered fierce opposition from conservative Muslim factions, prompting legislative action. The Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act in 1986, nullifying the Supreme Court's ruling and curtailing the maintenance rights of Muslim women. Nonetheless, the Shah Bano case remains significant for spotlighting the tension between religious-based personal laws and constitutional principles of equality and justice. It serves as a poignant reminder of the ongoing struggle for gender justice within the Indian legal framework. Following in the footsteps of the Shah Bano case, the Shayara Bano case emerged as a landmark in August 2017. Shayara Bano's plight epitomized the struggle against practices like triple talaq, which she challenged after being instantly divorced by her husband using this method. Supported by women's rights groups and the government, Shayara Bano contested that triple talaq, along with polygamy and *nikah halala*, infringed upon her constitutional rights. The Supreme Court, after careful consideration and receiving arguments from all sides, declared instant triple talaq unconstitutional, affirming the rights of Muslim women (Suman, November 17, 2022) ^[25]. In the realm of legal battles concerning Muslim women's rights, the *Daniel Latifi v. Union of India* case raised critical questions about the constitutionality of the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act, seemingly contradicting the Shah Bano judgment, restricted the maintenance obligations of Muslim husbands post-divorce. However, the Supreme Court, through a nuanced interpretation of the law, upheld its constitutionality, establishing that a Muslim husband's responsibility for maintenance extends beyond the *iddat* period (Legal Institute of India, January 1, 2024) ^[17]. Further emphasizing the need for legal uniformity and equality, the *Sarla Mudgal & Others v. Union of India* case addressed issues of bigamy and religious conversions to evade legal obligations. The Supreme Court ruled against using religious conversion to circumvent the law and

emphasized the necessity of a Uniform Civil Code to ensure justice and equality for all citizens, irrespective of religious affiliations (Singh, 1995) ^[24]. Similarly, in the case of John Vallamattom challenging Section 118 of the Indian Succession Act, of 1925, the Supreme Court highlighted the need for a Uniform Civil Code to prevent discrimination based on religion and promote national integration. The ruling underscored the importance of ensuring equality before the law for all citizens, regardless of their religious background (Arora, November 1, 2020) ^[2].

UCC and Controversy

Ambedkar's cautious backing for a Uniform Civil Code (UCC) is often invoked by BJP leaders advocating for its implementation in Parliament. However, the question arises: does this align with Ambedkar's original constitutional vision? While Ambedkar did support the idea of a UCC in the Directive Principles of State Policy, he was acutely aware of the serious objections from Muslim members of the Constituent Assembly. In a discussion on November 23, 1948, he sought to reassure minority members, suggesting that the application of the code might initially be voluntary. Ambedkar emphasized that personal laws couldn't be entirely excluded from the state's jurisdiction, as religious concepts in India encompassed every aspect of life. He highlighted the state's power to legislate without obliging the removal of personal laws and acknowledged the impracticality of ruling out any role for the state in personal law. While appreciating the concerns of those, especially Muslim leaders, opposed to the UCC, Ambedkar underscored the limited sovereignty of the government, stating that no administration should provoke minority communities to rebellion. As the BJP aligns itself with Ambedkar, the author questions whether Prime Minister Narendra Modi's government will adhere to Ambedkar's nuanced stance on the UCC, emphasizing that any imposition against the legislative intent of the Constitution's framers would be considered imprudent and contrary to Ambedkar's vision (Sahu, 13 Dec 2022) ^[2]. In the early 1950s, the Indian government faced challenges in building the nation after gaining independence. The primary task was reshaping the idea of "India" following Partition, aiming for a fully functional and democratic nation. The government took steps to reorganize state boundaries in 1953, appointing the State Reorganisation Committee, which later led to the State Reorganisation Act in 1956, creating 14 states and 6 union territories. During this period, Dr. B. R. Ambedkar wrote "Thoughts on Linguistic States" in 1955, expressing his stance on the debate. Ambedkar argued for linguistic states based on population, emphasizing uniformity in state sizes. He believed a common language fostered unity, supported democracy, and eased cultural variations. Ambedkar also addressed potential issues, proposing Hindi and English as national languages to prevent fragmentation. He discussed the complexities of dividing states, especially focusing on Maharashtra. Ambedkar advocated for smaller states to address economic inequality and social issues. Additionally, he suggested a second capital in Hyderabad to bridge regional gaps. Ambedkar's insights were grounded in empirical studies and aimed at building a united, administratively efficient India (Sarkar, Feb 24, 2023) ^[23]. B.R. Ambedkar discussed the significance of a Uniform Civil Code in the context of social reform. He emphasized the importance of a common set of laws that would apply to

all citizens, irrespective of their religious backgrounds. This was intended to promote equality and social justice, as personal laws based on religious traditions often perpetuated inequalities, particularly in matters of marriage, inheritance, and family rights. Ambedkar believed that a Uniform Civil Code would help create a more just and equitable society. The work also touches upon other important aspects of nation-building, including the role of education in eradicating social disparities, the challenges of integrating diverse communities, and the need for social and economic upliftment of marginalized sections of society. Ambedkar's thoughts on linguistic states and the Uniform Civil Code continue to be subjects of debate and discussion in India. While many aspects of his ideas have found their way into India's governance and policies, there are also ongoing debates about the practical implementation and potential impact of these concepts on India's complex social fabric. In summary, "Thoughts on the Linguistic States" by B.R. Ambedkar is a significant work that delves into the principles of linguistic reorganization, social reform, and the importance of a Uniform Civil Code in creating a more inclusive and just society (Ambedkar, 1955) ^[1]. Nobel laureate Amartya Sen on Thursday expressed scepticism about the Central government's push for the Uniform Civil Code (UCC), saying the "urgency" to implement the UCC had connections with paving the way for a 'Hindu Rashtra'. "We've had the Uniform Civil Code for thousands of years. It's nothing new. But one has to see who benefits from bringing the UCC into force. There is some connection between the urgency to implement the UCC and paving the way for the far-fetched idea of Hindu Rashtra," he said. Amartya Sen questioned whether implementing the Uniform Civil Code would solve all the "differential problems" that plague the nation. "Making India a Hindu Rastra will not solve the age-old problems in the country. Will UCC solve all the differential problems?" Sen questioned, adding, "Although there could be provisions to solve many issues." Amartya Sen warned that the UCC must not be misused in the name of religion or Hinduism, adding that the country needs unity. "There are many differences between us, there may be religious differences. There may be differences in obeying rules and regulations. We just have to ensure that the UCC is not misused in the name of religion, Hinduism. We all need to be united," Amartya Sen said. The Uniform Civil Code is a proposal aimed at replacing personal laws based on religions, customs, and traditions with one common law for everyone, irrespective of religion, caste, creed, sexual orientation, and gender. The government could table a bill on implementation of the Uniform Civil Code in the monsoon session of Parliament, set to begin on July 20 (Das, Jul 7, 2023) ^[6]. In 2018, the Law Commission suggested that a Uniform Civil Code (UCC) wasn't needed or desirable at that time, but it was just a discussion document, not an official report. Recently, the government revealed that they're reopening the discussion, seeking input from the public and religious groups on whether a common set of laws for personal matters, like marriage and inheritance, should be applied to everyone regardless of their religion. Currently, different laws regulate these aspects based on religion, and the UCC aims to standardize them. The 21st Law Commission had shared this idea in a consultation paper, but no official report was submitted. Now, the 22nd Law Commission is revisiting the matter, considering its importance and relevance, and asking for

opinions from the public and religious organizations. The 21st Law Commission's term ended in 2018, and the 22nd Commission is continuing the discussion (Das, July 22, 2023) [7].

Arguments favour a Uniform Civil Code

The Uniform Civil Code (UCC) has been a focal point of prolonged discussions and debates in India, revolving around the idea of a set of rules applicable universally, irrespective of religious beliefs, regulating personal matters such as marriage, divorce, inheritance, and adoption. While it has stirred controversy, it is crucial to recognize the potential benefits a UCC could bring to society. This blog explores the positive aspects of implementing a uniform civil code, emphasizing its role as a constructive response to equality and progress. An essential advantage lies in its ability to promote gender equality by eradicating discriminatory practices prevalent in existing personal laws, particularly affecting women in matters of inheritance, divorce, and maintenance. The UCC ensures equal rights for women across all communities, empowering them in personal decision-making and contributing to societal progress. Additionally, the diverse religious and cultural landscape of India sometimes leads to divisions, hindering social cohesion. Implementing a UCC can foster unity by establishing common laws transcending religious boundaries, and encouraging a shared understanding of legal rights and responsibilities among citizens. This aligns with the principles of secularism and constitutional values, as the UCC treats all individuals equally under the law, irrespective of their religious background. Furthermore, the UCC simplifies the legal framework by replacing multiple personal laws with a single set of rules, enhancing access to justice for all citizens and streamlining legal processes. This simplification not only benefits individuals but also reduces the burden on the judiciary. Embracing modern values and principles, a UCC is considered a progressive step for India, aligning personal laws with contemporary societal norms. It addresses outdated customs, promoting inclusivity and a forward-thinking society. In conclusion, despite the contentious nature of the Uniform Civil Code, its implementation stands to significantly contribute to the progress and development of Indian society. By prioritizing gender equality, social cohesion, secularism, legal simplification, and modernity, a UCC can pave the way for a more inclusive and harmonious nation, emphasizing the need for sensitivity and respect for diverse religious beliefs while upholding the principles of equality and justice of Form (Chugh, July 11, 2023) [5].

The Uniform Civil Code (UCC) is mentioned under Part IV, Article 44, of the Indian Constitution, aiming to establish a single set of civil laws applicable to all citizens regardless of their religion or background. Here are the key arguments in favour of introducing a UCC in India:

Gender Equality: The absence of a UCC can lead to gender discrimination within personal laws, impacting women's rights to equality and liberty. Implementing a UCC can help eliminate such disparities and promote gender justice and dignity for women.

Constitutional Mandate: Article 44 of the Indian Constitution mandates the state to strive for a UCC, aligning with the principles of equality and secularism. This ensures

that everyone is governed by the same set of civil laws, irrespective of their religious beliefs or community.

Inheritance Rights: Discrepancies across religious personal laws, such as unequal inheritance rights for women, highlight the need for a UCC [4]. A UCC can provide a secular legal framework that ensures equality in inheritance rights for all citizens.

Multiculturalism and Citizenship: Introducing a UCC does not seek to impose cultural or religious conformity but aims to ensure legal uniformity [1]. It promotes a shared sense of citizenship and national identity while respecting India's diverse cultural fabric.

Legal Uniformity: While India already has uniform criminal laws and statutes, a UCC would address personal laws relating to marriage, divorce, inheritance, and adoption, thus ensuring legal consistency across all citizens. The implementation of a UCC is crucial for upholding the principles of equality, justice, and secularism in a diverse society like India. Debroy and Sinha (June 29, 2023) [9]. A uniform civil code is viewed as a way to enhance national integration by eliminating conflicting ideologies and loyalties tied to different personal laws. Supporters argue that it would ensure equality and justice for all citizens, irrespective of their religious or cultural background. The proponents believe that a uniform civil code could eradicate discriminatory practices, offering a shared set of rights and protections, especially benefiting women facing inequality under certain personal laws. It is thought that implementing a uniform civil code would simplify legal procedures, fostering consistency in areas like marriage, divorce, inheritance, and adoption, leading to a more efficient and clear legal system. Advocates suggest that this code could address social injustices and promote gender justice by guaranteeing equal rights and opportunities for women in matters of marriage, divorce, and inheritance.

Arguments against a Uniform Civil Code

UCC and Indian civilization: India's distinct identity as a civilizational state is deeply rooted in its ancient and diverse cultural heritage, predating its modern nationhood. Being a civilizational state means embracing diversity, where various cultural, religious, and social practices coexist peacefully, forming the essence of India's civilizational legacy. The uniqueness of India, encompassing its people, land, traditions, and culture, contributes to shaping its identity and strengths. In contrast to the Western notion of a nation-state, which hinges on a shared language, religion, or lifestyle, it fails to capture the intricate complexity and diversity of India's civilizational state. India's civilizational ethos revolves around the constant spread and evolution of culture, drawing inspiration and adapting from other civilizations. Introducing a Uniform Civil Code (UCC) in India, seeking uniform laws for everyone, holds significant implications for the rich civilizational heritage. This move may potentially challenge existing socio-cultural and religious systems deeply ingrained in India's historical journey, particularly in areas like women's rights, ancestral property, and marriage, disrupting longstanding traditions. The intricate normative framework of India, with its multitude of cultures and traditions, presents a substantial challenge in achieving uniformity through parliamentary

procedures, given the diverse demographics, including tribal populations and regional variations. The ongoing UCC debate reflects the delicate balance between upholding universal ideals of equality and individual rights and the necessity to preserve and honour India's civilizational diversity and cultural heritage (Mariya, 23 Aug 2023)^[19]. In this view, the protests in the North East and other tribal regions stem from concerns regarding the imposition of a civil code that would potentially disrupt traditional tribal customs, particularly in matters of marriage, divorce, child custody, inheritance, and property rights. The tribal communities fear that the imposition of a uniform civil code would infringe upon their customary laws and practices, which have been integral to their way of life for generations. Some of the key concerns and issues raised by the tribal communities include:

Impact on Tribal Traditions: Tribal societies have their own customs, traditions, and customary laws governing various aspects of life, including marriage, inheritance, and property rights. The imposition of a uniform civil code could undermine these traditional practices and erode the cultural identity of tribal communities.

Threat to Land Rights: Many tribal communities have communal ownership of land, which is protected under specific laws such as the Chhota Nagpur Tenancy Act and the Santhal Pargana Tenancy Act. The implementation of a uniform civil code might jeopardize these land rights and open the door to exploitation by outsiders.

Loss of Autonomy: Tribal communities value their autonomy and self-governance. The imposition of a uniform civil code could be seen as an infringement upon their right to govern themselves according to their customs and traditions.

Gender Justice Concerns: While proponents of a uniform civil code argue that it would promote gender justice and equality, tribal communities fear that it could lead to the disempowerment of women within their societies and disrupt the existing balance of power and rights.

Potential Social Disruption: The sudden imposition of a uniform civil code without considering the complexities of tribal societies could lead to social unrest and instability, as it may disrupt existing social structures and norms.

Legal Uniformity vs. Diversity: While uniformity in laws across the country may streamline legal processes, it could overlook the diverse cultural and social realities of India, including those of tribal communities. Uniformity might not necessarily equate to justice or fairness in every context. Overall, the opposition from tribal communities and their leaders highlights the need for a nuanced approach that respects and preserves the unique customs, traditions, and rights of India's diverse tribal populations, while also addressing concerns about gender justice and legal uniformity (Lakshma, July 01, 2023)^[16].

Practical Implementation Challenges

Implementing a Uniform Civil Code (UCC) in India comes with a bunch of real-world challenges we need to solve to make it work for everyone.

Dealing with Administrative and Logistical Challenges:

To switch to a UCC, we've got to deal with a lot of paperwork and make sure our systems are up-to-date. That means updating all the forms and documents to fit the new rules. Plus, we need to coordinate with different government departments like the Ministry of Law and various state agencies to make sure everything runs smoothly. We also need to set up ways to handle legal issues under the UCC properly.

Training People Properly: Making the UCC work means training our legal folks – judges, lawyers, and their support teams. They need to understand all the ins and outs of the UCC so they can do their jobs right. Regular training sessions and workshops will help them stay on top of any changes or updates to the UCC. It's especially important to train judges well so they can make fair decisions.

Ensuring Awareness and Understanding: We've got to make sure everyone knows about the UCC and what it means to them. That means running public awareness campaigns and educational programs to explain why the UCC is important and how it affects people's lives. We can hold workshops, seminars, and public meetings to clear up any misunderstandings. Getting community leaders and organizations involved will help spread the word and make sure everyone understands what's happening.

Implementing a Uniform Civil Code (UCC) in India entails various practical challenges that must be overcome to establish a unified legal framework that caters to the diverse needs and aspirations of the population.

Making Sure Laws Fit Together: If India wants to have a Uniform Civil Code (UCC), it needs to make sure it fits with the rules in its constitution. The Constitution gives people the freedom to follow their religious laws. But it also says everyone should be treated equally. So, any UCC needs to respect both religious freedom and equality. Sometimes, though, there might be clashes between personal laws and what the Constitution says. For example, some religious practices like triple talaq might not match up with the constitution's guarantees. Finding a way to balance individual rights with having consistent laws is tough.

Courts Keeping Things Fair: The courts play a big part in making sure a UCC follows the rules. They protect people's basic rights and make sure laws line up with what the Constitution says. Courts have to balance things like religious freedom and fairness. They've made important decisions in the past, like letting women enter the Sabarimala temple, which shows they're serious about equality. The courts' job is to make sure the UCC sticks to what the constitution says and looks out for everyone's rights. So, in making a UCC work, we need to think about how it fits with the Constitution, get politicians to agree, and trust the courts to keep things fair for everyone (Kumar, July 7, 2023)^[15]. The debate over the Uniform Civil Code (UCC) in South Asia, especially in India, is complicated by identity politics, where different groups champion their views. This complexity is heightened in India's diverse and noisy democracy. Minorities fear that implementing a UCC might infringe on their rights and cultural identities, as it could impact their laws. Influenced by global Islamic politics and universal human rights, the UCC debate in India navigates

the demands of different religious and cultural communities. Achieving consensus on the UCC is challenging due to the sociopolitical climate and the need to address the concerns of various identity groups (Ghosh, 2018)^[10].

Conclusion

The notion of 'Gender Justice' in India encompasses debates on Personal Laws and the Uniform Civil Code (UCC). While the UCC strives to ensure equal rights for all individuals regardless of their background, its implementation faces significant challenges due to India's diverse cultural and religious landscape. Despite the UCC's potential to promote justice, gender equality, and individual rights, concerns persist regarding its practical feasibility. The demand for gender equality hinges on legal reforms, with the judiciary viewed as a potential catalyst for change. However, some argue that the UCC may prioritize political interests over genuine gender justice. While uniformity in law is essential, it must not compromise the diverse cultural fabric of India or undermine communal harmony. Hence, the focus should be on substantive legislative measures that empower women, rather than solely pursuing a uniform civil code. Ultimately, achieving gender justice requires a nuanced approach that balances legal uniformity with cultural sensitivity and meaningful empowerment initiatives.

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