

# A Study on Correlation between Uniform Civil Code and Gender Equality

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## Abstract

*This paper aims to entail the notion of 'Uniform Civil Code in relation to Gender Equality. In a legal sense, the term civil code refers to a set of laws that governs property rights as well as personal matters such as marriage, divorce, inheritance, adoption, and so on. The Constitution of India makes it compulsory for the personal laws to the implementation of uniform civil laws in Article 44. While the enactment of this civil code is hampered by the fact that it is a non-binding DPSP and the vehement opposition of critics who claim that it jeopardizes minorities' religious identities. As a result, during devoted debates on the code, objectivity and pragmatism are often overlooked. The core issue of ensuring women's justice and equality is being entangled in a slew of other contemporary subjects such as freedom, religion, and secularism. Gender questions, on the other hand, needed to be taken more seriously in this regard. Though the Indian judiciary has accomplished a great deal, the fact is that it is constrained and cannot perform the duties of other state institutions. This paper attempts to link the issues of equity to the implementation of a uniform civil code and gender justice, requirements of the enactment along its relevancy across India's territories.*

**Keywords:** *Uniform Civil Code, Justice, Secularism, Equality*

## **Introduction**

India is a democratic country, which means that it is directed by the rule of law, in which it is divined that all citizens, regardless of race, religion, creed, caste, or sex, are equal before the law and authorized to equal protection of the law. Women are jeopardized in numerous forms in the pillar of humanity, and they are forced to face a variety of difficulties simply because they are women. No statutory or constitutional safeguards or protections provide a favorable outcome for their protection. The Indian judiciary, on the other hand, has accomplished a great deal, but there are certain limitations to its authority, and it is unable to perform the duties of other state institutions. In this regard, the Uniform Civil Code, which is a legislative command, is awaiting the Indian Legislature's approval to become law, ensuring equal status for women who are victims of disparities in personal legislation. The status of women in India is initially looked after of being her a Hindu, Muslim, Christian, Jew, or Parsi, which is a cruel fact. This mindset is to blame for our discrimination, backwardness, and other social atrocities.

To harmonize the diversities in law, it is important to comprehend the importance of the Uniform Civil Code, in order to attain the gender justice objective. Mr. Narendra Modi, the Indian Prime Minister, said that in the modern world, it is more important for women to have dignity, liberty, and the ability to make life decisions<sup>1</sup>. We can sense the aura of the twenty-first century in those matters if we are keeping up with the times in other areas. However, the ideas and traditions of one social group or person must not be placed on another social group or individual. The main theme of justice reform and women's equality is wrapped up in a host of

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<sup>1</sup> Narendra Modi: Uniform Civil Code does not mean a Uniform Civil Code, (May 07th, 2014), <https://www.rediff.com/news/report/ls-election-interview-slide-show-1-the-narendra-modi-interview-we-will-empower-minorities-with-education/20140506.htm#7> [online] (Assessed on Mar 05, 2021)

other contemporary concerns such as freedom, secularism, and religion. Empowerment of women is important in critical areas such as safety, health, gender biases, social status, and empowerment. The provision of the Uniform Civil Code for all Indian citizens was required by Article 44. In India, the provisions of the Uniform Criminal Code are clear and defined, but there is no uniform civil code. Criminal law applies to all, regardless of religious belief. However, there is no uniformity in civil law, especially in the area of personal law.

### **Uniform Civil Code: Concept**

The Uniform Civil Code is an aggregate of the same kind of secular laws to ensure that all people are treated equitably and justly, irrespective of any caste, tribe, or religion. Previously, the laws related to any particular caste or religions were governed by their respective personal law, but UCC used to restore all the rights of citizens who are subject to disparities. The administration and acquisition of property, marriage, divorce, inheritance, and adoption are important areas covered by the Civil Code. It is enshrined in Article 44 of the Indian Constitution as a direct principle of state policy (DPSP)<sup>2</sup>, but it is considered a non-judicial right due to the difficulties in implementation.

There are three words used in this expression: Uniform, Civil, and Code. Here, all three words have three different meanings, but collectively, they make a whole new sense. The first word, Uniform refers to "a kind of thing that is not normal." or "to stay the same in all situations at all times." The next term Civil refers to the 'citizens' and it comes from the Latin word "civilis." The last word i.e., Code refers to the 'codified rules' or "a text composed originally of wooden table coated with wax and later of sheets of parchment of papyrus" and it comes from

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<sup>2</sup> Article 44, The Constitution of India

the Latin word which means 'codified rules'.<sup>3</sup> The Uniform Civil Code is seen as a step toward the secularization of personal laws by excluding religious ideologies from the equation. The idea of an overreaching Civil Law Code in India is referred to as the Uniform Civil Code of India, the definition of 'UCC' has two aspects: first, to have and enforce uniform legislation for all cultures; second, to provide identical and equitable rules along with uniformity between communities, namely between men and women, and for all in terms of gender justice and equality.<sup>4</sup>

### **Gender Justice: Concept**

The concept of Gender Justice is comparatively broader that applies to autonomous action aimed at establishing women's liberty and supporting women's freedom through women's engagement in economic and social policy and legal reforms. Any substantial theory of gender justice is based on a single political agenda; a set of beliefs concerning what is "good" and "right" in human relationships, and steps to achieve these cautious outcomes. The concept of gender Justice is more than merely debating men and women's relationships.<sup>5</sup> It entails developing plans for taking appropriate steps toward changing society collectively to make it more equitable and just, and it refers to an environment where men and women can be handled equally. Furthermore, it entails a shift from subjective to well-founded, equitable, and justifiable social relations which can be referred to as "fair-social relations." Gender justice is a tool for reducing gender differences. It demonstrates the impact of gender equity and aids in distinguishing between what and how it can be accomplished.

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<sup>3</sup> Dr. P.K. Pandey, Gender Justice and Uniform Civil Code: An Overview, Chapter 2, SSRN 17, Sep (2012)

<sup>4</sup> Dr. Saroj Bohra, Uniform Civil Code, Women Empowerment and Gender Justice, vol 3, SJIF 2349-7858 (2013)

<sup>5</sup> Medha Sarin, Uniform Civil Code for Gender Justice, Vol 3, Issue 2 ISSN 2581-5369 (2020)

## **The Constitutional Bedrock for Gender Justice**

The dignity of individuals including the dignity of women was ensured to all men and women irrespective of their religion or caste, by the preamble of the Constitution of India which states that "We the people of India....." Several influential enactments, about every walk of life, employment, guardianship, inheritance, and family have been developed in accordance with this system, with the aim of safeguarding women's status, freedom, and dignity. The Fountainhead of Rules i.e. our empathetic Constitution is gender-conscious. The Indian Constitution was not limited to ensure women's equality but also allows the government to implement a mechanism of positive discrimination in their favour to mitigate political, educational, and socioeconomic disadvantages faced by women. In the field of women empowerment, certain constitutional provisions are particularly significant. The state is empowered to make specific provisions concerning women empowerment under Article 15(3). A right to have adequate means of living for all citizens, including women is mandated by Article 39(a) upon the states. A provision of equal pay for equal work was mandated by Article 39(d) upon state legislation. This study is based on articles 14 and 16 and aims to develop a welfare society and a uniform social order in the Indian Union for men and women. These Constitutional provisions place a responsibility on the state to take measures to guarantee more humane working conditions and allow the women workers to take maternity relief. In political fields, the reservation to empower women is given in Article 243D (3)(4)<sup>6</sup>, 243T (3)(4)<sup>7</sup>.

The security of effective implementation of uniform civil code upon all citizens throughout the country was ensured by the state in the direction provided by Article 44 of the

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<sup>6</sup> Article 243D (3),(4), The Constitution of India

<sup>7</sup> Article 243T (3), (4), The Constitution of India

Indian Constitution, and this article was written as a proposal to allow the state, time after independence to incorporate and unite the nation before going on to civil reforms. The common grounds protected by a civil code include rules relating to administration and acquisition of land, marriage, divorce, inheritance, and adoption. All of the above-mentioned discussions show that the issues of sexual inequality and gender injustice of women were already in the minds of the framers of the constitution, and they include it in Article 44 in the hopes that it would be ratified and implemented at a later date.

### **Judicial Approach on Gender discrimination under Indian Personal Laws**

It is evident that the issue of gender injustice exists in almost every personal law of all communities, and the prevailing reason behind such injustice is the socio-economic conditions. As a result, a uniform civil code is urgently needed in the country to ensure not only equality between men and women but also justice. Personal law is the main root cause to give rise to gender discrimination against women who dedicate their whole lives to men in different roles such as wife, mother, daughter, sister, and so on. Women are discriminated against in certain cultures that used to applies to all personal laws such as matters concerning marriage, divorce, succession, abortion, and preservation, among other things. The major examples of gender injustice under personal laws are as follows:

#### **Under Hindu Law:**

In comparison with Hindu men, Hindu women did not have equal rights until the codification of Hindu law in 1955 and 1956, and Polygamy was popular among Hindus prior to 1955. Except in the case of Stridhan, Hindu women were not permitted to own property as absolute proprietors. "The British policy of non-interference with personal laws and perpetuation

or mechanical representation of Hindu practices halted the normal development of Hindu law and gave rise to petrified rules,” stated Jawahar Lal Nehru.<sup>8</sup> Many concepts have been highlighted by the Constitutional courts, who have interpreted the clause to decide the women's status in the society and inspire them.

During the lifetime of a husband, a woman can never be the first natural guardian for her children, and when this matter was raised, the court ruled that assigning the mother to a lesser status to serve as natural guardian is a clear violation of Articles 14 and 15 of Indian Constitution. In the case of *Gita Hariharan*<sup>9</sup>, it was decided that this understanding had altered the women's right to guardianship.

In the leading case of *Sarla Mudgal v Union of India*<sup>10</sup>, a Supreme Court division bench supported the implementation of a UCC in India. This case is related to converting a Hindu male to Islam solely to contract bigamous relations, and the court decided that it was illegal to do so. The court finds those marriages to be bigamous and void under Section 494 of the Indian Penal Code. The court, citing numerous precedents, stated categorically that before the implementation of UCC on all citizens of India, there would be an incentive for a Hindu husband to convert themselves into an Islam if he wishes to enter into a second marriage. The court highlights the injustice to the lawfully married first wife in this case. The bench also observed that successive governments had failed to enforce Article 44 and its constitutional guideline, and recommended that minorities' personal laws need to be rationalized in order to foster cultural and religious harmony, ideally by committing the duty to the Minorities and Law Commission.

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<sup>8</sup> P.Ishwara Bhatt, Directive Principles of State Policy and Social Change with reference to Uniform Civil Code vol.25, Banaras Law Journal 1989 pp. 75-96 at 76

<sup>9</sup> AIR 1999 SC 1149

<sup>10</sup> AIR 1995 3SCC 635

While grappling with the legality of a Hindu husband's second marriage after his conversion to Islam in the case of *Lily Thomas v Union of India*<sup>11</sup>, an explanation was provided by the Apex Court in which he stated that the judges on the various benches had only shared their opinions on the case's facts and the court had not given any instructions for the codification of the Common Civil Code. This explanation reveals that the Supreme Court of India, which was known for its judicial activism in the past, took a step backward with this explanation when it came to the matter of establishing a uniform civil code.

### **Under Muslim Law:**

When contrasted to men in pre-Islamic Arabia, women enjoyed a negligible status in all regions. The arrival of Islam has played a significant role in the improvement of Muslim women's lives and the alleviation of their difficulties. Equal status to both men and women is granted by the Holy Quran and respectably puts women. Although, Polygamy (four wives at a time) is allowed under Muslim law for Muslim men, but not for Muslim women. A Muslim husband can unilaterally divorce his wife, but if she wants to remarry the same husband, she must go through the "halala"<sup>12</sup> procedure, which is patriarchal and inhumane. During the proceedings of divorce, her status is also inferior because she requires the consent of her husband before doing so.

In terms of maintenance, divorced Muslim wives are expected to be maintained beyond the period of 'Iddat'. A husband is mandated by the provisions of CrPC to maintain his wife including divorced wife before she can support herself, which is a secular statute that applies to

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<sup>11</sup> AIR 2000 SC 1650

<sup>12</sup> 'Halala' means 'The divorced Muslim wife has to marry another person and get the marriage consummated. Thereafter she has to take divorce from her second husband and then she can be able to marry the first divorced husband.'

all. The Constitutional bench of the Supreme Court questioned the constitutional validity of the 1986 law in the case of *Daniel Latif v Union of India*<sup>13</sup> and it was believed that the Muslim husband should take rational and equitable measures for the future. The divorced wife is entitled to get maintenance under Article 3 (1) (a) of the Act during the Iddat period, including her maintenance beyond the Iddat period. As a result, it was decided that a Muslim husband's obligation to support his divorced wife is not limited to the time of Iddat under Section 3 (1) (a) of the Act. The Supreme Court noted in *Shah Bano Case*<sup>14</sup> that Section 125 of the CrPC of 1973 was applicable on all and it was a secular clause under which the husband was obliged to retain his wife until she got re-married. The provision of Article 44 was ignored in this case, and the court is disappointed with the legislature. The doctrine of harmonious construction was used by the Supreme Court to enact legislation, which was somewhat similar to Shah Bano's decision<sup>15</sup>. As a result, under Section 125 of the CrPC, a Muslim woman is qualified for fair and equitable maintenance as long as she continues her status as an unmarried woman after the divorce.<sup>16</sup>

The Supreme Court, however, delivered the most ground-breaking decision in the controversial '*Shayara Bano v. Union of India case*'.<sup>17</sup> The court ruled that 'talaq-e-biddat' has no place in the Holy Quran, so it is unconstitutional. The holy Quran makes it clear that only 'talaq-e-ahsan' and 'talaq-e-hassan' are allowable. A man who pronounces the term "talaq" three times, including by some electronic media, is deemed to have proclaimed his solemn holy marriage to a Muslim woman null and void, according to a distorted tradition (talaq-e-biddat). It addressed concerns about justice, secularism, human dignity, human rights, and gender equality

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<sup>13</sup> (2001) 7 SCC 740

<sup>14</sup> Mohd. Ahmed Khan v. Shah Bano, AIR 1985 SC 945

<sup>15</sup> Soumik Chakraborty, Uniform Civil Code & Gender Justice, (December 17th, 2014), <https://www.lawctopus.com/academike/uniform-civil-code-gender-justice/> (Last visited on Mar 05, 2021)

<sup>16</sup> Section 125, Criminal Procedure Code

<sup>17</sup> AIR 2016 SC 118

as values. It is unworthy, according to the judges, and Justice Kurian Joseph raised his voice, adding, "There can be no constitutional defense for such a procedure." The constitution is the supreme ruler of the country, which must take precedence over all faiths and guarantee the right to life and the right to liberty of all people. The Parliament was ordered by the Court to pass laws regulating in the Muslim community concerning marriage and divorce within six months.

The Supreme Court has focused not only on religion but also on gender-friendly personal rule amendments from *Shah Bano to Shayara Bano* cases. Over time, the requirement of developing a Uniform Civil Code is felt by all the people regardless of religion that guarantees the protection of their constitutional and fundamental rights. Especially for Muslim women, it has been a long road as they have challenged personal laws in order to defend their constitutionally guaranteed rights to life and liberty.

#### **Under Other Laws:**

The provision of discrimination was also observed in other communities and their respective personal laws like Christian, Parsi, and Jews. Under the Convert's Marriage Dissolution Act 1866, the conversion is the ground for divorce among Christians for converters (not non-converts); conversion is the ground for divorce for non-convert spouses under the Parsi Marriage and Dissolution Act 1936. In the case of adultery, a Christian husband may divorce his wife easily, but it becomes complicated for the wife because she requires proving more reasons for her husband's adultery in order to seek a divorce.

Although gender differences exist in all personal legislation, even the ostensibly secular Special Marriage Act of 1954 reveals a communal prejudice. The Indian Succession Act, 1925 used to govern all the matters on which the personal laws of Christian, Parsi, Jews, or Muslim

laws provided nothing about succession. A Hindu, Buddhist, Jain, or Sikh, on the other hand, will retain his or her personal rule of succession if they marry in the same civil marriage.

### **Obstacles in implementation of UCC**

The following are the three most frequent obstacles to the implementation of the UCC in India:

- To begin with, it is required to repeal Article 44 of the Indian Constitution because personal laws are holy and unchangeable, and no legislature has the authority to amend them: Since personal laws are not religious, such an objection is illogical, irrational, and baseless. The clause in Article 44 is nothing more than an essential implementation of the Constitution's goal of "integrity, unity, and fraternity of the nation," which is mentioned not only in the preamble but also in Article 51 A(c) and (e) of the Fundamental Duties.
- Next, the provision of the fundamental right contained in Articles 25 and 26 was opposed by UCC. The roots of both of these articles were in health, morality, and public order as well as all fundamental rights such as social justice and equality. In the case of John Vallamattom<sup>18</sup>, the Chief Justice declared: "In a civilized society, there is no required connection between personal law and religious."
- Lastly, UCC violates Article 29's fundamental rights. Art.29, which protects the right to culture, is seen as alternative protection against Art.44. Personal law, it is said, has become a part of society.

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<sup>18</sup> John Vallamattom and another v. Union of India, (2003) 5 SCALE 384

It is exposed that the isolated identities of the minority group will be tearing apart once Article 44 is applied. Articles 25-27 protect one's sentiments, faith, and religious beliefs, so this warning is baseless.

### **Requirement of UCC in India**

Even when India achieved independence in 1947, it was clear that a uniform civil code would be needed to further integrate the country and make it a fully secular republic. We haven't been able to do this even after 73 years of independence. However, there are several reasons behind such incapability. On the positive side, there is a bundle of reasons which necessitate the implementation of the Uniform Civil Code in India. Such reasons include the promotion of secularism, equal rights to women, progress of the nation, eradicate loopholes in the personal laws, no vote bank politics, and integration of India.

### **Conclusion**

It is apparent that despite statements in favour of constitutional protections, legislative requirements, and women's empowerment, nothing has improved social attitudes and institutions. However, to achieve the required goal, full hope is required. It is important to accelerate this phase of reform through concerted and deliberate efforts to bury the deep social evil of gender equality in its grave. The Indian judiciary has indeed accomplished a great deal, but the fact is that the judiciary's authority is limited, and it cannot take over the roles of the state's other institutions, including the Legislature and Executive. In this regard, the Uniform Civil Code, which is a legislative requirement, is expecting the Indian Legislature's grace in order to become

law and give equal status to both men and women who suffered disparities in personal legislation.

Uniform Civil Code, a popular instrument to accomplish the aim committed in the Indian Constitution, has become just a debatable problem, and due to a lack of interest, our Indian Legislature did limit to implement the Code, instead of seeking to block the direction of UCC, which has been timely promoted by the judiciary. De facto, it is constitutional incompetence that can never be justified in the name of national dignity and unity. A uniform civil code is important for the progression of solidarity and national unity, protection of the oppressed, the protection of women's human rights in India, regardless of their caste or religion, and to bring national laws into conformity.