



## ABHIDHVAJ LAW JOURNAL

[ [www.abhidhvajlawjournal.com](http://www.abhidhvajlawjournal.com) ]

**The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.**

**Editor In chief – Assistant Professor Mr. Janmejy Singh**

**Publisher & Founder – Vaibhav Sangam Mishra**

**Frequency – Quarterly ( 4 Issue Per year )**

**ISSN : 2583-6323 (Online)**

**Copyright © 2023 - 24**

---

**UNIFORM CIVIL CODE: A DISPUTE.**

---

**AUTHOR'S NAME – Ketaki Rajesh Telkar, LLB, Second Year.**

**INSTITUTION NAME - Gj Advani Law College, Mumbai.**

**ABSTRACT:**

The uniform civil code (UCC) is among the most hotly contested and scrutinized topics in our country. So basically, UCC are set of laws that might replace the personal laws of our country. Personal laws are those that every religion has specifically put down to govern people from the respective religions. This is because of the diversity of our country. Every religion has its own personal laws. For instance, The Hindu Marriage Act of 1955<sup>1</sup>,<sup>2</sup> The Indian Christian Marriage Act of 1872<sup>3</sup>, The Parsi Marriage and Divorce Act of 1936<sup>4</sup>, and the Muslim Marriage law<sup>5</sup> in India. UCC will give equal status to everyone and that will truly bring out sense in the statement that everyone is equal in the eyes of laws and the same set of laws would be governed for everyone without any discrimination. This will also bring women and men to par. This paper talks about the answers to the question of how it will help our country to progress and develop. This paper will talk about what exactly is UCC, where is the uniformity needed, whether is it a debate between religions, the advantages and disadvantages, what the role of the judiciary is in this particular aspect, and if there is an alternative to UCC or not.

**INTRODUCTION:**

UCC has been one of the most contentious and controversial topics in our country. Article 44 states that the state shall endeavor to provide its citizens with a uniform civil code<sup>6</sup>. Our country is a diverse country where various religions are practiced. The Indian population is made up of Hindus (82.41%), Muslims (11.6%), Christians (2.32%), Sikhs (1.99%), Buddhists

---

<sup>1</sup> Paras Diwan, *The Hindu Marriage Act, 1955*, 6 INT. COMP. LAW Q. 263 (1957).

<sup>2</sup> Anusha Soni, Law Commission Chairman on Uniform Civil Code: Each religion would continue to have personal laws, *indiatoday*, (Oct. 10, 2023, 9:29 PM), <https://www.indiatoday.in/india/story/uniform-civil-code-law-commission-chariman-religion-personal-laws-gender-justice-351904-2016-11-14>

<sup>3</sup> Indiacode, [https://indiacode.nic.in/acts/3. Indian Christian Marriage Act, 1872.pdf.](https://indiacode.nic.in/acts/3.Indian%20Christian%20Marriage%20Act,%201872.pdf.), (last visited Oct. 10, 2023).

<sup>4</sup> Government of India, *The Parsi Marriage and Divorce Act 1936*, 36 (1936).

<sup>5</sup> Personal Law, *THE MUSLIM PERSONAL LAW ( SHARIAT ) APPLICATION ACT, 1937 THE MUSLIM PERSONAL LAW ( SHARIAT ) APPLICATION ACT, 1937 An Act to Make Provision for the Application of the Muslim Personal Law ( Shariat ) to Muslims .*, 5 (1937).

<sup>6</sup> legislative.gov, <https://legislative.gov.in/constitution-of-india/>, (last visited Oct. 10, 2023).

<sup>7</sup> zeebiz, <https://www.zeebiz.com/trending/politics/news-uniform-civil-code-narendra-modi-bjp-centre-minorities-pm-modi-opposition-controversy-stst-242211>, (last visited Oct. 10, 2023).

(0.77%) and Jains (0.41%)<sup>1</sup> and the remaining are tribal communities<sup>58</sup>. The term “secular” was added by the 42<sup>nd</sup> Amendment of the Constitution in 1976<sup>9</sup>. This means that our country has no religion and will not interfere with the relationship between God and man. There are multiple personal laws in our country and each person is governed according to the religion he follows. Now it is quite difficult to introduce UCC as it might hamper the diversity of the country but there are too many factors connected to this. However, some of the personal laws are too discriminatory and derogatory towards women which exactly points out how patriarchal our society is. There are some laws that are illogical according to today’s time. In order to achieve specific ambitions for the development of the country and make the country progressive, UCC needs to be implemented as it is vital for the national integration of our country.

### **WHAT IS UNIFORM CIVIL CODE (UCC)?:**

There are several personal laws in India. UCC means one law that applies to every person irrespective of the religion of that particular person. UCC brings the idea of One law, One country.

UCC initiates uniformity in the personal laws of the country so that everyone in the country is treated equally and they are governed under a single law. This aims to remove the inequality in the country. Under the Directive principles of our country, Article 44 states that the State should ensure a uniform civil code of the country<sup>1011</sup>. Though directive principles are not justiciable rights, which means that if the state does not apply directive principles, you cannot go to the courts for the same. These rights would not be enforceable in the courts. The most important question is why is UCC in the directive principles. The main reason for that is while executing our constitution, there were some limitations of the factors such as social, economic, and political were taken into consideration. Some rights were such that they had to be enforced and thus they became our fundamental rights<sup>12</sup>, and some bundle of rights were such that they would be implemented at the correct time depending on how developed our country becomes and how modernized our country is for accepting such changes.

<sup>8</sup> clearias, <https://www.clearias.com/diversity-of-india/>, (last visited Oct. 10, 2023).

<sup>9</sup> Statement O F Objects, *THE CONSTITUTION ( FORTY-SECOND AMENDMENT ) ACT , 1976* (1976).

<sup>10</sup> Singh Rahul Sunilkumar, Edited by Poulomi Ghosh, What is Uniform Civil Code? Constitutional provisions, arguments | Explained, hindustantimes, (Oct. 10, 2023, 9:29 PM), <https://www.hindustantimes.com/india-news/what-is-uniform-civil-code-constitutional-provisions-arguments-explained-101687927925602.html>

<sup>11</sup> Arun K Thiruvengadam, *The Constitution of India*, CONST. INDIA (2017).

<sup>12</sup> Cornell Law School, [https://www.law.cornell.edu/wex/fundamental\\_right](https://www.law.cornell.edu/wex/fundamental_right), (last visited Oct. 10, 2023).

## **IS UCC A HINDU-MUSLIM DEBATE AND HAS OUR SOCIETY BEEN RADICALIZED BY TALKING ABOUT IT?**

In very simple words, it is not a debate between any religions, it is about removing such laws from society which are derogatory, discriminatory, restrictive, and illogical according to the present times. We need to develop our mindset which the time. When untouchability was removed, the legislators did it as it was a social evil for our country. As our country progressed, we knew that it had to be gone and therefore it was done. Such decisions are important to be taken for the betterment and development of the country. Due to the lack of constitutional knowledge, some antagonists have turned it into a war between different religions and communities.

### **WHERE IS THE UNIFORMITY NEEDED?:**

Section 494 of the Indian penal code makes bigamy punishable for all religions except having a provision for Muslim men<sup>13</sup>. They are allowed to marry up to 4 women and if they marry more than 4 it still would be considered as an irregular marriage and no void. This is discriminatory.

There is a prescribed uniform age for marriage in all the religions except in one that is Muslim law where a girl can get married when she hits the puberty mark, which is generally considered at 15. Marriage is constituted as a sensitive topic in the country and there are too many factors to be considered to get married. At the age of 15, generally, people are not mature enough to consider all the factors because the mind isn't able to comprehend everything.

Under The Hindu Maintenance Act, of 1956, absolute rights are given to the wife to claim maintenance from her husband<sup>14</sup>. Under the Muslim law, there is no compulsion to provide maintenance to the women when the divorce is given out of the law.

### **PROS OF UCC:**

#### **1- Reduces the burden on the Judiciary**

There are different types of laws based on different religions in our country. This creates an extensive load on our judiciary which causes delays to the justice served. As it is

---

<sup>13</sup> Ratanlal Ranchhoddas, *Ratanlal & Dhirajlal's the Indian Penal Code (Act XLV of 1860)*, 1 (2007).

<sup>14</sup> Maintenance Act, *The Hindu Adoptions and Maintenance Act, 1956*, 1 (1956).

said, delay in justice is as good as no justice. This is also because of how unclear some of the personal laws are and therefore interpreting them becomes a task. This creates extreme cases of confusion and hence it becomes difficult for our court systems to function systematically. The 21<sup>st</sup> Law Commission Report, 2018 says that it “is neither necessary nor desirable at this stage”<sup>15</sup>. But now in 2023, it's time that we re-think about the same.

## 2- Exploitation of personal laws

The usage of personal laws is tremendously misused by some people. This has been observed a number of times. People generally tend to find loopholes to get out of the mess they create for themselves. Bigamy is punishable in our country except in one religion, so people who want to get married twice or more than that, convert themselves to that specific religion so that they aren't punished for the offense. This way it becomes extremely discriminatory and painfully difficult to differentiate the sense of rightness.

## 3- Equality

If UCC comes into effect, one single law would be applicable to everyone. This gives a sense of equality to everyone without any discrimination. Before the amendment of the Hindu law women could not hold any property, though now it's changed. For example, now in Maharashtra, women would have equal rights to hold property as a man. Some of the laws are still derogatory towards women. For instance, Muslim men are allowed to get married more than once while women in the same religion are not allowed to do the same. This needs to change where laws for every gender are equal and should be treated equally as men. A lot of personal laws are in the favour of men which shows how dominating is the patriarchal society even in today's world.

## 4- Actual secularism

India is a secular country which means that our country has no religion. Our country does not interfere with the relationship of man and God. There is a common misconception that UCC will violate articles 25 and 26 of our constitution. Article 25

---

<sup>15</sup> Flavia Agnes writes: Law Commission's report on Uniform Civil Code — undesirable and unnecessary, <https://indianexpress.com/article/opinion/columns/law-commissions-report-on-uniform-civil-code-undesirable-and-unnecessary-8680821/> (last visited Oct 9, 2023).

guarantees freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens and Article 26 gives us freedom to manage religious affairs<sup>16</sup>. Article 44<sup>17</sup> is based on the concept that there is no necessary connection between religion and personal laws in society.<sup>18</sup> There is no religion that intentionally contorts. The main of UCC is to remove derogatory and discriminatory laws and provide equal and logical laws according to today's time.

### 5- Invariability

UCC's motive is to provide uniformity in all the personal laws so that there is no prejudice between any laws and hence no discriminatory laws would exist. In this way, equal status and consequences would apply to everyone. Derogatory laws would be removed and rational laws would be in place because some existing personal laws are truly questionable. This is extremely important for the development of our country. There would be no existing loopholes where people could get out of using them.

### 6- Promotes liberalism

There is a false dichotomy that UCC will prevent liberalism and secularism. UCC does not have to supersede customs and practices that citizens choose. There will be choices. There would be liberty to practice their faith and religion as the state would interfere in the religion and thus would not be in violation of Articles 25 and 26<sup>19</sup>. The laws that are against the social justice of the society would be removed that doesn't mean that people wouldn't be allowed to practice their own religion.

## CONS OF UCC

### 1- Execution

There is no conventional way to actually implement UCC. It is going to create a lot of chaos if the execution of UCC is not done in a systematic manner. People might be confused as to what uniform way would be followed. According to Hindu law, marriage

---

<sup>16</sup> Thiruvengadam, *supra* note 7., at 973.

<sup>17</sup> *Id.*, at 973.

<sup>18</sup> Akshaya Chintala, Comparative analysis of India and countries that follow the Uniform Civil Code, blog.ipleaders, (Oct. 10, 2023, 9:29 PM), <https://blog.ipleaders.in/comparative-analysis-of-india-and-countries-that-follow-the-uniform-civil-code/>

<sup>19</sup> Thiruvengadam, *supra* note 7., at 973.

is a sacrament<sup>20</sup> but according to Muslim law is a contract<sup>21</sup> and no laws of religions can be imposed on each other. There is no clarity on subjects like these. Hence people are confused as to what uniformity would be provided under the UCC. Here, it is vital that a systematic way is implemented with logical reasons for the justification. There should be adequate design for presenting UCC with a clear knowledge of customs.

## 2- Diversity

Our country is a diverse country. There are different religions and a number of languages in our country. It is a multi-cultural country. We need communal harmony in our country to live without any fear and anxiety. Now the question is when UCC would be implemented, would it be a dig at the diversity of the country? Unfortunately, political parties might use the disparity of religions and caste to advance their political interests. This might create riots and chaos in the country. It would obviously be a task to implement UCC in such a diverse country.

## 3- Mass perception

The Muslim community feels that their right to religious practice would be taken away and therefore Mr. Mualana Wali Rehmani, General secretary of All India Muslim Law Board said “Uniform civil code is divisive, and will lead to social unrest and that it is against the spirit of constitution which safeguards the rights for the citizen to practice their culture and religion”<sup>22</sup>. Therefore, proper implementation and a clear conversation are required so that this community does not feel attacked.

## ROLE OF JUDICIARY:

The most important question is whether constitutional laws are supreme or personal laws are supreme. And if the Supreme Court can interfere in the personal laws? We can understand this with the cases.

<sup>20</sup> Monika Rathore et al., *HINDU MARRIAGE IS A CONTRACT OR A RELIGIOUS SACRAMENT*, 10 332 (2022).

<sup>21</sup> Did you know: Muslim marriage is a contract. - Nyaaya, <https://nyaaya.org/nyaaya-weekly/did-you-know-muslim-marriage-is-a-contract/> (last visited Oct 9, 2023).

<sup>22</sup> All India Muslim Personal Law Board rejects govt move on uniform civil code, <https://www.thenewsminute.com/news/all-india-muslim-personal-law-board-rejects-govt-move-uniform-civil-code-51294> (last visited Oct 9, 2023).

➤ **Mohammed Ahmed Khan vs Shah Bano AIR 1985 SCC 945<sup>23</sup>**

This was a game-changing case and hence called the landmark in the field of UCC. Mohammed Ahmed Khan had given a triple talaq to his wife, Shah Bano Begum. After the divorce, she claimed maintenance under Section 125 of CrPc<sup>24</sup>. There is a provision for all the women in the country to claim maintenance under this particular section. Her, Husband filed an appeal against the maintenance. The verdict was given by the five bench of judges, Y.V. Chandrachud (Chief Justice), Rangath Misra, D A Desai, O Chinnappa Reddy, and ES Venkataramiah. Supreme Court clearly stated that even Muslim women are entitled to protection under section 125 of CRPC<sup>25</sup>. Also, they added that if the uniform civil code comes into existence it will bring national integration to our country and during such conflicting ideologies, it would provide a better solution. Such a progressive verdict was overturned by passing the Muslim Women Act. This act stated that Muslim Women cannot claim protection under section 125 of CRPC<sup>26</sup> and cannot demand maintenance under CRPC.

➤ **State of Bombay vs. Narasu Appa AIR 1952 BOM 84<sup>27</sup>**

A man was punished for bigamy under the Bombay Prevention of Hindu Bigamous Marriage Act, of 1946<sup>28</sup>. The convict filed a case questioning the validity of such an act saying that the punishment and the law were against his religion. At that time Hindu marriages were considered sacramental union and marriage under Hindu religion was for the procreation of a male heir, which is basically a religious practice or belief. If his son doesn't do his last rites, he won't get any salvation. Hindu religion at that time allowed marrying a second woman stating that, if the man is not getting a son from his first wife, then that person can marry for the second time. The court rejected all the arguments and declared the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 valid and punished the person for polygamy.

<sup>23</sup> Mohammed Ahmed Khan vs Shah Bano AIR 1985 SCC 945

<sup>24</sup> Government of India, *The Code of Criminal Procedure, 1973*(1973).

<sup>25</sup> *Id.*, at 975.

<sup>26</sup> *Id.*, at 975.

<sup>27</sup> State of Bombay vs. Narasu Appa AIR 1952 BOM 8

<sup>28</sup> Bombay Prevention of Hindu Bigamous Marriages Act, 1946



➤ **Shayara Bano Vs. Union of India AIR 2017 9 SCC 1 (SC)<sup>29</sup>**

In this case, Shayara Bano's husband pronounced triple Talaq and divorced her. Shayara Bano filed a Writ petition in the Supreme Court against it and challenged three practices of Muslim Law. Those were, Nikah Halala, Polygamy, and Talaq e Biddat. She said that these practices are discriminatory and derogatory. All India Muslim Personal Law Board said that Muslim law cannot be challenged constitutionally because Muslim law isn't codified yet, hence it should get protection under Article 25 of the constitution. Supreme Court declared Talaq e Biddat or triple talaq as unconstitutional with a majority of 3:2. They also added that it wasn't a vital practice and if they wanted to declare Nikah Halala and polygamy as unconstitutional, the correct authority would be the parliament.

**ANOTHER ALTERNATIVE TO UCC?**

In a diverse country like India implementation of UCC is definitely difficult than it seems. UCC will be introduced to remove the disparity between the personal laws and to eradicate derogatory and discriminatory laws. Before introducing UCC, filtering out the regressive aspects of the personal laws and bridging the gap that these laws have can be a head start as that might help the people ease out a bit. After people are comfortable with it, then introducing UCC would be easier. If at all, people are not really happy with UCC and there is a great opposition to it, maybe reforming the personal laws or codifying such a law which is an amalgamation of all personal laws except the part that is restrictive, thereby providing equal status to everyone. Even in the report 21<sup>st</sup> Law Commission, "if there is no consensus on UCC, the only way to move forward would be to make changes in the personal laws but ensure that the personal laws do not contradict with the fundamental rights guaranteed under the Constitution of India<sup>30</sup>. They also suggested that to remove all the problematic laws and make them gender-just.<sup>31</sup>

**CONCLUSION:**

---

<sup>29</sup> Shayara Bano Vs. Union of India AIR 2017 9 SCC 1 (SC)

<sup>30</sup> thewire, <https://thewire.in/rights/ucc-bogey-muslim-bashing-electoral-needs-flavia-agnes> (last visited Oct 9, 2023).

<sup>31</sup> Government of India Law Commission of India Consultation Paper on Reform of Family Law 31 August 2018, archive.pib.gov, <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf>, (last visited Oct. 10, 2023).

Applying UCC is extremely crucial for the evolution of our country. Some personal laws that are restrictive in nature shouldn't exist in today's world. Uniformity will limit the space for arbitrariness and have equal treatment of law for everyone in the country. However, there is a lack of awareness and information regarding UCC as there is no manifesto regarding UCC. The government should take initiatives for the correct spread of information. Maybe in the start, the government should not apply rigid laws that might hurt the feelings and sentiments of the people. Starting with subtle application and then time to time Amendments in the law would make a great difference. UCC will seal all the loopholes that the people take advantage of and will not only remove variations of the personal laws among different religions but also have the same set of laws for everyone.<sup>32</sup> This is equality. People should understand that laws and religions are two different things and they shouldn't feel sentimental about things that are practical and essential for the development of our country. UCC is not only the equality between men and women but it's also about the equality of the country as a whole. UCC will not be warmly welcomed by the people but it is a need of an hour because our country is ready for the change.

#### REFERENCE:

- Bombay Prevention of Hindu Bigamous Marriages Act, 1946
- Shayara Bano Vs. Union of India AIR 2017 9 SCC 1 (SC).
- <https://legalaffairs.gov.in/>.
- <https://lawmin.gov.in/>.
- <https://legal.gujarat.gov.in/>.
- <https://doj.gov.in/>.

---

<sup>32</sup> bbc, <https://www.bbc.co.uk/bitesize/topics/znbrpg8/articles/z42kxhk>, (last visited Oct. 10, 2023).

