

# **A Comparative Analysis of the Uniform Civil Code and Personal Laws in India**

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## **Abstract:**

The aspiration for a Uniform Civil Code (UCC), as outlined in Article 44 of the Indian Constitution, envisions a uniform legal framework applicable to all citizens, irrespective of their religious affiliation. India's multifaceted religious landscape is mirrored in its diverse personal laws that govern crucial aspects of life such as marriage, divorce, inheritance, and adoption. While the UCC holds the promise of advancing gender equality, mitigating socio-economic disparities, and bolstering national cohesion, its implementation in India faces significant hurdles due to the nation's rich religious and cultural heterogeneity, factors that often contribute to gender inequality, discrimination, and societal imbalances. This study undertakes a comprehensive analysis of the inherent merits and demerits of both the current system of personal laws and a potential UCC. It further explores prospective models for a progressive and inclusive UCC. The analysis is grounded in a thorough review of existing scholarly literature, relevant case studies, legislative acts, and statutory provisions.

## **Introduction:**

As the world's largest democracy and a secular nation, India encompasses a remarkable diversity of languages, cultures, and religions. Religion exerts a profound influence on Indian politics and society, forming a fundamental basis of its cultural identity. The majority of the Indian population identifies as Hindu, followed by significant populations of Muslims, Christians, Sikhs, Buddhists, and Jains, alongside numerous minor tribal customs. For an extended period, personal laws derived from religious beliefs have governed individuals of different faiths. Consequently, disparate treatment has prevailed across various communities concerning matters such as marriage, succession, inheritance, adoption, maintenance, and guardianship, extending even to the foundation of statutory enactments on religious legal principles. The UCC seeks to establish a unified legal framework applicable to all citizens, transcending religious boundaries. However, this differential treatment inherent in personal laws has also engendered issues of discrimination, inequality, and inconsistencies in legal application.

The concept of a UCC can be traced back to the British colonial era. The British administration established a uniform criminal justice system through the Indian Penal Code (1860), the Criminal Procedure Code (1898), and the Civil Procedure Code (1908) to streamline judicial administration. Notably, these codes permitted religious communities to retain their rules governing marriage, divorce, inheritance, and other private matters, primarily to avert potential socio-religious unrest (Agarwal, 2010; Parashar, 1992).

## **Uniform Civil Code (UCC)**

The Uniform Civil Code (UCC) represents a unified set of laws pertaining to marriage, divorce, inheritance, adoption, and maintenance, intended to apply equally to all Indian citizens, irrespective of their religious affiliation. Currently, personal laws rooted in religious scriptures and customs govern these aspects of life. These include enactments such as the Hindu Marriage Act, the Hindu Succession Act, the Indian Christian Marriages Act, the Indian Divorce Act, and the Parsi Marriage and Divorce Act. Simultaneously, certain legal frameworks, like the Sharia (Islamic laws), remain largely uncoded and are based directly on religious texts. Article 44 of the Constitution references the UCC within the Directive Principles of State Policy, expressing the expectation that the Indian state will endeavor to apply these principles and a common law for all citizens in the formulation of national policies. Goa stands as the only state in India that historically possessed a common family law, known as the Goa Civil Code, predating 2024. More recently, Uttarakhand has become the first state to implement a UCC, passed on February 7th, 2024, and notified on March 13th, 2024, following presidential assent. Recently the Government of Gujarat has constituted a committee to assess the need for implementing Uniform Civil Code in the state of Gujarat.

Article 15 of the Constitution prohibits discrimination based on religion, race, caste, sex, or place of birth, while Articles 25-28 guarantee religious freedom and allow religious groups to manage their own affairs. While the Constitution permits religious groups to manage their internal affairs, this autonomy is not absolute. The state retains the authority to regulate these institutions in the interest of public order, morality, and other fundamental rights.

However, Article 37 of the Constitution explicitly states that the Directive Principles of State Policy "shall not be enforceable by any court." Nevertheless, they are deemed "fundamental in the governance of the country." This indicates a constitutional recognition of the desirability of implementing a Uniform Civil Code in some form, without making it a mandatory obligation (Basanth Kumar Sharma, 2011).

The 42nd Constitutional Amendment Act introduced the term 'secularism' into the Preamble, which now declares India a Secular Democratic Republic. This signifies that India has no state religion, and a secular state must not discriminate against individuals based on their religious beliefs. Religion is considered a matter concerning the individual's relationship with God and should not interfere with the ordinary aspects of an individual's life (Indira Jaising, Lawyers Collective Women's Rights Initiative).

## Personal Laws

India's diverse societal fabric encompasses numerous religious and cultural communities, each adhering to its own set of personal laws. Major religious groups such as Hinduism, Islam, Christianity, Sikhism, and others possess distinct personal laws governing family-related matters. Additionally, various tribal and indigenous communities follow their own customary laws. Personal laws in India refer to the legal systems and codes that regulate family, marriage, inheritance, and succession based on the religious or customary practices of different communities. These laws, derived from religious texts, customary practices, and traditions, are applicable to marriage, divorce, maintenance, inheritance, adoption, and succession. The following outlines the different legislative frameworks based on religion (Agnes, 2007; Dhagamwar, 1989):

- **Hindu Personal Laws:** Governed by the Hindu Marriage Act (1955), the Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956), and the Hindu Adoptions and Maintenance Act (1956).<sup>3</sup> These laws apply to Hindus, Buddhists, Jains, and Sikhs, covering marriage, divorce, maintenance, adoption, inheritance, and guardianship.
- **Muslim Personal Laws:** Primarily governed by the Muslim Personal Law (Shariat) Application Act (1937) and traditional interpretations of Sharia. These laws address marriage (Nikah), divorce (Talaq), inheritance (Wirasat), and maintenance (Nafkah), among other aspects.
- **Christian Personal Laws:** Governed by the Indian Christian Marriage Act (1872) and the Indian Divorce Act (1869), which deal with marriage, divorce, and maintenance for the Christian population in India.
- **Parsi Personal Laws:** Subject to the Parsi Marriage and Divorce Act (1936), applicable to the Parsi community in India and covering marriage, divorce, and other personal matters.
- **Jewish Personal Laws:** While no specific codified law exists for the Jewish community in India, their personal matters are guided by their religious texts and adjudicated in civil courts (Ratnaparkhi, 1997).
- **Sikh Personal Laws:** The Sikh community largely adheres to the Anand Marriage Act of 1909 for marriage-related matters, with Sikh religious practices and customs influencing their personal laws (Shetreet & Chodosh, 2015).

The application of these personal laws concerning marriage, divorce, maintenance, inheritance, and adoption is further detailed below:

## **Marriage**

- Hindu Law: Governed by the Hindu Marriage Act (1955), considering marriage a sacrament with conditions including monogamy, mental capacity, and prescribed ages (18 for women, 21 for men).
- Muslim Law: Governed by the Muslim Personal Law (Shariat) Application Act (1937), viewing marriage (Nikah) as a contract. The age of marriage is often linked to puberty, generally presumed at 15 years. Polygamy is permitted, with a limit of four wives.
- Christian Law: Governed by the Indian Christian Marriage Act (1872), regarding marriage as a sacrament with conditions of monogamy and specified ages (18 for women, 21 for men).
- Parsi Law: Governed by the Parsi Marriage and Divorce Act (1936), considering marriage a contract with stipulations of monogamy and prescribed ages (18 for women, 21 for men).
- Special Marriage Act (1954): Provides a secular option for inter-religious marriages, with conditions including monogamy and specified ages (18 for women, 21 for men).

## **Divorce**

- Hindu Marriage Act: Applicable to Hindus, Sikhs, Jains, and Buddhists, outlining grounds for divorce such as adultery, cruelty, desertion, and unsound mind. It also allows for divorce by mutual consent with a mandatory waiting period of six months after filing the petition.
- Muslim Personal Law: Under the Dissolution of Muslim Marriages Act (1939), divorce can be initiated by the husband (talaq), the wife (khula), or by mutual agreement (mubarat), with various forms of talaq carrying different legal implications.
- Indian Christian Marriage Act: Specifies grounds for divorce, including adultery, cruelty, desertion, and insanity, and also permits divorce by mutual consent with a waiting period.
- Parsi Marriage and Divorce Act: Provides grounds for divorce similar to Christian law, including adultery, cruelty, desertion, and insanity, but does not mandate a waiting period for divorce by mutual consent.

## **Adoption**

- Hindu Law: Governed by the Hindu Adoption and Maintenance Act (1956), applicable to Hindus, Sikhs, Jains, and Buddhists. It details the adoption procedure and the rights and obligations of adoptive parents and adopted children, allowing both male and female Hindus to adopt under specific conditions, including sound mind and not having a living child of the same gender.

- Muslim Law: Traditional Islamic law does not recognize adoption in the same manner as other religions. Guardianship (Kafala) is practiced, where the guardian cares for the child without conferring inheritance rights (Hazarika, 2010).
- Christian Law: No specific adoption law exists; Christians typically adopt under the Juvenile Justice (Care and Protection of Children) Act (2015).
- Parsi Law: Similar to Christian law, there is no specific adoption law for Parsis, who generally adopt under the Juvenile Justice (Care and Protection of Children) Act (2015).
- Special Marriage Act (1954): Adoption under this act is also typically governed by the Juvenile Justice (Care and Protection of Children) Act (2015).

### **Inheritance and Succession**

- Hindu Law: Governed by the Hindu Succession Act (1956), which initially provided differential treatment but was amended in 2005 to grant daughters equal coparcenary rights with sons.
- Muslim Law: Based on the Quran and Hadith, it prescribes fixed shares for heirs, with sons generally receiving twice the share of daughters. Examples include a wife without children inheriting 1/4th of the husband's property, and with children, 1/8th. The shares vary based on the number and relationship of the heirs.
- Christian Law: Governed by the Indian Succession Act (1925), ensuring equal rights for sons and daughters in intestate (without a will) and testamentary (with a will) succession. It outlines specific shares for the widow and other relatives based on the presence of lineal descendants.
- Parsi Law: Governed by the Parsi Succession Act (1865), which specifies distinct shares for various relatives in both intestate and testamentary succession (Jain, 2008).
- Special Marriage Act (1954): Succession under marriages registered under this act is governed by the Indian Succession Act (1925).

### **Guardianship**

- Hindu Law: Governed by the Hindu Minority and Guardianship Act (1956), with the father recognized as the natural guardian, followed by the mother, prioritizing the child's welfare.
- Muslim Law: Governed by the Guardians and Wards Act (1890), prioritizing the child's welfare, with the father typically being the natural guardian, followed by the mother.
- Christian Law: Also governed by the Guardians and Wards Act (1890), emphasizing the welfare of the child.



- Parsi Law: Similarly governed by the Guardians and Wards Act (1890), prioritizing the child's welfare.
- Special Marriage Act (1954): Guardianship is determined under the Guardians and Wards Act (1890).

### **Maintenance**

- Hindu Law: Governed by the Hindu Marriage Act (1955) and the Hindu Adoption and Maintenance Act (1956), allowing wives, children, and aged parents to claim maintenance, the amount determined by the husband's income and the claimant's needs.
- Muslim Law: Governed by the Muslim Women (Protection of Rights on Divorce) Act (1986), providing maintenance (Nafaqah) during the Iddat period (three months' post-divorce). Post-Iddat maintenance for the wife is limited, but she can claim for children.
- Christian Law: Governed by the Indian Divorce Act (1869), permitting the wife to claim maintenance during and after divorce proceedings, with the amount based on the husband's income and the wife's needs.
- Parsi Law: Governed by the Parsi Marriage and Divorce Act (1936), allowing the wife to claim maintenance during and after divorce, with the amount determined by the husband's income and the wife's needs.
- Special Marriage Act (1954): Maintenance can be claimed by the wife during and after divorce, with the amount determined by the husband's income and the wife's needs.

### **Tax Implications**

- Hindu Undivided Family (HUF): A unique entity under Hindu law, the HUF is recognized as a separate tax entity under the Income Tax Act (1961), enabling families to pool assets and income for potential tax benefits, managed by the family head (Karta) with lineal descendants and their spouses as members (Furnivall, 1940).
- Muslim Law: No specific provision like HUF exists; taxation is individual-based.
- Christian Law: No specific provision like HUF exists; taxation is individual-based.
- Parsi Law: No specific provision like HUF exists; taxation is individual-based.
- Special Marriage Act (1954): No specific provision like HUF exists; taxation is individual-based.

The existence of these diverse personal laws in India reflects the nation's commitment to its pluralistic society, acknowledging the significance of religion in personal affairs. While these laws provide a sense of identity and belonging, they also present challenges concerning uniformity, gender justice, and national integration. The ongoing process of balancing

community-specific rights with the imperative for a progressive and egalitarian legal system remains a dynamic aspect of India's legal and social landscape (Gajendragadkar, 1951; Derrett, 1954).

### **Supreme Court's Views on Uniform Civil Code**

The Supreme Court of India has addressed the issue of a Uniform Civil Code in numerous cases, rendering significant judgments and observations that have contributed substantially to the discourse on the UCC (Constituent Assembly Debates, 1949; H.M. Seervai, 2018):

- **Mohd. Ahmed Khan vs. Shah Bano Begum (1985):** The Supreme Court ruled that Muslim women were entitled to maintenance beyond the iddat period under Section 125 of the Criminal Procedure Code, observing that a UCC could help eliminate contradictions arising from differing religious ideologies.
- **Sarla Mudgal vs. Union of India (1995):** The Court held that a Hindu husband converting to Islam could not contract a second marriage without legally dissolving his first marriage, emphasizing the necessity of a UCC to ensure gender justice and equality.
- **Shayara Bano vs. Union of India (2017):** The Supreme Court declared the practice of triple talaq unconstitutional, asserting that it violated the fundamental rights of Muslim women, thereby highlighting the urgency of enacting a UCC to address gender discrimination and ensure uniform laws governing marriage and divorce.
- **Joseph Shine vs. Union of India (2018):** The Court struck down Section 497 of the Indian Penal Code concerning adultery, deeming it violate of Articles 14, 15, and 21 of the Constitution, and suggested the enactment of a UCC to resolve inconsistencies in personal laws.
- **Indian Young Lawyers Association vs. State of Kerala (2018):** This case addressed the ban on the entry of women of menstruating age into the Sabarimala temple, with the judgment underscoring the need for a UCC to harmonize conflicting rights and ensure gender equality across religions.

These judgments collectively indicate the Supreme Court's inclination towards a more uniform legal framework in personal matters to uphold fundamental rights and ensure equality.

### **UCC in India: A Comparative Study with Other Countries**

Several nations globally have adopted forms of a UCC to varying extents. Examining these systems offers valuable insights for India's potential implementation and its likely impacts:



France was among the pioneers in implementing a Uniform Civil Code in 1804. The French Civil Code, or Napoleonic Code, is a comprehensive body of civil laws covering property, family, and inheritance. Based on the principles of liberty, equality, and fraternity, it applies to all French citizens regardless of religion. However, religious communities retain some autonomy in personal affairs like marriage and divorce, provided they do not contravene public order.

Turkey adopted the Turkish Civil Code in 1926, modeled on the Swiss Civil Code, encompassing various aspects of civil life. Applicable to all Turkish citizens irrespective of religion, it promotes gender equality in marriage, divorce, and inheritance. Nevertheless, some religious minorities have criticized its secular nature and perceived infringement on their religious traditions.

Tunisia uniquely among Arab nations implemented a UCC in 1956 with its Code of Personal Status, addressing marriage, divorce, and inheritance. While rooted in Islamic law, it incorporates modern concepts of gender equality and civil rights, serving as a potential model but also facing criticism from conservative Islamic groups.

In contrast, countries like the United States and Canada operate without a national Uniform Civil Code. Their legal systems are based on common law, evolving through judicial precedents. Family law, including marriage, divorce, and inheritance, is primarily governed by state or provincial laws, leading to variations across jurisdictions.

In conclusion, a comparative analysis of UCC implementation in diverse countries reveals that its application and consequences are heavily influenced by the specific social, cultural, and political contexts. While some nations have successfully adopted a UCC, others have encountered opposition from religious and cultural groups. Therefore, any endeavor to implement a UCC in India must carefully consider the nation's unique cultural and religious diversity, ensuring that principles of equality and justice are upheld while respecting minority rights (J.S. Furnivall, 1940).

### **Impact of Uniform Civil Code (UCC) on India**

The implementation of a Uniform Civil Code (UCC) in India is anticipated to have multifaceted impacts across various societal and legal domains:

- **Equality and Justice:** A primary objective of the UCC is to establish a common legal framework for all citizens, irrespective of their religious affiliation, thereby promoting equality and ensuring a more consistent application of justice.
- **Women's Rights:** The UCC has the potential to eliminate discriminatory practices prevalent in some personal laws that adversely affect women's rights in areas such as marriage, divorce, maintenance, and inheritance.
- **National Integration:** By establishing a unified set of laws governing personal matters, the UCC could contribute to a stronger sense of national integration and shared citizenship.
- **Secularism:** Aligning personal laws with a common civil code would further reinforce India's secular ethos by separating legal frameworks from religious doctrines in matters of personal life.
- **Taxation:** The UCC may necessitate changes to the tax status of entities like the Hindu Undivided Family (HUF), potentially leading to a more standardized tax system across religious communities.
- **Abolition of Polygamy:** The implementation of a UCC is likely to lead to the abolition of polygamy, which is currently permitted under Muslim personal law, thus impacting the marital rights of Muslim women.
- **Dissolution of Existing Laws:** The enactment of a comprehensive UCC would necessitate the repeal or significant amendment of existing religion-specific personal laws, such as the Hindu Marriage Act (1955) and the Muslim Personal Law (Shariat) Application Act (1937).
- **Simplified Legal System:** Consolidating personal laws into a single code would simplify the current legal framework, which is fragmented based on religious beliefs, thereby streamlining legal processes and interpretations.
- **Promotion of Modernization:** By moving away from outdated religious laws in personal matters, a UCC could reflect the progressive values and ethical standards of a modern democratic society.
- **Enhanced Global Image:** Adopting a UCC could enhance India's international standing as a progressive and inclusive democracy committed to upholding principles of equality, justice, and secularism, aligning its legal framework with global human rights norms.
- **Freedom of Choice:** A religion-neutral personal law would offer greater protection to couples in inter-caste and inter-religious marriages. Existing legislation like the Special Marriage Act (1954) already provides a mechanism for civil marriages outside the ambit of religious personal laws (Gajendragadkar, 1951).

## Arguments Against Uniform Civil Code

Despite its potential benefits, the implementation of a Uniform Civil Code in India faces significant opposition and raises several concerns:

- **Lack of Consensus:** A fundamental challenge is the absence of a broad consensus among diverse religious communities regarding the content and principles of a UCC. This lack of agreement makes the formulation of a universally acceptable code exceedingly difficult.
- **Implementation Challenges:** The sheer diversity of existing personal laws governing different communities presents a formidable task in drafting and implementing a UCC that adequately addresses and respects the nuances of each community's legal traditions.
- **Threat to Religious Freedom:** Concerns exist that imposing a UCC could infringe upon the religious freedom of citizens by enforcing uniform laws that may contradict their deeply held religious beliefs and practices, potentially leading to perceived state interference in religious affairs.
- **Threat to Cultural Diversity:** Imposing uniform laws across India's diverse religious and cultural landscape could disregard the unique cultural practices, traditions, customs, and sensitivities of different religious groups, potentially undermining the nation's pluralistic ethos.
- **Fear of Majoritarianism:** A significant apprehension is that a UCC might disproportionately reflect the beliefs and practices of the majority religious community, potentially leading to the marginalization and assimilation of minority groups under a majoritarian legal framework.
- **Threat of Social Unrest:** Given the sensitive nature of religious and cultural practices, any attempt to implement a UCC carries the risk of triggering social unrest and exacerbating communal tensions.
- **Undermining Federalism:** With personal matters currently under the Concurrent List of the Constitution, both the Parliament and state legislatures have the authority to enact laws. Imposing a UCC could be perceived as an encroachment on the legislative powers of states, thereby undermining the federal structure.
- **Legal Changes and Amendments:** The transition from a system of diverse personal laws to a unified UCC would necessitate substantial legal reforms, including amending or repealing numerous existing laws, a process that could be protracted and complex.

- **Polarized Debates:** The UCC is a highly politicized issue, often utilized by political parties for electoral gains. Pushing for its implementation without broad bipartisan support could further polarize the debate and generate significant resistance.
- **Legal Complexity:** Drafting a comprehensive UCC that effectively addresses the intricate details of diverse personal laws while ensuring legal clarity, consistency, and fairness presents a formidable legal challenge (Derrett, 1954).

## Way Forward

Navigating the complexities of implementing a Uniform Civil Code in India requires a multifaceted and carefully considered approach:

- **Dialogue and Consultation:** Extensive and inclusive dialogue and consultation with all stakeholders, including religious communities, legal experts, policymakers, and civil society organizations, are essential to understand diverse concerns and perspectives regarding the UCC.
- **Public Awareness and Education:** Conducting comprehensive public awareness campaigns and educational programs to inform citizens about the potential benefits and implications of the UCC can help foster a more informed public discourse and build broader consensus.
- **Piecemeal Approach:** Adopting a gradual, piecemeal approach by initially codifying and reforming specific aspects of personal laws and subjecting them to public debate and scrutiny could be a pragmatic strategy to build public consciousness and identify areas of potential agreement.
- **Inclusivity:** Ensuring that the drafting of a UCC respects religious diversity while unequivocally promoting gender equality and justice is paramount for its acceptance and effectiveness.
- **Gradual Implementation:** Implementing the UCC in a phased manner, beginning with areas where there is relatively less resistance and gradually expanding its scope, could help mitigate concerns and facilitate a smoother transition.
- **Monitoring and Evaluation:** Establishing robust mechanisms for monitoring the implementation of the UCC and evaluating its societal impact will be crucial for making necessary adjustments and improvements to ensure its effectiveness and fairness.
- **Political Will:** Strong and sustained political leadership, demonstrating a genuine commitment to navigating the complexities and challenges associated with UCC implementation, is indispensable for progress (H.M. Seervai, 2018).

## Conclusion

The Indian Constitution, through Article 44, provides a directive for the State to endeavor to secure a Uniform Civil Code for its citizens. However, the implementation of the UCC in India has been hindered by the inherent conflicts and diversities within existing personal laws. Despite repeated pronouncements by the Supreme Court of India urging the government to implement a UCC, a lack of sustained political determination has impeded its realization. Notably, the demand for a UCC predates India's independence, yet it remains unachieved even after 75 years. The implementation of a UCC is increasingly viewed as a necessity for fostering national integration, promoting equality and justice, and transcending caste-based conflicts within society. India undeniably requires a Uniform Civil Code that is equitable and unbiased. Establishing a common civil code has the potential to advance equality and justice for all genders across different communities. The argument that it infringes upon religious freedom is often (logically untenable) and represents a mischaracterization of its intent. Just as historical practices detrimental to human dignity, such as Sati and child marriage, were abolished, and laws protecting women from domestic violence were enacted, the banning of Triple Talaq signifies a commitment to progressive reform. The purview of the UCC is intended to be limited to matters of succession, inheritance, marriage, divorce, child custody, guardianship, and alimony, applicable uniformly to all citizens irrespective of their religious beliefs (Constituent Assembly Debates, 1949).

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