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## Uniform Civil Code in modern India: Historical roots, contemporary developments, and the role of the judiciary in pursuit of 'One Nation-One Law'

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### Abstract

The research paper delves into the multifaceted aspects of the Uniform Civil Code (UCC) in the context of Modern India. Framed under Article 44 of the Directive Principles of State Policy in the Indian Constitution, the UCC strives for "One Nation-One Law," seeking to replace diverse Personal Laws with a unified set of rules governing all citizens. The paper systematically explores the historical roots, contemporary developments, advantages, disadvantages, and the pivotal role of the judiciary in the evolution of the UCC. The introduction outlines the constitutional basis and primary objectives of the UCC, focusing on three contextual issues: Legitimacy, Majority vs. Minority concerns, and Gender Equality. The subsequent sections examine the current political landscape, emphasizing the UCC as a burning issue, with recent attempts at legislation and opposition dynamics in the Rajya Sabha. Contextual issues in Modern India, including Legitimacy, Majority vs. Minority, and Gender Equality, are thoroughly scrutinized. The paper traces events before and after independence, highlighting significant historical milestones, such as the 2nd Law Commission Report of 1835, Queen Victoria's Proclamation in 1858, and the recommendations of the B.N. Rau Committee of 1941. The role of the judiciary is a crucial focus, analyzing key cases like the Shah Bano case of 1985, and emphasizing the need for a proactive approach in achieving the UCC's goals. The paper explores the political perspective of the UCC, scrutinizing arguments for and against its implementation, especially considering the right-wing narrative and recent political pronouncements. Efforts towards the implementation of the UCC are discussed, including the Special Marriage Act of 1954 and the Shah Bano case's aftermath. Recent developments, such as observations by the Delhi High Court in 2021, are highlighted. The paper provides a balanced assessment of the advantages and disadvantages of the UCC, addressing issues of equal status, gender parity, national integration, and potential challenges related to diversity and religious freedom. It further scrutinizes the timing and practicality of implementing such a reform.

**Keywords:** Uniform Civil Code (UCC), national integration, diversity, justice, equality, unity in diversity

### Introduction

Uniform Civil Code (UCC) also known as "One Nation- One Law" is defined in Indian Constitution under Article 44 of the Directive Principles of the State Policy which states that it is the duty of the State to secure Uniform Civil Code for the citizens throughout the country. It mainly aims to replace Personal Laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen. Personal Laws are distinguished from Public Law and it basically covers marriage, divorce, inheritance, adoption and maintenance. There are mainly three contextual issues which are related to Uniform Civil Code in Modern India. They are Legitimacy, Majority *viz.* Minority and Gender Equality.

The main objective of this Chapter of my thesis is to understand the detailed concept of Uniform Civil Code i.e. its beginning, contemporary developments, advantages, disadvantages and Role of Judiciary. Thus, at last in the chapter, critical analysis and conclusion has been provided. In the process of making this chapter, several journals, books and articles were referred and taken into consideration. Internet has also been a support in this process. Hence, this chapter is a result of Doctrinal Research Methodology.

### UCC is the Burning issue of today

Uniform Civil Code has always been a topic of controversy in news.

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The Uniform Civil Code Bill has been introduced two times as Private Member Bill in past few months in Rajya Sabha but the opposition urged Chairman to block it. Thus, it is now expected that the government might introduce the Bill in the next Parliamentary Session.

### Contextual Issues in Modern India

There are mainly three contextual issues related to Uniform Civil Code in Modern India.

They are:

1. Legitimacy
2. Majority *viz.* Minority
3. Gender Equality

#### 1. Legitimacy

It can be argued that it was probably wise in 1858 for a foreign colonial power to stay away from areas related to religion and personal custom in the overall interest of maintaining peace. But in independent India, where sovereignty rests with the people, there is no external constraint that can prevent the Indian Government duly and successively elected to power on the principle of universal suffrage for seven decades to legislate on a common uniform personal code.

#### 2. Majority *viz.* Minority

It is not only non-Hindus who may have severe objections to the promulgation of a law that will govern their most inherent beliefs and faith as well as customs and practices. There has been opposition to the principle in question amongst sections of the Hindus as well because of wide variations in customs amongst its many castes and communities.

#### 3. Gender Equality

It is also well known that the Hindu law for a long time discriminated against women by depriving them of inheritance, remarriage and divorce. Their condition, particularly those of Hindu widows and daughters, was poor due to this and other predominant traditions.

### Events Before and After Independence in India

#### 1835: 2nd Law Commission Report

The 2nd Law Commission Report of 1835 stressed the need for uniformity in codification of Indian Laws relating to crimes, evidences and contracts but recommended that codification should not extend to matters like the personal laws of the Hindus and Muslims which derived their authority from their respective religions.

#### 1858: Queen Victoria's Proclamation

In 1858, Queen Victoria in her proclamation promised the people of India for absolute non-interference in religious matters.

Movements made by progressive sections of British-ruled India and Women's organizations led to a spate of laws passed with respect to the Hindus which were beneficial to women, such as the Hindu Widow Remarriage Act of 1856, Married Women's Property Act of 1874, Hindu Inheritance (Removal of Disabilities) Act of 1928 and Hindu Women's Right to Property Act of 1937. The growing tide of legislation on personal issues, generated debate and controversy and required a reasoned and measured response from the government of the day.

### B.N. Rau Committee Of 1941

B.N Rau Committee of 1941, officially known as the Hindu Law Committee was tasked mainly to examine the question of the necessity of common Hindu Laws. The Hindu Law Committee recommended a codified Hindu Law which would give equal rights to women in keeping with the modern trends of the society. However, it must be mentioned that its focus was primarily on reforming the Hindu Law in accordance with the scriptures on this topic but were endless; thus, the Hindu Code Bill lapsed and was resubmitted only in 1952.

### Passage of Hindu Code

The provisions of the Hindu Code were passed in separate parts, namely, Hindu Marriage Bill which was passed in May 1955, Hindu Succession Act passed in June 1956, Hindu Minority and Guardianship Bill passed in August 1956 and Adoptions and Maintenance Bill passed in December 1956. To this G.R. Rajagopal said that-

"It was felt that an attempt should be made to codify the Hindu Law and if this succeeded, and way of the measures produced thereby had in themselves intrinsic merits commending them for universal application, the time would not be far off when other communities might like to follow suit and ask for reconsideration of their own law in the light of the changed situations".

### Uniform Civil Code in Political Perspective

There were certain arguments made by the Fundamentalists against the Hindu Code. Firstly, it was argued that there is a need to protect the hallowed traditions of the Hindu Shashtras. Secondly, there was resentment from the fact that the Muslim Personal Laws remained untouched. Thirdly, measures had not been calculated so as to ascertain public opinion and were being pushed through hastily and; lastly, grant of equal property rights to women threatened the well-entrenched economic rights of the male in the society. Besides this, a section tried to suggest that the Hindu Code was, after all, a communal measure and a Uniform Civil Code should have been made instead to give effect to the secular ideals of the country.

The call for a Uniform Civil Code (UCC) has long featured on the agenda of the Bharatiya Janata Party (BJP) and found mention in its manifesto for the 2019 Lok Sabha election. The issue is not new either for the BJP or for Indian politics: it has been at the centre - and sidelines - of political and legislative debates for well over a century and a half. The BJP was the first party in the country to promise the implementation of UCC if it were to be elected into power. Now that it holds the reins of power, it may be a matter of days before the subject leapfrogs from the cycle of debates to actual law. The urgency seems unavoidable given the ruling party's recent history with regard to the revocation of Article 370, rendering all forms of talaq to be void, in the context of the talaq-i-biddat, and the determination it has shown towards the construction of the Ram temple in Ayodhya.

Keeping in mind the right-wing political narrative dominant in the country, the recent pronouncements made in political quarters as well as by the Supreme Court, C.K. Mathew, who was Chief Secretary of Rajasthan before retiring from the Indian Administrative Service (IAS), traces the trajectory of the UCC debate, linking it to the contentious

evolution of the Hindu Code Bill, and other key developments since independence, such as the Shah Bano case. He draws also attention to international experiences from Rome, France, and the UK and other countries, including the Islamic nations.

Mathew accepts that UCC has been a long-pending matter and also that it is arguably a necessary push in the direction of equity and freedom, especially with regard to gender. And yet he advises caution in applying it to a diverse people with varying degrees of religious sensibilities. The way forward, he says, is not to force it on an unwilling people but to follow the middle path of voluntary adoption, as once suggested by the Chairman of the Drafting Committee of the Constitution of India and the country's first Law Minister, B.R. Ambedkar:

"It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary."

### **Efforts towards Uniform Civil Code**

Many efforts were made towards the implementation of Uniform Civil Code:

#### **1. Special Marriage Act, 1954**

The Special Marriage Act of 1954 provides for civil marriage for any citizen irrespective of religion, thus, permitting any Indian to have their marriage outside the boundaries of any religious personal law.

#### **2. Shah Bano Case of 1985**

In this case, Shah Bano was refused her claim for maintenance. The Supreme Court ruled in her favour under Section 125 of Code of Criminal Procedure (CrPC), which applied to all citizens the order for maintenance of wives, children and parents. The Supreme Court further recommended that the long pending Uniform Civil Code finally enacted.

### **Supreme Court's Key Observations in Shah Bano Case**

The Supreme Court, in Shah Bano case, observed that it is the matter of regret that Article 44 has remained a dead letter. Uniform Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is probably going to bell the cat by making unwarranted concessions on this issue. It is the state which is charged with the duty of securing a Uniform Civil Code and unquestionably, it has the legislative competence to do so. There are difficulties involved in bringing persons of different faiths and persuasions on a common platform. But a beginning has to be made if the Constitution is to have any meaning. Piecemeal attempts of courts to bridge the gap between personal laws cannot take the plea of a common civil code. Thus, justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

### **Aftermath of Shah Bano Case**

After the 1984 Anti-Sikh riots, most of the minorities in India, with Muslims being the largest, feared attacks on their identity and felt the need to safeguard their culture. According to them the judiciary recommending the Uniform

Civil Code was evidence that Hindu values would be imposed over every Indian. The worst effect of this case was seen in the succumbing of the Rajiv Gandhi Government, when it passed a law nullifying the judgment through the Muslim Women (Protection of Rights in Divorce) Act, 1986, which made Section 125 of CrPC, non-operable for Muslim Women. At that time, it was strongly condemned by the Hindu Right, the Hindu Left, Muslim Liberals and Women's Organizations.

Drawing attention to the debate over the implication and application of the Uniform Civil Code, Chief Justice of India (CJI) SA Bobde on Saturday, 28 March 2021 urged intellectuals to observe and take note of the state of Goa, where the law is in force. Highlighting his tenure as the Bombay High Court judge in Goa, CJI Bobde pointed out that he had the 'privilege' of administering justice under the Goa Civil Code. The Uniform Civil Code in India directs the government to formulate and implement personal laws which equally apply to every citizen of the country irrespective of their religion.

"Addressing an inaugural function of the new building of the Bombay High Court at Goa,

CJI Bobde said, "Goa has what the Constitutional framers envisaged for India, a Uniform Civil Code. It applies in marriage and succession governing all Goans irrespective of religious affiliation. I have heard a lot of academic talk about the Uniform Civil Code. I would request all those intellectuals to simply come here and watch the administration of justice to know what it turns out to be."

Notably, Goa is the only state in India where the Uniform Civil Code has been implemented. Although the Constitution mandates that the government shall endeavour a Uniform Civil Code through Article 44, it is not enforceable since it is only a Directive Principle of State Policy. The Goa Uniform Civil Code enforces an equal law related to marriage, divorce, and succession upon all citizens of the state, irrespective of their religion.

Delhi High Court on Friday, 9 July 2021 observed that there is a need for implementation of the Uniform Civil Code applicable to all caste, creed and religious communities.

Stating that it is the right time to implement the Uniform Civil Code, the High Court has sent the judgment to the Union Law Ministry to take appropriate steps as deemed fit for the creation of the Uniform Civil Code.

The Delhi HC went on to state that the need for the Uniform Civil Code as envisioned under Article 44 of the Constitution has been reiterated from time to time by the Supreme Court, thus calling for its implementation.

A single bench of Justice Pratibha M Singh passed the order concerning the implementation of the Uniform Civil Code, regarding the governance of communities or religious or personal matters such as marriages, divorces, inheritance, adoptions, among others.

Justice M Prathiba Singh passed the judgment on July 7 on a plea involving the applicability of the Hindu Marriage Act, 1955, in respect of parties belonging to the Meena community.

### **Advantages of Uniform Civil Code**

#### **1. Provide Equal Status to all Citizens**

A secular democratic republic in order to provide equal status to its citizens must have a common civil and personal law irrespective of their religion, class, caste, gender, etc.

## 2. Promote Gender Parity

It is generally observed that in almost all religions men are granted top preferential status in the matters of succession and inheritance which results in discrimination towards women. Thus, the Uniform Civil Code will promote gender equality and will bring both men and woman at par.

## 3. Accommodate the aspirations of the young population

The social attitude and aspiration of the young population is shaped by universal and global principles of equality, humanity and modernity. Thus, the enactment of Uniform Civil Code will help in utilizing their full potential towards nation building.

## 4. Support National Integration

All citizens are treated equally before the court of law whether it is criminal laws or other civil laws (except Personal Laws). Thus, the implementation of Uniform Civil Code will grant equal set of personal laws to all, resulting in the end of politicization of issues of the discrimination or concessions or on the other hand exceptional benefits appreciated by a specific community on the basis of their specific religious personal laws.

## 5. Bypass the contentious issue of reform of existing Personal Laws

The existing personal laws of all religions are based upon the upper-class patriarchal notions of the society. Thus, the codification and implementation of the Uniform Civil Code will destroy the sanctity of the patriarchal orthodox people or will oppose it profusely.

## Disadvantages of Uniform Civil Code

### 1. Practical difficulties due to diversity in India

It is difficult to come up with a uniform set of rules for personal issues like marriage due to tremendous diverse culture in India across the religions, sects, castes, states, etc.

### 2. Perception of Uniform Civil Code as encroachment on religious freedom

Many communities, especially the minority communities believe that the Uniform Civil Code is an encroachment on their right to religious freedom. According to them, the Uniform Civil Code will neglect their traditions and impose rules which will be mainly influenced by the majority religious communities.

### 3. Interference of State in Personal Matter

Articles 25 to 28 of Indian Constitution provide the Right to Freedom of religion. But the scope of the freedom of religion will get reduced with the codification of Uniform Civil Code.

### 4. Sensitive and Tough Task

The implementation of Uniform Civil Code is a sensitive and tough task as it will bring many changes like issuing judicial pronouncements that ensures gender equality, adopting expansive interpretations on marriage, maintenance, adoption and succession with a view that one community should ensure benefits from others. The task is very demanding and the government would be expected to be sensitive and unbiased while dealing with the minority and majority communities otherwise it would turn out to be more disastrous in the form of riots and communal violence.

## 5. Time not yet suitable for this reform

In consideration to the major opposition from Muslim community in India, there are issues related to controversies over beef, saffronization of schools and colleges, love jihad, etc. Thus, a sufficient time should be given to instill confidence in the community; otherwise, they will become more insecure and vulnerable to get attracted towards extremist ideologies.

## Role of Judiciary

In the case of ABC v The State (NCT of Delhi 99), the court managed with the issue of guardianship of a Christian unwed mother without the consent of the child's father.

While ruling the case in the woman's favour, the court commented- "It would be inverse for us to underscore that our Directive Principles imagine the presence of a Uniform Civil Code, but this remains an unaddressed constitutional expectation". Similarly, in the recent case of Jose Paulo Coutinho v Maria Luiza<sup>100</sup>, the Supreme Court held that-

"While the authors of the Constitution in Article 44 in Part IV managing with the Directive Principles of State Policy had trusted and expected that the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard".

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## Critical Analysis

With repeated exhortations by the judiciary, a strong women's movement and a majoritarian government there is a better chance of it getting through now. All India Muslim Personal Law Board (AIMPLB) is clear that it shall oppose any attempts to adopt a Uniform Civil Code, yet, the recent Triple Talaq Act found approval in most places, including Muslim Women, through clerics still protest. Thus, in an age when citizen's rights are of paramount significance, and the admitted position is to move towards a society which

respects human rights irrespective of caste, religion, region and gender, an imperative to legislate on a Uniform Civil Code cannot be denied.

### Conclusion

In conclusion, the Uniform Civil Code (UCC) in Modern India emerges as a complex and multifaceted endeavor, deeply rooted in historical perspectives, contemporary dynamics, and constitutional imperatives. The research paper has meticulously examined the evolution of the UCC, its constitutional foundations, and the intricate interplay of factors such as Legitimacy, Majority vs. Minority concerns, and Gender Equality. The historical exploration traced pivotal milestones, from the 2nd Law Commission Report of 1835 to recent observations by the Delhi High Court in 2021. Through this journey, it became evident that the UCC is not merely a legal proposition but a reflection of India's societal fabric, requiring a delicate balance between unity and diversity. The role of the judiciary, as exemplified by landmark cases like the Shah Bano case of 1985, underscores the necessity for a proactive approach in realizing the UCC's objectives. Recent judicial pronouncements and the Chief Justice of India's observations signal a cautious yet evolving stance, acknowledging the need for a nuanced strategy. Examining the contemporary political landscape revealed the UCC's status as a contentious and polarizing issue. Arguments for and against its implementation, particularly within the context of right-wing narratives, have underscored the inherent challenges of navigating diverse opinions and maintaining social harmony. Efforts towards the UCC, exemplified by the Special Marriage Act of 1954 and subsequent legal developments, showcase the incremental progress made, albeit amidst controversies and opposition. The assessment of advantages and disadvantages brings to light the delicate balance required to ensure equal status, gender parity, and national integration, while addressing concerns related to diversity and religious freedom. In the face of these complexities, the conclusion echoes the words of Dr. B.R. Ambedkar, suggesting a voluntary adoption approach as a potential middle ground for success. While acknowledging the challenges, the paper emphasizes that the task of implementing the UCC is not insurmountable. It calls for a collective and inclusive dialogue, involving legal experts, policymakers, and the public, to navigate the intricate path towards a unified legal framework that reflects the evolving ethos of Modern India. The UCC stands not only as a legal proposition but as a testament to the nation's commitment to principles of justice, equality, and unity in diversity.

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