



MAJESTY LEGAL

Advocates & Solicitors

DECODIFICATION OF ARCHAIC PERSONAL LAWS

GLIMPSE OF UCC

The Uniform Civil Code (hereinafter referred as **UCC**) is a legal concept that envisions a single set of Civil Laws applicable to all citizens of a country, irrespective of their religious or personal beliefs. It seeks to harmonize diverse personal laws governing Marriage, Divorce, Inheritance, Adoption, and Other Family Matters. The UCC aims to establish a uniform and equitable legal framework that promotes Gender Equality, Social Justice, and National Integration.

The need for uniformity in personal laws has been a subject of discussion and debate in India since decades. The idea of a UCC traces its roots to the efforts made during the colonial era to codify and streamline various legal systems prevalent in the country. The framers of India's Constitution recognized the importance of a UCC in achieving social and legal reforms.

Historically, personal laws in India were primarily derived from religious scriptures and customary practices. These laws differed among religious communities, leading to disparities in the treatment of individuals based on their religious affiliation. Over time, these divergent personal laws have contributed to Social Fragmentation, Inequalities, and challenges in ensuring Justice and Gender Equality.

The historical context also includes landmark judicial pronouncements that have addressed issues related to personal laws and the need for uniformity. For instance, the "*Shah Bano*" case in 1985 sparked a National debate on the rights of Muslim women and highlighted the complexities arising from different personal laws.

The historical backdrop, coupled with the evolving societal dynamics and aspirations for a more inclusive and equitable legal system, has propelled discussions on the need for a UCC in India. It is in this context that the significance of a uniform civil code becomes evident, as it strives to create a just, equal, and cohesive society by addressing the challenges posed by diverse personal laws.

PERSONAL LAWS:-

A. Hindu Personal Laws

Hindu personal laws govern the legal aspects of personal and family matters for Hindus in India. These laws encompass a wide range of areas, including Marriage, Divorce, Adoption, Inheritance and Maintenance. Hindu personal laws are influenced by religious texts, customs, and practices.

Hindu personal laws recognize the sacraments of marriage, with ceremonies varying across different regions and sects. The laws provide guidelines for solemnization, eligibility, and validity of marriages. In terms of Divorce, Hindu personal laws recognize both traditional and legal methods of dissolution. Traditional practices like 'divorce by mutual consent' and 'divorce by desertion' coexist with statutory provisions under the Hindu Marriage Act. In matters of inheritance, Hindu personal laws follow the principles of succession based on the Mitakshara and Dayabhaga schools of thought. These laws outline the rules for the distribution of property among family members, considering factors such as gender, lineage, and relationship to the deceased.

Hindu personal laws exhibit regional and sectarian variations. Different regions within India have their own customs and practices that influence the application and interpretation of Hindu personal laws. For example, Marriage Ceremonies, Rituals and Post-Marital Customs may differ significantly between North India and South India. Similarly, sects within Hinduism, such as Vaishnavism, Shaivism, and Shaktism, may have specific customs and practices that influence personal laws.

In the 1950s, the Hindu Code Bill¹ was a key piece of legislation intended to modernise and codify Hindu personal laws in India. The bill aimed to alleviate gender disparities, update family laws, and create a more consistent and fair legal system for Hindus. While the Hindu

¹ Hindu Code Bill, 1953

Code Bill did result in significant improvements, several of its planned provisions were not implemented and its implementation was patchy.

B. Muslim Personal Laws

Muslim personal laws in India are derived from the principles of Shariah which are based on Islamic religious texts and legal traditions. These laws govern personal matters such as Marriage, Divorce, Maintenance, Inheritance and Adoption for Muslims in India.

Muslim personal laws are guided by the principles of Shariah, which provide guidelines on marriage, divorce, and other personal matters. Marriage in Islam is considered a contract, and the laws specify the requirements for a valid marriage, the rights and obligations of spouses, and the procedures for divorce. The concept of 'talaq' (divorce) has different forms, including verbal, written, and judicial pronouncement. In matters of inheritance, Islamic laws prescribe the distribution of property among heirs based on fixed shares allocated to different relatives. These laws specify the shares of spouses, children, parents, and other relatives, considering factors such as gender and relationship to the deceased.²

Muslim personal laws in India differ from other personal laws, particularly in terms of marriage and divorce practices. The provisions related to divorce, maintenance, and inheritance in Muslim personal laws are distinct and have different legal principles and procedures compared to Hindu and Christian personal laws. These differences have been a subject of debate and discussions related to the need for a uniform legal framework.

C. Christian Personal Laws

Christian personal laws in India draw inspiration from Canon law, which is the legal system governing the Catholic Church and various Christian denominations.

Canon law provides guidelines for marriage, divorce, and inheritance matters within Christian communities. Christian personal laws recognize the sacrament of marriage and the procedures for solemnization and registration may differ based on the Christian denomination. Divorce in Christian personal laws is guided by the provisions of Canon law, which prescribe specific grounds and procedures for the dissolution of marriages. In matters of inheritance, Christian personal laws adhere to principles outlined in Canon law,

² <https://onlinelibrary.wiley.com/doi/10.1111/lasr.12351>

considering factors such as spousal rights, children's rights, and the distribution of property among heirs.

Christian personal laws have certain unique provisions and practices that distinguish them from other personal laws in India. For example, some Christian denominations have specific Rules regarding marriage annulment, which is a distinct concept from divorce. Christian personal laws also recognize the concept of 'domicile' in determining jurisdiction for marriage and divorce cases.

all the personal laws are based on their own religious belief such as *Hindu laws are based on ancient religious texts like Vedas, Gathas, and Smits, religious scripture like Bhagavad Gita, and the modern concept of equality, rights, justice, and legislation was also taken into consideration. Likewise, Muslim laws are based on a religious text like The Qur'an, also the Sunna of Hadis, Ijma, and Qiya are other primary sources, and the modern concept includes equality, rights, justice, and legislation. Also, Christian personal laws are based on religious scripture like the Bible, and modern concepts same as that of Hindu or Muslim personal laws.*³

CRITICISM/CHALLENGES

One of the primary challenges arising from diverse personal laws is the persistence of gender inequalities in matters of marriage, divorce and inheritance. Different religious personal laws often treat women unequally, denying them equal rights and opportunities. Practices such as polygamy, unilateral divorce, and discriminatory inheritance rules place women at a disadvantage and undermine their autonomy and agency within familial and societal structures.

The presence of diverse personal laws based on religious affiliations contributes to social fragmentation and communal divisions within Indian society. The existence of separate legal frameworks for different communities may reinforce communal identities and hinder the development of a shared national identity. It creates a sense of "otherness" and fosters divisions among communities, impeding the progress towards a cohesive and harmonious society.

³ Abhishek Chakraborty, 'As Clamour for UCC rises, here's what you need to know about Uniform Civil Code' (India Today, 28 April, 2022) <https://www.indiatoday.in/india/story/uniform-civil-code-in-india-ucc-bjp-muslim-hindupersonal-law-marriage-act-1942830-2022-04-28> Accessed 20 June, 2023

A uniform civil code has the potential to foster national integration and social cohesion by promoting a sense of common citizenship and equal rights. It transcends religious boundaries and emphasizes the principles of equality, justice, and secularism. By providing a common legal framework that applies to all citizens, regardless of their religious background, a uniform civil code can contribute to a sense of belonging and unity among diverse communities, strengthening the fabric of the nation.

The existence of multiple personal laws poses challenges for individuals seeking justice and resolution of disputes. Navigating the complexities of different legal systems can be arduous, especially in cases involving inter-religious marriages, divorce, and inheritance disputes. Individuals may face difficulties in understanding their rights and obligations under different personal laws, leading to lengthy legal battles and delays in obtaining justice. A Uniform Civil Code would simplify the legal landscape, making it easier for individuals to navigate the legal system and seek redressal.

Furthermore, *the Personal laws are prejudiced in the case of polygamy, giving Christian women the right to a divorce based on adultery, child custody, the ability to own property, and the ability to exercise their rights during divorce, maintenance, and succession.*⁴ In the case of **Mohd. Ahmed Khan v. Shah Bano Begum**⁵, where the woman was refused maintenance by her husband, the Supreme Court established that Section 125 of the Criminal Procedure Code is applicable regardless of the religion of women by highlighting the necessity for a uniform civil code. The Supreme Court has repeatedly emphasised the urgency of creating a Uniform Civil Code for our nation. In one case, **Sarla Mudgal v. Union of India**⁶, where it was questioned whether a Hindu marriage would be dissolved after the husband converted to Islam, the court ruled that a Hindu marriage can only be dissolved in accordance with the Hindu Marriage Act, 1955. Additionally, Section 118 of the Indian Succession Act had been upheld as constitutional in the case of **John Vallamattom v. Union of India**⁷.

Addressing the challenges posed by diverse personal laws requires a careful balance between respecting religious freedoms and ensuring the principles of equality, justice, and social

⁴ Vibhuti Patel, 'All personal laws in India are discriminatory' (Live Mint, 22 August, 2017) <https://www.livemint.com/Opinion/Cn69qE9pQClmtQzzvw1oVP/All-personal-laws-in-India-are-discriminatory.html> accessed 20 June, 2022

⁵ (1985) 3 SCR 844

⁶ (1995) 3 SCC 635

⁷ (2003) 6 SCC 611

progress. The implementation of a Uniform Civil Code has the potential to overcome these challenges and pave the way for a more equitable, inclusive, and cohesive society.

The primary objection of a UCC is that it infringes on the constitutional right to practice one's religion of choice, which enables various religious groups to adhere to their own local rules. For instance, Article 25⁸ guarantees each religious organization the freedom to conduct its own business. They have the right to preserve their own culture under Article 29⁹.

A UCC was purposefully left off of the list of fundamental rights by the Constituent Assembly of India's subcommittee on fundamental rights. Tribal organizations like the **Rashtriya Adivasi Ekta Parishad**, which petitioned the Supreme Court in 2016 to have their cultural and religious practices shielded from a prospective UCC, have expressed a similar worry. Customary laws already in place take precedence over federal laws in Nagaland's tribal districts when it comes to private matters like marriage, property ownership, etc.

The main question that is being examined is that did the makers of constitution envision the codification of personal laws. Since personal laws were listed as item number 5 on the Concurrent List, both the Parliament and State Assemblies have the authority to enact personal laws. If the Constitution's creators had wanted personal laws to be consistent, they would have put them on the union list and given parliament complete legislative authority over them.

The last allegation is that a UCC will impose a Hinduized code on all communities. A UCC may, for instance, contain clauses that, while conforming to Hindu tradition in matters such as marriage, will legally obligate members of other groups to do the same.

NECESSITY FOR UNIFORM CIVIL CODE

One of the primary arguments in favor of a Uniform Civil Code is that it would eliminate discriminatory practices and ensure equal treatment for all citizens, regardless of their religious affiliations. It would create a level playing field by removing preferential treatment or disadvantages based on religious personal laws, thus upholding the principles of equality and justice enshrined in the Indian Constitution.

⁸ Constitution of India, Art. 25

⁹ Constitution of India, Art. 29

Also, a Uniform Civil Code can play a crucial role in promoting gender equality and women's Empowerment. It would eliminate discriminatory practices prevalent in different personal laws and provide a uniform framework that upholds women's rights and ensures equal opportunities in matters of marriage, divorce, inheritance, and other personal matters. By creating a legal system that treats men and women as equal citizens, a Uniform Civil Code can contribute to the advancement of women's rights and gender equality.

UCC has the potential to foster a sense of unity and shared identity among diverse communities in India. It would transcend religious boundaries and promote a common set of rights, obligations, and values that all citizens can adhere to. By emphasizing the principles of equality, justice, and secularism, a Uniform Civil Code can bridge communal divisions and reinforce the idea of a united and inclusive nation.

The presence of multiple personal laws leads to legal complexities and inconsistencies. A Uniform Civil Code would streamline the legal system by providing a single, comprehensive legal framework for personal matters. It would simplify legal processes, reduce procedural complexities, and minimize conflicting judgments. This streamlining would enhance the efficiency and effectiveness of the legal system, making it more accessible and user-friendly for all citizens.

The Supreme Court stated in the **Shah Bano**¹⁰ case in 1985 that "Parliament should outline the contours of a Common Civil Code as it is an instrument that facilitates national harmony and equality before the law." The Shah Bano case concerned the rights of a Muslim woman in divorce.

While Hindu unmarried women are the "natural guardians" of their children, the Supreme Court emphasised in the **ABC v. State of Delhi**¹¹ decision from 2015 that Christian women are "not recognised as natural guardians" of their own children under Christian law. Hon'ble Supreme Court had observed that the Uniform Civil Code "remains an unaddressed constitutional expectation".

The Hindu Succession Act¹² was interpreted by the Supreme Court in 2020 to promote Gender Equality. Women were granted equal coparcenary rights and the right to inherit

¹⁰ AIR 1985 SC 945

¹¹ S.L.P. (Civil) No. 28367 of 2011

¹² Hindu Succession Act, 2005

property as long as they were alive during or after the 2005 amendment to the Hindu Succession Act.

In order to guarantee that the nation's residents "can mingle freely" without being constrained by various marriage rules, the Allahabad High Court in the case of **Mayra alias Vaishnvi Vilas Shirshikar and another vs State of UP and others**¹³ requested Parliament to take the issue of establishing consolidated family laws under consideration in 2021. In a case involving conversion and interfaith marriage, the HC had stated, "A common civil code will help the cause of national integration."

CONCLUSION

A Uniform Civil Code (UCC) in India would be akin to other uniform laws such as the Indian Penal Code (IPC)¹⁴, the Code of Criminal Procedure (Cr.PC)¹⁵, and the Goods and Services Tax (GST)¹⁶ Act that are applicable to all citizens regardless of their religious or personal affiliations. Just as the IPC provides a uniform criminal law framework and the CrPC establishes a standardized procedure for criminal cases, a UCC would ensure a consistent set of civil laws governing personal matters for all individuals. This uniformity would promote equality before the law and foster a sense of unity and cohesion within the diverse Indian society.

Similar to the implementation of the GST, which replaced multiple indirect tax laws across country, a UCC would simplify the legal landscape by replacing the existing diverse personal laws. It would provide a common legal framework that transcends religious boundaries, ensuring equal rights and obligations for all citizens. By unifying personal laws, a UCC would facilitate a more efficient legal system, reducing complexities and streamlining processes related to marriage, divorce, inheritance, and other personal matters. It would promote a sense of fairness, justice, and uniformity, aligning with the principles of a secular and democratic nation.

The 22nd Law Commission, in its recent report dated 14th June 2023, has invited feedback from the general public, political parties, and other stakeholders on the topic of a Uniform Civil Code. This feedback collection period will extend for 30 days. Notably, the previous

¹³ Writ-C No. - 14896 of 2021

¹⁴ Indian Penal Code, 1860

¹⁵ Code of Criminal Procedure, 1973

¹⁶ Goods and Service Tax, 2017

21st Law Commission, after extensive consultations and reviewing 75,000 responses over a span of two years, had published a "consultation paper" in September 2018. This paper stated that the implementation of a Uniform Civil Code was deemed unnecessary and undesirable at the current stage. However, the commission did propose certain modifications to family and personal laws. The consultations conducted by the previous commission revealed a lack of consensus among the various stakeholders involved. The implementation of a Uniform Civil Code has been a subject of extensive debate, primarily due to the challenges posed by religious identity and gender justice.

When debating the introduction of a uniform civil code, it is imperative to emphasise the need for an educated and inclusive discussion. India's complex religious, cultural, and social landscape calls both care and sensitivity. Any choice on a UCC should be the result of talks and consultations with a range of stakeholders, including legal professionals, religious authorities, proponents of women's rights, and members of other groups. To ensure that all viewpoints are taken into account and to enable a more complete and nuanced understanding of the challenges associated with the implementation of a UCC, it is important to engage in an open and courteous discourse.

We must acknowledge a UCC's ability to address the issues brought on by various personal laws and promote a more equal and cohesive society while also noting the critiques and worries around it. A UCC can offer a framework that respects the ideals of justice, equality, and secularism while also preserving the freedom of religion and variety in culture. Equal rights and opportunities for all people should be guaranteed, the legal system could be made simpler, social peace could be encouraged, and national unity could be strengthened. A well implemented UCC may help create a more inclusive, forward-thinking, and peaceful India by striking a balance between uniformity and variety.

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¹⁷ Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.