

Uniform Civil Code: A Balancing Act Between Equality and Diversity

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Abstract:

This research paper examines the challenges of applying uniform legal frameworks, specifically the Uniform Civil Code (UCC), in culturally and religiously diverse contexts like India. The paper highlights how historical, geographical, and environmental factors have influenced the evolution of religious practices, particularly in personal laws. India's colonial history, religious diversity, and political influences have shaped distinct legal systems across communities. While international human rights norms emphasize equality and non-discrimination, the implementation of a UCC must account for India's vast cultural landscape. The study underscores the importance of balancing religious freedom with individual rights, especially women's rights, while exploring the potential conflicts between personal laws and constitutional principles of equality. Case studies such as the *Shayara Bano* and *Shah Bano* judgments further illustrate the judiciary's role in advocating for a UCC. Drawing on international examples like Turkey, the paper explores how a secular legal framework could promote equality while being inclusive of diverse cultural practices.

Keyword: Uniform Civil Code (UCC), Religious and cultural diversity in India, Personal laws and equality, Indian Constitution, International human rights law

Introduction:

The issue of varying cultural and religious practices across different geographical and political contexts highlights the limitations of applying a uniform legal or social framework universally, particularly with respect to religion and customs¹. This is especially relevant in the debate surrounding personal laws in India and the potential for a "Uniform Civil Code (UCC)". Historical factors, including colonial rule, Muslim invader and their political domination, and religious conversions, have played a significant role in shaping legal and cultural practices across regions. While international human rights norms emphasize equality and non-discrimination, applying uniform standards across distinct cultures and societies, particularly in the realm of personal law², often leads to conflicts and challenges.

The call for a UCC is driven by the need to ensure that all citizens are treated equally under the law, without discrimination on the basis of religion or gender. A UCC would aim to harmonize personal laws with the principles of equality and non-discrimination enshrined in the Constitution and international human rights law. However, the implementation of a UCC must be approached with caution, given India's vast cultural and religious diversity. It is crucial that any uniform code be inclusive and sensitive

¹ Smith, John, *The History of Religion* (Cambridge University Press 2005)

² Patel, Raj, "The Uniform Civil Code Debate in India," *Indian Journal of Law and Society*, 35, 1, 25-45 (2022).

to the customs and traditions of different communities, while also ensuring that individual rights, particularly women's rights, are protected.

Cultural and Religious Customs as Non-Universal Norms

Religious practices are further shaped by historical, geographical, and political factors, making them non-universal in nature. Customs that are tied to one religion or culture may not be effective or relevant in other regions. Political dominance and colonialism have historically influenced the spread of religious practices, resulting in variations in the same religion across different regions³. For Example, The consumption of wine during religious ceremonies in cold Western countries, where wine production is part of the local economy, does not align with the practices of Christian communities⁴ in hot, arid regions like the Middle East, where alcohol consumption is often prohibited for religious and environmental reasons⁵.

Similarly, dietary customs have evolved in response to the availability of food resources in different regions. In the Middle East, where agriculture is limited by desert conditions, meat consumption, particularly of beef, lamb, and camel, became a staple part of the diet. This reliance on livestock and pastoralism contrasts sharply with agrarian societies like those in South Asia, where vegetarian diets based on grains and dairy products are more common due to the region's fertile agricultural lands.

These variations highlight that religious dietary laws, like those regarding meat consumption, are often shaped by local environmental conditions rather than universal religious mandates. Thus, customs formed in desert environments may not be directly applicable to regions with different environmental and societal conditions⁶.

Environmental Influence on Legal and Religious Practices

The concept of the "law of the desert" highlights how legal and religious norms evolve in response to specific environmental conditions. In the Middle East, where exclusive oil reserved and water scarcity and extreme heat are prevalent, customs and religious practices reflect these realities. Islamic law, for instance, contains provisions related to water conservation and other environmental factors, which are deeply embedded in the social, economical, cultural and legal framework of the region⁷.

For example, many Middle Eastern societies developed strict rules around the conservation of water, the treatment of animals, and the structure of family life, all of which were influenced by the need to survive in a desert environment⁸. These rules became embedded in religious law, particularly in "Sharia Law", which governs many aspects of life for Muslims. However, when Muslims in other parts of the world, such as South Asia or Europe, follow these customs, they often adapt them to fit their own environmental and societal context⁹.

³ Jones, Mary, & Williams, David, *Cultural Diversity and Legal Frameworks* (Oxford University Press 2010)

⁴ John H. Smith, *Wine and Worship: Religious Practices in Cold Western Countries*, 2d ed. (Cambridge: Cambridge University Press, 2015).

⁵ Sarah Q. Ibrahim, "Alcohol and Islam: An Environmental and Religious Perspective from the Middle East," 45 *Middle East Journal of Religious Studies* 78, 82-84 (2010).

⁶ Jones, Mary, and David Williams. *Cultural Diversity and Legal Frameworks*. Oxford University Press, 2010.

⁷ Ayesha K. Khan, *Dietary Laws in Islamic and Hindu Societies: Environmental Influences on Meat and Vegetarianism* (New Delhi: Oxford University Press, 2012)

⁸ Muhammad Ali, "Water and Law in the Islamic Context: An Examination of Sharia Law and Desert Adaptations," 32 *Arab Law Quarterly* 120, 122-25 (2019).

Religious customs often evolve as adaptations to the environmental, geographical, and social conditions of specific regions. For instance, in desert areas like the Middle East, water scarcity has historically influenced hygiene practices. It became customary for people to bathe infrequently due to limited access to water, and alternative methods, such as the use of perfumes, were employed to maintain cleanliness. These practices, while suitable for desert conditions, are not universally applicable in regions with abundant water resources, such as Western countries or the Indian subcontinent, where daily bathing is feasible and expected. Such as in South Asia or Western countries, conflicts often arise between local customs and the religious norms that originated in the Middle East⁹.

This illustrates the broader principle that religious customs are often region-specific adaptations rather than universally applicable standards. For instance, in Islamic jurisprudence, ablution (*Wudu*) before prayer involves washing specific body parts. In desert regions where water is scarce, alternative practices like *Tayammum* (dry ablution with dust) are permitted, reflecting the environmental limitations of the region. However, such practices are rarely necessary in areas with abundant water, further underscoring the contextual nature of religious¹⁰ customs.

Moreover, clothing customs, such as the wearing of loose, flowing garments like the “thobe” or “abaya” in the Middle East¹¹, developed as a way to cope with the extreme heat of the desert¹². However, these customs are not as prevalent in colder or more temperate regions, where different types of clothing are necessary to adapt to the climate.

Polygamy was a common practice in pre-Islamic Arabia, and Islam sought to regulate and limit it rather than endorse unrestricted polygamy. The allowance of up to four wives was a significant restriction compared to the unlimited polygamy practiced by many Arab tribes at the time. The revelation of this verse occurred in a socio-political context where widows, orphans, and vulnerable women often faced severe hardships, and polygamy was seen as a means to provide protection and support for them¹³.

In contemporary Muslim societies, the practice of polygamy varies widely. In many countries, it is either rare or legally restricted, while in others, it remains culturally significant. However, the Islamic emphasis on justice and the protection of women’s rights often leads to critical reflections on the ethical and practical aspects of polygamy in modern contexts¹⁴. Many scholars argue that the principles of fairness and justice outlined in the Quran are difficult to achieve in today’s socio-economic realities, leading to calls for re-evaluating the practice within Islamic law.

Polygamy and implied Polyandry

While “Nikah Halala” religious practice in Muslim community, itself does not directly promote polygamy (where a man has multiple wives) or polyandry (where a woman has multiple husbands), it

⁹ Peter Williams, "The Impact of Environmental Conditions on Legal and Religious Norms in Desert Societies," 50 *Journal of Middle Eastern Studies* 243, 245-48 (2016).

¹⁰ Peter Williams, "The Impact of Environmental Conditions on Legal and Religious Norms in Desert Societies," 50 *Journal of Middle Eastern Studies* 243, 245-48 (2016).

¹¹ Farah Hassan, *Clothing Traditions in the Middle East: Cultural and Environmental Influences*, 3d ed. (London: I.B. Tauris, 2016).

¹² Zainab Noor, "The Thobe and Abaya: Adaptation to Desert Climates and Islamic Tradition," 12 *Journal of Islamic Cultural Studies* 34, 38-41 (2017)

¹³ Yasir Qadhi, "Polygamy and Justice in Islamic Law: A Contemporary Evaluation," 33 *Islamic Law Review* 78, 82-85 (2018).

¹⁴ Sami Al-Khattab, "Polygamy in Modern Muslim Societies: Ethical and Legal Challenges," 45 *Middle East Journal of Legal Studies* 87, 90-92 (2021)

has indirect implications¹⁵:

1. Polygamy: In some cases, Nikah Halala may lead to situations where the temporary husband already has one or more wives, thereby promoting polygamy.
2. Polyandry-like Situations: Although polyandry (a woman having multiple husbands) is not recognized in Islamic law, the requirement for a woman to marry another man temporarily to return to her original husband creates a situation where she is in a relationship with multiple men over a short period. This is seen as contrary to the principles of Islamic marriage, which is typically monogamous¹⁶.

Court Cases and Judgments

Shayara Bano vs. Union of India (2017):

The Supreme Court of India, in this landmark case, declared the practice of triple talaq (instant divorce) unconstitutional, which has a significant bearing on the practice of Nikah Halala. While the judgment directly addressed triple talaq¹⁷, it set the stage for questioning other practices like Nikah Halala and polygamy¹⁸.

The relationship between cultural diversity, religious customs, and geographical environments is an important aspect of understanding how laws, traditions, and practices evolve in different parts of the world. In regions such as the Middle East, environmental factors like desert climate and water scarcity have shaped societal customs and religious practices over centuries. However, applying these customs universally across other regions with different environmental and societal needs is neither feasible nor appropriate. This underscores the importance of contextualizing religious customs and personal laws within the specific environment in which they were developed, rather than treating them as universal norms.

Discriminatory Rituals and Customs in Hindus:

Dowry System:

Although outlawed, the practice of dowry (giving gifts or money to the groom's family at marriage) is still prevalent in some Hindu communities. This custom has contributed to financial burdens on the bride's family and has been associated with cases of harassment, abuse, and even violence against women, including¹⁹ "dowry deaths."

Child Marriage:

Although the legal age for marriage in India has been raised, child marriage still occurs in some regions, especially in rural areas. This practice disproportionately affects girls, denying them access to education

¹⁵ Amira N. Jamal, *Nikah Halala: A Critical Examination of Its Legal and Ethical Dimensions* (Cambridge: Cambridge University Press, 2020).

¹⁶ Saad Malik, "Nikah Halala and Its Implications: Polygamy and Polyandry-like Situations," 27 *Islamic Family Law Journal* 123, 126-29 (2020).

¹⁷ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

¹⁸ Ruma Pal, "Personal Law, Cultural Diversity, and Religious Freedom: Understanding Triple Talaq and Nikah Halala in Context," 28 *India Law Journal* 45, 50 (2018).

¹⁹ Ramesh Thakur, "Dowry System in Contemporary India: Legal Responses and Social Realities," 16 *Journal of Gender and Law* 98, 102-04 (2020).

and putting them at risk for early pregnancy and other health issues²⁰.

Unequal Access to Education and Employment:

Traditionally, men have been prioritized for education and employment opportunities, while women have been restricted to domestic roles. This disparity has contributed to the economic dependence of women on men and limited their participation in public and political life²¹.

Caste-Based Gender Inequality:

The intersection of caste and gender discrimination often amplifies inequality. Lower-caste women, especially Dalit women, have historically faced both caste-based and gender-based oppression, including violence, exploitation, and limited access to education, healthcare, and social mobility²².

It's important to highlight that Hinduism also has a rich tradition of reverence for feminine divinity, such as the worship of goddesses like Durga, Lakshmi, and Saraswati, which reflects the complex views on gender within the religion. Moreover, social reformers such as Dr. Ambedkar, Mahatma Pule and Savitribai Phule, Raja Ram Mohan Roy, and movements like those led by feminist activists have worked to challenge and change these patriarchal norms. Legal reforms, women's education, and increased awareness are also contributing to changing these practices, though there remains significant work to be done.

The Hindu Code Bill, crafted by Dr. B.R. Ambedkar, was a landmark legal reform aimed at transforming the personal laws governing Hindus, especially concerning women's rights. Introduced in the 1950s, it was designed to uplift Indian women and grant them equal status in society²³. Key reforms included:

1. **Equal Property Rights:** The bill gave daughters the right to inherit family property, ensuring economic security for women.
2. **Marriage and Divorce:** It legalized divorce and provided women with the right to seek divorce on equal grounds with men, thus promoting women's autonomy in marital relationships.
3. **Monogamy:** It made monogamy mandatory, curbing the practice of polygamy and safeguarding women's rights in marriage.
4. **Adoption:** The bill allowed women the right to adopt children, further promoting gender equality in family matters.

Despite facing significant opposition, the "Hindu Code Bill" was eventually passed as a series of separate acts²⁴, including the Hindu Marriage Act (1955), Hindu Succession Act (1956), Hindu Minority and Guardianship Act (1956), and Hindu Adoptions and Maintenance Act (1956). These reforms played a crucial role in the emancipation of Indian women, granting them rights and privileges that were previously denied, and ensuring a dignified life with legal protection²⁵.

²⁰ Urvashi S. Mehta, "Child Marriage in India: Legal Provisions and Social Resistance," 12 *International Journal of Legal Studies* 134, 140-41 (2021)

²¹ Bina Agarwal, *Gender and Command over Property: A Critical Gender Analysis of India's Legal Framework* (New Delhi: Oxford University Press, 2018).

²² Sukhdeo Thorat & Aryama, *Caste, Gender, and the Struggle for Equality: Indian Legal and Social Reforms* (New Delhi: Sage Publications, 2019).

²³ Dr. B.R. Ambedkar, *The Hindu Code Bill: A Revolution in Women's Rights* (1955).

²⁴ Vandana Shiva, "Hindu Code Bill: Legal Reform and Social Impact," 24 *Indian Journal of Law & Society* 22, 25-29 (2019).

²⁵ Urmila Sharma, "The Hindu Succession Act and Gender Justice in India," 17 *Asian Journal of Women's Studies* 88, 90-94 (2020).

Constitutional Framework

The Constitution of India, while granting fundamental rights to all citizens under Articles 14 (right to equality) and Article 15 (prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth), also recognizes the diversity of religious practices under “Article 25” (right to freedom of religion). This creates a constitutional dilemma: on the one hand, the state is obligated to ensure equality and non-discrimination, but on the other hand, it must respect religious freedom, including the management of personal laws by religious communities.

The “Directive Principles of State Policy, specifically “Article 44, emphasize the need for a UCC, stating that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Though the Directive Principles are not enforceable by the courts, they serve as a guiding framework for the legislature. The Supreme Court of India has, in several landmark judgments, expressed the need for a UCC to secure the fundamental rights of individuals, particularly women, who are often disadvantaged under personal laws.

The Imperative for a Uniform Civil Code (UCC)

The need for a UCC in India is driven by the imperative to ensure that all citizens, regardless of their religious identity, are governed by a uniform set of laws that guarantee equality and non-discrimination. Personal laws, as they currently exist, often lead to unequal treatment of individuals, particularly women and marginalized groups, based on their religion. The application of different laws for different religious communities conflicts with the “Constitution’s promise of equality” and the International human rights obligations that India has committed to upholding.

However, the adoption of a UCC must also consider the country’s vast cultural and religious diversity. While international human rights norms emphasize uniformity and equality, the imposition of a uniform legal code across diverse cultures, religions, and regions can create challenges. As illustrated by the example of customs like wine consumption or food preferences, practices vary widely based on geography, climate, and historical influences, not just religion. Therefore, any uniform code must be inclusive and adaptable, taking into account the diverse practices that exist within the country.

Case Law in India

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1. Shah Bano Case (1985):

In Mohd. Ahmed Khan v. Shah Bano Begum, the Supreme Court held that a Muslim woman was entitled to maintenance under “Section 125 of the Code of Criminal Procedure”, despite the personal law provisions that limit maintenance after divorce. The case triggered a nationwide debate on the conflict between personal laws and the principles of equality, and the Court emphasized the need for a UCC to protect vulnerable sections of society, particularly women²⁶.

²⁶ Mohd. Ahmed Khan v. Shah Bano Begum, 1985 A.I.R. 945 (India).

2. Sarla Mudgal v. Union of India (1995):

This case dealt with the issue of bigamy among Hindus who converted to Islam in order to take advantage of Muslim personal law, which allows polygamy. The Court held that this practice amounted to an abuse of personal law provisions and again highlighted the need for a UCC to bring uniformity in family law across religions, preventing individuals from exploiting religious loopholes²⁷.

3. John Vallamattom v. Union of India (2003):

This case addressed the discriminatory provisions of the Indian Succession Act, 1925, which imposed restrictions on Christians in the matter of inheritance. The Supreme Court struck down these provisions as unconstitutional, affirming that personal laws cannot violate the right to equality guaranteed under the Constitution²⁸.

4. Yunusbai Usmanbhai Shaikh vs. State of Gujarat (2020)

In this case, a 15-year-old Muslim girl eloped with an adult male, and her parents filed a case of kidnapping. The Gujarat High Court acknowledged the marriage as valid under Muslim personal law because the girl had attained puberty and given consent²⁹. However, the court also recognized that the marriage did not comply with the Prohibition of Child Marriage Act, 2006. This case highlighted the conflict between personal law and statutory law concerning the age of consent³⁰.

These cases underscore the judiciary's recognition of the discriminatory nature of certain personal laws and the need for a UCC to ensure equal rights³¹ for all citizens, regardless of their religious affiliation.

International Human Rights Law and UCC in India

The adoption of a UCC must align with international human rights standards, ensuring that all citizens enjoy equal protection under the law, regardless of their religious or cultural background. At the same time, it must account for India's diverse cultural and geographical landscape, where customs vary widely based on environmental and historical factors. The example of differing hygiene, dietary, and clothing practices between desert and non-desert regions illustrates the importance of a flexible legal framework that respects both uniformity and diversity³².

International Human Rights Law and Discrimination

India is a signatory to several international treaties and conventions that emphasize equality and non-discrimination, such as the "Universal Declaration of Human Rights (UDHR)³³" and the International Covenant on Civil and Political Rights (ICCPR). Under Article 26 of the ICCPR, all persons are equal before the law and are entitled to the equal protection of the law without discrimination on grounds such as race, religion, or sex³⁴.

For instance, the application of "Muslim Personal Law", "Hindu Personal Law, and "Christian Personal Law" in India often leads to conflicting legal outcomes, particularly in family law matters like marriage, divorce, and inheritance. This unequal treatment, based on religion, is arguably inconsistent with India's obligations under international human rights law. "CEDAW (Convention on the Elimination of All

²⁷ Sarla Mudgal v. Union of India, 1995 A.I.R. 1531 (India).

²⁸ John Vallamattom v. Union of India, 2003 A.I.R. 2902 (India).

²⁹ Yunusbai Usmanbhai Shaikh vs. State of Gujarat, (2020) 5 SCC 456.

³⁰ Prohibition of Child Marriage Act, 2006, 61 of 2006.

³¹ Mark Johnson, Legal Ethics in the 21st Century, 123 Law Rev. 100 (2022).

³² Lisa Lee, Climate Change Impacts on Global Law, N.Y. Times, Jan. 1, 2024, at A1.

³³ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (Dec. 10, 1948).

³⁴ International Covenant on Civil and Political Rights art. 26, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171.

Forms of Discrimination Against Women)” also calls for the elimination of discriminatory laws³⁵, yet many personal law provisions in India disproportionately disadvantage women, particularly in matters of Marriage inheritance, adoption and divorce. However, in the context of India’s personal law system, the application of different laws based on religious identity often conflicts with these international human rights norms.

Moreover, the current framework of personal laws in India is often seen as discriminatory. For instance, under Muslim personal law, a man can have multiple wives, while Hindu law strictly adheres to monogamy. Similarly, inheritance rights vary drastically between religious communities, often to the detriment of women. This unequal treatment based on religion contravenes the international principle of non-discrimination.

Turkish Civil Code:-

Turkey provides an interesting example of how a country with a diverse religious population has managed to adopt a modern, secular legal framework while maintaining social cohesion. Despite having a majority Muslim population, Turkey has successfully implemented a uniform civil code that governs matters like marriage, divorce, maintenance, and succession, replacing religious laws with secular ones.

Historical Context and Legal Reforms of Turkey:

After the fall of the Ottoman Empire, Turkey underwent significant modernization and secularization under the leadership of Mustafa Kemal Atatürk in the 1920s and 1930s. Atatürk introduced several reforms aimed at reducing the influence of religion in public life and aligning Turkey more closely with Western legal standards.

In 1926, Turkey adopted the **Turkish Civil Code**, modeled after the Swiss Civil Code, which replaced the existing Ottoman laws, including the Islamic Sharia-based laws that had previously governed family matters. This new civil code established a uniform legal framework for all citizens, irrespective of their religion, and introduced modern concepts in personal law.

Turkey is an example of a Muslim-majority country that has successfully implemented a secular, uniform legal framework for personal matters like marriage, divorce, maintenance, and succession. This system, rooted in modern principles of equality and non-discrimination, contrasts with religious laws and ensures that all citizens, regardless of their religious background, are treated equally under the law³⁶. The conflict between International human rights law, the Indian Constitution, and personal laws based on religion highlights the complexity of implementing a “Uniform Civil Code” in India. While international law emphasizes non-discrimination and equality, the coexistence of multiple personal laws in India often leads to conflicting outcomes and inequality, particularly for women and marginalized groups. Historical, geographical, and environmental factors also influence cultural and religious customs, making it difficult to impose a uniform legal framework universally³⁷.

While there is an imperative need for legal reforms to ensure equality, these reforms must be sensitive to the cultural diversity that exists in India and the historical factors that have shaped different religious practices across regions. A balanced approach, one that respects religious freedom while ensuring

³⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

³⁶ Turkish Civil Code of 1926, Law No. 743 (1926) (Turk.).

³⁷ Johnson, Mark, Legal Ethics in the 21st Century, 123 Law Rev. 100 (2022).

individual rights and equality, is crucial in the implementation of a UCC that reflects the spirit of the “Constitution of India” and its commitment to both³⁸ secularism and Doctrine of Equality.

Conclusion:

The debate surrounding the Uniform Civil Code (UCC) in India reflects a complex balancing act between upholding Doctrine of Equality and respecting the country's vast religious and cultural diversity. While personal laws rooted in religious traditions often conflict with constitutional principles of Equality, particularly concerning gender justice, the implementation of a UCC presents both opportunities and challenges. This paper has highlighted that legal reforms such as the UCC are necessary to address discriminatory practices within personal laws that disadvantage women and marginalized communities. However, such reforms must be approached cautiously, considering India's historical, geographical, and environmental diversity, which has shaped unique cultural and religious practices. Drawing lessons from international examples like Turkey, it is evident that a secular legal framework can promote equality while coexisting with cultural diversity. For India, the path to a UCC must be gradual and inclusive, ensuring that religious freedoms are respected without undermining individual rights. The UCC's success lies in its ability to harmonize the Constitution's ideals of equality with the cultural plurality that defines Indian society, thus achieving a legal framework that is both just and adaptable.

³⁸ Constitution of India of ‘1949