

Uniform Civil Code - A Constitution Ideal Between Unity and Diversity In India, the Uniform Civil Code has long since been a subject of intense public debate amongst constitutionalists & sociologists alike. At its most basic, the purpose of implementing a Uniform Civil Code is to create one universal set of laws governing all individuals' civil matters, including marriage and divorce, in place of every individual following different personal laws based on their Religious/Community Beliefs. While many people advocate the development of a Uniform Civil Code for the purposes of achieving equality for all citizens, the potential for negative impacts on both religious freedom & cultural diversity cannot be ignored. Once you have fully developed an understanding of the Uniform Civil Code, it is important to set aside yourself from the political rhetoric and look at how the Uniform Civil Code will (a) affect people's minds and feelings, (b) the constitution where people are allowed to express their opinions freely, and (c) be used as a tool by some to impose their views upon others.

The background of the UCC traces back to Article 44 of the Indian Constitution, where it is written, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." It must be understood that while the aforementioned article is part of the Directive Principles of State Policy, which are not legally enforceable, they act as a source of guidance.

The drafters of the Indian Constitution understood well the diversity existing in India. Historically, when the Indian Constitution was being framed, persons such as Dr. B.R. Ambedkar supported the concept of a UCC but also advocated a gradual approach when implementing a UCC. The criminal laws in India should not be imposed uniformly at the cost of their diverse society.

The UCC's strongest argument is based on Article 14 of the Constitution, which guarantees equality before the law. Differences in personal law, which vary from one religion to another, result in a lack of equal treatment among many individuals, especially for women who feel the negative consequences of polygamous marriage, lack of equal property rights, and discriminatory divorce laws based on religion. The UCC is seen as a mechanism to promote gender justice and the rights of individuals rather than an attack on a particular religion or belief system. Civil law applies to the secular side of life, and allowing different areas of civil law to apply to different communities contributes to the undermining of the principle of equal citizenship. In addition, a common civil code could enhance India's national integration since all citizens would have the same common civil law, regardless of their religious identity.

The Indian judiciary has often referred to the need for the implementation of the Uniform Civil Code. In the case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), the Supreme Court pointed to the injustice meted out to Muslim women because the UCC was not implemented. Again, in the case of *Sarla Mudgal v. Union of India* (1995), the Court referred to the misuse of the concept of personal laws and reiterated the need to implement Article 44.

However, courts have also been cautious and sensitive to the fact that social reforms should not go beyond and above a democratic social consensus. The courts have urged that this is a matter that should be left to the active initiative of the legislature.

Although the UCC (Uniform Civil Code) has support at the constitutional level, it faces significant opposition. Many people believe that the Uniform Civil Code (UCC) will violate Article 25 of the Constitution, which gives citizens the right to practise their own religions and to spread their beliefs. Personal laws play an important role in the cultural identity of minority community members, and therefore the move toward a uniform code, in the view of many, represents majoritarian domination, rather than reform of personal laws.

Another concern about a Uniform Civil Code is the fear of cultural homogenisation; India's pluralism has survived because of the fact that it provides for each culture individually. Critics of the UCC contend that rather than attempt to create a single code for the country, the focus should be on modernisation of existing personal law systems and will enable each community to develop its own way of evolving over time.

The practical challenge of providing for all forms of personal law in India is also significant because there is not one single personal law system in India; there are many personal law systems, with several being tribal customs that are localised and unwritten. Therefore, the task of developing a single uniform code that accommodates all of these variations is extremely complex.

One of the misconceptions in the UCC discussion is the assumption that uniformity means equality. The aim of the UCC is not to have all people perform the same rituals and traditions, because that would be impossible, but rather for all people to enjoy the same rights under the law. Uniformity in law does not equate to uniformity in culture.

For instance, the Indian criminal code is made uniform for everyone, and yet this has never affected its cultural diversity. Again, there can be a uniform civil code based on basic principles like monogamy, shared inheritance rights, and consent, and yet there would be scope for different cultures to flourish.

Often, Goa is referred to as an example of a Uniform Civil Code that has already been implemented. The Goa Civil Code was based on Portuguese law, and applies to all communities equally with respect to Marriage and Inheritance issues. Although it is not a perfect solution, it shows that there can be a common civil legal system within a diverse society. Goa's Civil Code has been praised for many reasons, including the fact that it provides the basis for a Uniform Civil Code in India. However, there are those who argue that Goa's model cannot simply be applied uniformly across the entire country. India has a differing demographic and social landscape than Goa. However, while there are certain limitations to the Goa Civil Code, it also provides an opportunity to learn from the gradual development of the implementation of the Uniform Civil Code, and about the need for legal clarity.

Instead of treating the Uniform Civil Code as a do-or-die issue, a gradual and consulting approach might be more effective in this regard. Improvement in biased practices in personal laws, social awareness, and interaction with stakeholders might remove gaps in trust in this situation.

Any step towards a UCC must lie in gender justice, morality in the Constitution, and inclusivity, not in politics. The emphasis must be on safeguarding rights as an individual while also protecting India's pluralist character.

The Uniform Civil Code is a constitutional ideal, in which unity coexists with diversity, and equality with freedom. The code is neither necessarily anti-religious nor necessarily progressive, its depends and results only in the implementation.

In a democracy as complex as India, real change cannot be imposed; it has to be won. In fact, the question of the UCC raises a question about the sort of republic India wants to be—a republic in which diversity and equality exist together, and justice is not identity-based but citizenship-based.

DHRUV KUMAR
BA. LLB
MAIMS, DELHI