

"Revisiting the Uniform Civil Code: Constitutional Promise and Practical Challenges"

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DOI: <https://doi.org/10.51584/IJRIAS.2025.100800021>

Received: 12 August 2025; Accepted: 17 August 2025; Published: 30 August 2025

ABSTRACT

The word "uniform common code" means common law for every citizen of India irrespective of their religion. Article 44 of the Indian Constitution "The state shall endeavour to secure common code for every religion." As India has a diverse religion it has different personal laws too which should be unified. The uniform civil code will bring gender equality and justice among everyone. Some people might argue that uniform common code will infringe their freedom of religion. The researcher in her research paper will also deal with challenges in favour of uniform common code. The debate revolving around the implementation of the UCC in India is complex and involves a delicate balancing of modernity, secularism, and religious diversity. While the adoption of a UCC could perhaps simplify the legal process and promote gender equality, its implementation faces significant political, social, and cultural challenges. This abstract explores the arguments for and against the harmonized civil code, its probable outcomes on Indian society, and the challenges involved in its formulation and adoption.

INTRODUCTION

Uniform civil code means that is one law for one nation. The uniform civil code will replace all the personal laws like marriage, divorce, inheritance etc. It is contended that uniform civil code will bring gender equality. Personal laws of different communities are governed by their religious text. Freedom of religion is given under article 25-28 under Indian Constitution.

Part IV of the supreme law of the land deals with the directive principle of state policy. Article 44 says "The state shall endeavour to secure for the citizen a uniform civil code throughout the territory of India."

Uniform civil code came into limelight from the "Shah Bano Case" in 1985. In this case women were deprived of his right of maintenance. Goa has adopted a common civil code under "Portuguese civil code of 1867". In 2024 the state of Uttarakhand adopted a harmonized civil code. Rest all other parts of India follow personal laws.

Why is there a need to adopt a uniform civil code?

Article 44 of law of the land explains that the state shall adopt uniform civil code for all the citizens. As it will bring gender equality highlighted in Part III of the Indian Constitution. It will also uphold the concept of secularism. As the religion will not come on the path of civil matters.

HISTORICAL BACKGROUND

The 1840 October lex loci report described that there is need to codify law relating to crime but it suggests that family laws of Hindu, Muslims should be kept out of it. The Britishers have separated religious texts which are governed by customs, scriptures etc.

Constitutional history: Fundamental rights under the law of the land were drafted by the sub-committee.

Many like Ambedkar, Munshi and Minoo were in support of uniform civil code. The Fundamental rights were separated into justiciable and non-justiciable rights. Uniform civil code was considered a non-justiciable right. Family law based on religion interrupts national unity like M.R Masani, Hansa Mehta and Amrit kaur. It was considered justiciable right.

Constituent Assembly Debates : Ambedkar drafted article 35 which later became article 44 making it a not subject to litigation provision under guiding principles for governance . Uniform civil code is violative of religious freedom as argued by muslim leaders like Ismail Sahad and Pocker Sahib Bahadur.

Defence of Uniform Common Code :

KM Munshi - It will bring secularism among states and bring national unity. Alladi Krishnaswami

Aiyyar - It will bring harmony in the nation.

Ambedkar - It includes guiding principles for governance and emphasised on uniform civil code.

The Main Objectives of Uniform Common Code

1. Harmonized civil code is applicable to the whole of india.
2. Uniform common code will be applicable on the matters of marriage, divorce, inheritance, adoption etc.
3. It will bring gender equality among nations, hence guaranteed under article 14 and 15.
4. Uniform common code will substitute all the personal laws.

Argument In Favour of Uniform Common Code

Equality under the law breaking down religious barriers - The uniform common code will bring gender equality under “article 14 of law of the land”. It brings equality in marriageable laws and will bring religious equality. As recent Uttarakhand civil code has brought marriage age to 21 and has also prohibited polygamy.

1. **Women Empowerment** - It will empower women, as religious or personal laws are little discriminatory towards women. harmonized civil code will give several rights to women like Inheritance rights, child marriage and issues like Triple talaq.
2. **Eradicating personal laws will streamline the legal system** - It will be more accessible for courts to deal with cases if the law will be common for every religion. It will reduce the burden of the courts.
3. **Bring unity among religious groups** - By successful implementation of this common law will bring unity among religious groups as they will not have a comment on each other's customs.
4. **Evolution of society** - The civil code will modernize the society and put forth all the evil practices or patriarchal practices. It will bring new provisions for LGBTQ and will socially reform the laws on grounds of marriage, adoption and Inheritance.

Challenges In Implementing Uniform Civil Code

1) **Religious diversity and Customary practices** - As we all know India has various kinds of religious communities who have different religious practices and different personal laws like Hindu's are governed by “Hindu Marriage act” etc. Muslims are governed by muslim personal law like the “Dissolution of Muslim marriage act” etc . There are different customary practices followed by every religion.

2) **Defiance from religious and minority communities** - The minority view that uniform civil code will infringe “article 25 of Indian Constitution”. Article 25 guarantees freedom of conscience,

profession, practice and prorogation of religion. The minority view that a uniform civil code will be imposed as it will suppress the majority community.

3) **Practical Difficulties and Complexities** - It is a need to provide awareness among the people about a code. Consultation must be made with legal experts, women organizations etc.

Research Problems

1. Due to different religions and diversity in their customs will cause difficulty in providing the same platform for all the religions.
2. It will hinder the concept of religious freedom sanctified under the constitution.
3. The minority views that it will infringe their religious practices.
4. The most important issue is that people are very unaware of this law because of lack of education, False propaganda etc.

Uttarakhand common code - The Uttarakhand civil code bill has prohibited polygamy, halala iddat, talaq-ul-biddat, child marriages and most importantly the mandatory registration of live-in relationship. The code has brought gender equality in matters of Inheritance and marriage. It has added in the code a muslim women should also have equal rights in property. It specifies that the people should perform religious customs, but registration should be mandatory.

Judicial Perception

In *Shah Bano Case*, (1985) : “The supreme court held that section 125 of Code of criminal procedure is applicable to all irrespective of caste, religion etc .”

In the *Sarla Mudgal Case*, (1995) : “The supreme court held that man’s first marriage will still be valid under Hindu law, his another marriage after adopting Islam be illegal under section 494 IPC.”

In the *Jordan Diengdoh Case* (1985) : In this case the Supreme court held that there are many inconsistencies in various personal laws relating to marriage and divorce. So, there is an urgent need to implement common law for everyone.

In the “*Lily Thomas v Union of India* (2000)” : In this case Supreme Court held that if a Hindu male marries again by converting Islam to save himself from, legal sanctions is discriminatory and violative of religious freedom. Also a penal offence under section 494 of “Indian Penal Code” because just by converting to Islam does not end your first marriage.

In the *John Vallamattom v Union of India* (2003) : The Supreme Court held that Section 118 of Indian Succession Act 1925 was discriminatory towards Christian. Hence contravening of article 14, 15, 25 and 26 of Indian “Constitution”. The section 118 of “Indian Succession Act” was declared unconstitutional.

In the *Shabnam Hashmi Case* (2014) : In this case the Supreme Court granted the right of adoption to a couple under Juvenile Justice Act 2000. Though their personal law does not give a right of adoption. But it cannot be denied that everybody has the right of adoption under part III of the law of land Constitution without regard to their “caste, religion, sex etc.”

In a *Shayara Bano Case* (2017) : In this case triple talaq was held unconstitutional as it was violative of fundamental rights. This case also emphasizes bringing uniform civil code among nations.

CONCLUSION

Hence it is concluded that uniform common code will bring equality and justice among nations. It will bring secularism among people. A researcher thinks that uniform common code should remain implemented

without compromising a religious custom

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