

# Uniform Civil Code Isn't a Distant Dream

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## ABSTRACT

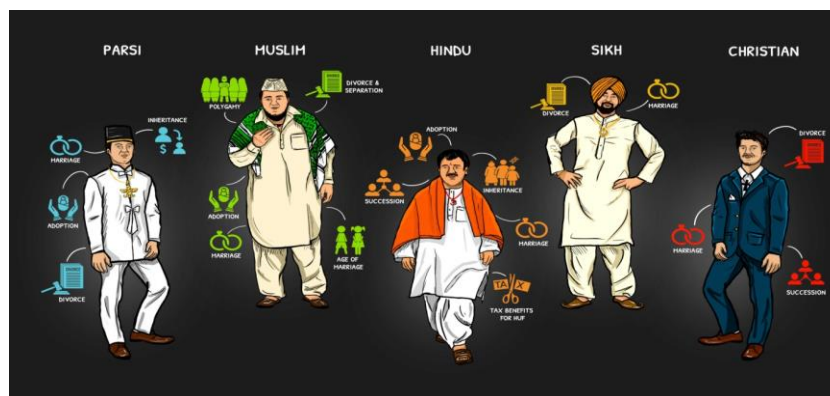
When looking at the Article 44 of the Indian constitution gives us an insight into equality in the aspects related to civil matters. But currently, we are having personal laws in different religions. These laws are usually contradictory to the basic law of the country, we can see this difference when it comes to Hindu and Muslim personal laws concerning marriage, Divorce, Adoption of children, and Maintenance of women after divorce.

This article will enhance the understanding as well as the outcome of UCC if brought into force. It will also help us to know whether there is a need to bring this uniformity. If yes how should it be implemented so that it does not violate any Fundamental right that is provided by our constitution?

This article will also focus on the statement of not bringing UCC force and also touch upon areas of alternatives. It will also reason why UCC should remain a goal as a Directive principle of state policy and not common law.

By understanding both sides of UCC it helps the reader to analyze the benefits of UCC and the need for UCC for a better India

**Keywords:** Article 44, Divorce, Directive Principle Of State Policy (DPSP), Muslim personal laws, Adoption and Maintenance



## INTRODUCTION

Today, Uniform Civil Code herein after mentioned as UCC is a trending issue in India as every one of us has different views on it . The country is divided into those who favor and those who do not favor UCC. However, it is necessary to understand the basic objective and reason behind uniform civil code as envisioned by our constitution makers. They were well aware of the diversity in India and knew that there would come a time when personal laws will demonstrate their arbitrary nature in the name of religion for matters which are common and do not necessarily connected to religion. Whether it is professing , practicing, or propagating religion, when it comes to nation's interest, everything else is secondary. Religious practices that do no good and instead harm us have no place to be followed in the name of religion. We still assume UCC as a dream when it comes to country like India with a huge population and diversity of uniqueness. Lets explore a dream which is not at distance anymore if we can see it from the eyes of reality in the form of ideas, solutions, creativity to bring UCC as acceptance.

## HISTORY OF UCC

The concept of UCC was first introduced in France. It is now seen in many countries as a medium being adopted to bring uniformity but in India UCC originated from the British Government's 1835 report on colonial India, in which it suggested uniformity in codification of Indian law. The Britishers never touched the personal issues related to the religion as they were more bothered about having financial and administrative powers in their hands, so that they can maintain their control and rule over India. But in the year of 1772 Warren Hastings tried to bring the personal laws under one umbrella but it was so arbitrary that it created a fight, in this process the country suffered a lot as it created communal riots, Indian Rebellion of 1857 was a later result. Due to this it ended up as an uncontrollable position and financial loss for British East India Company. After Queen's proclamation declaring that it will not deal with any personal law matter of the country. Slowly there was no attempt further but we waited a long time understanding whether it is the right time for bringing of UCC which still remains unanswered.

But we can see this uniformity only in criminal laws and law of contracts, but not in civil matters (family law). Still, we do not have uniformity even after 76 years of independence, which will be celebrated on August 15, 2023 this year. It is not the first time UCC has been brought in any country, but many countries already have UCC. It is worth noticing that countries like United States, Turkey, Indonesia, Egypt, Ireland, France and our neighboring countries including Pakistan, Bangladesh, Malaysia have implemented it. We can observe that its effect is different in every country because the procedures followed for its implementation differ.

## 3. UNDERSTANDING OF UCC

### 3.1 UNIFORM CIVIL CODE

Uniform civil code is described under Part IV of Indian Constitution under Article 44 as

*“The state shall endeavor to secure for the citizens a uniform civil code throughout the Territory of India”<sup>1</sup>*

This article 44 might appear to be so simple but it comes with various conditions. Our makers of the constitution did not keep UCC under part III of constitution and it was not declared to be a fundamental right the state cannot enforce it. The line says that the state shall endeavor which means the state cannot impose it. Until it gets the willingness of its citizen for its approval of bringing UCC into existence it does not have any role and remains only as a vision and mission under the directive principle of state policy.

Mere the fact that India is a diverse country it does not justify that uniformity cannot be brought, if people start to consider national interest and government considers public welfare first, the solution to this lies in its coordination and cooperation of various diverse groups religion community of India which should come within ourselves.

### 3.2 Personal laws versus justice and equality

Personal laws are just a hindrance when it comes to justice or equality. The mere fact that a person belongs to a particular religion and is under the personal laws of that religion means that even if the laws are unjust, the person cannot claim justice. For instance, when we compare Hindu and Muslim personal laws, we find differences in marriage, Divorce, Adoption and Maintenance. While a Hindu is allowed to marry and have only one wife, a Muslim man is allowed to marry and have four wives. The procedure of divorce is also different under shariah law (Muslim personal law). Divorce can be initiated from both sides. When it comes to the husband, he can divorce his wife by talaq-ul-sunnat, talaq-ul-biddat, Ila and zihar, while the wife can divorce her husband by talaq-i-tafweez, lian and khula and sometimes even through mutual agreement that is Mubarat. However in Hinduism, marriage is considered a sacred tie that cannot be broken. Additionally, a Muslim woman has only the right to claim maintenance until the

<sup>1</sup> Dr.J.N.Pandey, Constitutional law of India, Central Law Agency

end of the Iddat period( under sec 3 of muslim women act 1986), whereas a Hindu can claim maintenance until she or her husband dies under sec 18 of Hindu adoption and maintenance act 1956. The fact that a particular women is muslim means she is far away from the rights of Hindu women, or vice versa.

Instead of discriminating on aspects that are secular in nature, which is unreasonable, there demands uniformity. One might question why, even after so many years , this uniformity is not brought into force.

### 3.3 Reason for non implementation

The justification for delay is that this uniform law cannot be imposed by the state; instead, it should be agreed by all communities. The State has to get suggestions from everyone .The 22<sup>nd</sup> law commission<sup>2</sup> started to collect responses from the common man and has received 80 lakh response till June 14 2023. However the timeline has been extended to 28 July 2023, yet it received only 85 Lakh responses . This is the practical difficulty when it comes to UCC under Article 44 of Indian constitution and a negative aspect because the State cannot use its power to bring UCC into force. The Process of taking suggestions is highly time consuming and even if one community disagrees with it, then UCC as a goal cannot be achieved, even if it is for better India.

### 4. UCC as a solution:

If UCC comes into existence as a law in force, it would bring a change that is advantageous for the nation.

- It will remove all discriminating , unreasonable and derogatory laws.
- It will be easy to grant justice, and the interpretation of law will be the same for everyone
- The Application of laws on a uniform basis makes the administration of law easier, and peace and harmony can be maintained.
- If any amendments are required, they can also be done with ease.
- Removal of social evil practices in the name of religion.
- Women gets a new source of protection under this law.
- Unnecessary different acts for same aspects can be reduced .
- It saves the time of Government and judiciary. Speedy justice can be given by the courts .

UCC is not a problem, but its implementation has become an issue. The Law commission sees UCC as a solution, but common people are actually measuring UCC on the scale of religious freedom and sentiments. Uniformity does not mean your freedom will be taken away. If our constitution gives us equal rights, then why don't we have the same law, when every one of us come under protection of it. At this moment, UCC has become a need that is required forever.

If UCC does not come into existence , then more cases like Sarla Mudgal v UOI, Ahmed khan v Shah Bano Begum, shayara Bano v UOI will demand their right against personal laws in the form of UCC. More cases will put us in confusion when providing justice, when personal laws are contradictory . we are already late, and now if it is right time, then it should be done with due care.

### 5. NEGATIVE ASPECTS OF UCC

However we can find views against UCC and they are also valid at there stand. Yes every aspect has two sides one is good and other is bad. UCC bad side is that

- It might hurt the sentiments of the people
- There will be a situation which may make few groups or communities to feel inferior.

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<sup>2</sup> Explained Desk of The Indian Express, June 18 2023, Law commission seeks views on Uniform Civil Code, <https://indianexpress.com/article/explained/explained-law/law-commission-uniform-civil-code-8671382/>

- Country might not be socially or at the societal front stable.<sup>3</sup>
- There can be increase in violence between two or more communities.
- There is no guarantee of UCC will be helpful because minute negligence can make the nation to pay a lot for it.
- There is no clarity provided with respect UCC application and implementation.
- It is time consuming process
- Practical difficulties are more when it comes to making UCC as law
- Public might not support and hence can lead to difficulty in execution
- Less awareness and more confusion about UCC are threat to harmony and peace in the country.

Still these all negative aspects will be nullified if UCC is thought and implemented carefully. UCC might appear to be a big step which many may not accept. There always exists an alternative or substitute for anything. In place of UCC additional acts can be passed against the unreasonable personal laws. For instance ban of Triple Talaq<sup>4</sup> and an Act was passed for it that is Muslim women[ protection of rights on marriage]2019. So like these acts can be passed by the legislature for changes. But it does need a lot of patience, time and smart work at regular basis. At last we will always end up with demand or solution called UCC.

## 6. CRITERIA FOR IMPLEMENTATION OF UCC

When the BJP<sup>5</sup> in its election manifesto made a promise to bring UCC if they win the election, There win can also be seen as general public acceptance. If UCC comes in effect, it will not amount to imposition because steps have been taken to receive suggestions. For UCC to be successful in India, Government has to take proper steps. The first and most important thing is Government has to provide clarity on UCC so as to remove further ambiguity, such as;

### 6.1 To what extent uniformity is going to be brought. A border line should be provided so that it does not violate fundamental rights and people sentiments:

This means that the government should be well aware that India is a diverse country with various communities, religions, minor groups and a home for many tribes. It should also understand that there exists many customary practices still followed and bringing all these in one umbrella is a very big task for the government because if there is no pre determined idea or a border line to what extent it wants to bring uniformity as there might be contradiction and complexity arising when bringing UCC.

### 6.2 To what extent it impacts the country both indirectly and directly:

Mere the fact that the extent to which uniformity is described might not serve as a solution for the consequences or the effect which this uniformity can bring. The government has to understand that the extent of its application can effect the country and various citizens directly as well as indirectly. Hence it should taken cautiously so that it can bring positive effect. Sometimes it may all raise a problem to those tribes or minor groups whose sentiments can be impliedly hurt which can even cause feeling of inferiority.

**6.3 To provide the reason and basis for uniformity on particular aspect that strongly touches religion. It may involve removal of Any rule and practice from a personal law or any additions made.** The government cannot bring uniformity on the basis of unreasonable, not justifiable grounds. UCC can be applied by either additions required in all personal laws or removal of some practices

<sup>3</sup> How UCC impact personal laws of different religions, <https://www.indiatoday.in/interactive/immersive/ucc-uniform-civil-code-india>

<sup>4</sup> *Shayara Bano v Union of India*, <https://www.scoobserver.in/cases/shayara-bano-union-india-triple-talaq-case-background/>

<sup>5</sup> Sravasti Dasgupta, Jul 03 2023, Election Rhetoric or real plan?

<https://thewire.in/politics/election-rhetoric-or-real-plan-opposition-raises-questions-as-bjp-broaches-ucc-yet-again>

belonging to few personal laws. So if any deductions are made, those groups affected might question why there is effect in their personal laws and not other religious groups. At this scenario government must be ready to verify as well as justify its decision.

For instance let's take marriage. We know the procedure of marrying is different among various religions and tribes. Here uniformity can be brought by asking all religions to register. In the terms of age limit, uniformity can be established by setting minimum age for marriage at 18 years for girls and 21 for boys to marry regardless of their religion. It can also eliminate bigamy. However, uniformity cannot be achieved in terms of different procedures and beliefs regarding specific gods, and it is not possible to make all religions devote on an equal basis. The misconception of complete change in personal laws should be removed. The UCC aims to replace personal laws which are inconsistent with each other. There might be some personal laws which are same in all religions and are fair. Hence they do not come under this scope. But if the reason for removal of certain personal law of a religion which strongly touches the freedom of religion is justifiable then it is valid because no fundamental right is absolute and comes with restrictions. Nation's Interest comes first before Individual rights. UCC is that aspect if implemented then if benefits arise, it will be enjoyed by all citizens and if any problems arise we will suffer together so that we can come out of it.

## 7. RECOMMENDATIONS

Government can work in phases to make UCC a success;

### 7.1 PHASE I: AWARENESS

People should be educated about UCC. They should be aware so that they do not get sudden shock and in the name of freedom of religion they do not come up with protests and violence.

We can see this in the three farmers bill case, citizenship Amendment Act and NRI confusion. Government should create a platform for the removal of complicated and erroneous information out from the minds of general public spread by various political parties, social platforms, news channels. Government should try to bring rules and guidelines when it comes to UCC information in public should be authentic. Government can join up with various NGOs, social welfare groups, news platform and social media platform so that all the steps taken towards UCC implementation can be known to common people which might reduce conflicts. Government can also create an App like Arogya setu during time of COVID and post all the information which can reduce conflicts and protests. This app can be used for public suggestions and new ideas can be welcomed by providing a message section to it. It can also stop this politics played not even considering the people's and nation's welfare.

### 7.2 PHASE II: ONE STAGE AT A TIME

There are mainly four aspects in which uniformity is required. So Government can experiment uniform code slowly, starting with one aspect like adoption or maintenance for divorced women. After its success then moving to another aspect. Which means Government can put its hands on those aspects which are less complex like marriage registration for all. This means small steps at starting, aspects those do not involve any overlapping of religion sentiments, effects the opinion of the minor groups, which can be accepted by all can be taken into consideration first which can solve half of the problem as people will observe the procedure and get used to new changes slowly which might not affect them in long run to shift their views. If it creates favorable results then it can lead to a belief and strong connection system between the public and government.

### 7.3 PHASE III: FINAL SHOT

slowly with incremental changes, when people are adjusted and comfortable with it. UCC can be implemented in one go after evaluating and correcting mistakes from Phase II. This means Government has to create different channels for easier implementation of Phase II and some period gap should exist between Phase II and III. At the last step it requires more efforts as complex aspects are to be classified and simplified so that UCC comes into existence. During this step the Government has to be extra cautious and serious.

Comparison of process of implementation of different countries and their outcome can also be taken as a step to avoid those mistakes which others did. We can adapt to all those good steps of different nations with modification to suit our country's situation just like how our constitution was formed.

It should be noted that success of Phase I and II affects Phase III, but failure of Phase III rarely affects the previous phases. Hence the riskiness of this is reduced to some extent. But it is a requisite that the first and second phases are a pass to move. The most important phase is PHASE I and it's the basic foundation which the Government has to achieve with favorable outcomes.

### CONCLUSION

UCC can appear as a goal under Article 44 of the Indian Constitution but it always remained as a requirement which was always kept aside for various reasons. The prolonged statement which is always given is that "it is not the right time to bring UCC". There can be many alternatives but are only short-term remedies which will always demand for another alternative at the end we will come up with the same question of UCC. Hence UCC must be made sure to function and remain stable for a long span of time. I would say UCC was never the need for this particular hour; instead, a demand which was important and remained as a requirement for so many years. Just the fact it was shaped in the form of Government's goal, we saw only few or no initiatives. Any time it might be, it has both sides but no one is trying to bring UCC into existence and only considering completely one side of it will lead us to trouble. Mere discussions, debates, speeches on UCC do not bring actions until steps are taken. Hence UCC has never been the need of this particular hour; instead, it only demanded for steps for implementation for so many decades which never came up. Now at present India requires unity to implement uniformity.