

UNIFORM CIVIL CODE: A TRUMP CARD TO ATTAIN GENDER JUSTICE

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ABSTRACT:

A change in personal laws to different individuals will undoubtedly be met with resistance in multicultural society such as India, which has a plethora of religions and practises. However, in order to create a level playing field, we must first rewrite the laws that place certain groups of people on a pedestal. The objective of the study is to identify the lacunas present in the current personal laws that disadvantage certain genders and the non-existence of laws to represent other disadvantaged gender-minority groups. This paper aims to study how personal laws of various religions obstruct gender justice and whether the UCC's implementation will result in gender equality. It also analyses the UCC's debates as well as the complexities involved in its implementation. This paper weighs the pros and cons of having a uniform civil code and examines how having one could be a step in the right direction for gender justice. Further, the discussion about UCC is usually centred on the plight of women and also overshadows the needs of other gender minorities by highlighting some of the most arbitrary provisions in personal laws to demonstrate the necessity of UCC. Thus, this paper's goal will be to identify the need for implementation of UCC and India's position to implementing such a code and to show how it can be helpful as a tool for obtaining gender justice by enacting provisions for marriage, divorce, succession, inheritance, and adoption, among other things, that apply to everyone, regardless of religion or gender.

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INTRODUCTION:

UCC is a means of unifying all “personal laws” into a set of secular laws that is applicable to all Indian citizens irrespective of the community affiliations. It is yet to establish the contours of such unifying code, it is expected to include contemporary and progressive aspects of all subsisting personal laws while rejecting which are regressive.

The Constitution’s “directive principles” mandates that the state creates a Uniform Civil Code to protect all Indian citizens. Under Art 44 of the Indian constitution, 1949, *"The State shall endeavour to secure for the citizens a UCC throughout the territory of India²"*. The directive principles, as stated in the Constitution, are not enforceable in the court of law. Nonetheless, they are “fundamental in the country’s governance”.³ This demonstrates that, while our constitution states that UCC should be implemented in some way, it is not an obligation. As a result, the debate over whether India should have its own UCC continues.

In legal terms, the implementation of U.C.C. and the issue of gender justice are inextricably linked. The fundamental issue is to provide proper justice, and equal treatment for all genders which is confined in various modern issues such as freedom, secularism, and religion, among others. Gender justice is a serious issue that requires immediate addressing. For instance, if we take women then Women's empowerment is required in various fields, including health, security, & employment, as well as in the fight against gender bias. This will not be entirely possible because of the biased personal laws.⁴

There are personal laws specific to each religion, as well as personal laws that are universal if someone wishes to use them. Hindus, for example, have a marriage law called the Hindu Marriage Act, 1955, whereas Muslims follow Sharia law. The Parsis, Jews, and Christians all have their own set of marriage laws. There is also the Special Marriage Act of 1954, which allows two people to marry even if they are from different religions or castes or if they want to follow the universal law. Apart from this there are other laws such as guardianship, adoption, maintenance, Inheritance which are different for different religions, and which constitutes gender inequality⁵. There is now a pressing need to amend these acts in

² India. (1949). *The constitution of India*. New Delhi.

³ Bhim Singhji v. Union of India AIR 1981 SC 234.

⁴ “Is Uniform Civil Code the Path to Gender Justice? - Sayfty.” Sayfty, sayfty.com, 14 June 202.

⁵ GHOSAL, JOYDIP, UNDERSTANDING UNIFORM CIVIL CODE AND ITS PROBLEM IN IMPLEMENTATION (2019).

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order to accommodate the rights of transgender people. So, the Supreme Court has recommended that the U.C.C. be sanctioned by the Central Government. It is claimed that it will only help if governments prioritise gender equality as a top priority.⁶

THE ROLE OF PERSONAL LAWS IN PROMOTING GENDER INEQUALITY IN THE CASE OF WOMEN

Our nation discriminates on the basis of personal laws such as marriage, succession, divorce, maintenance, minority, and guardianship, as evidenced by historical development. They also create norms, rules, and regulations that govern human relationships in the family. Personal norms governing Hindus, Muslims, Christians, and others are patriarchal in nature, rendering them unjustified and discriminatory to women.⁷

When we review Muslim Laws, it is unmistakable that the current personal laws are prejudiced towards women and are oppressive in character. Despite modifications, practically all religious laws have been the subject of lengthy legal fights. This dispute, however, arose in the aftermath of the Triple-Talaq ruling. Women's rights advocates were quick to bring into question the prevalent discriminatory practises in personal legislation. The discussion began with a question on Muslim law. Polygamy, unilateral divorce, and depriving women of maintenance were all investigated as harsh practices under Islamic law⁸. However, it is far from the last example of discriminatory personal law in the country.

In another case, Muslim law recognises a guardian's authority to enter into a marriage contract with his minor ward and there is a remedy in the shape of the "option of puberty" (the right to repudiate the marriage upon reaching puberty), but it is limited to women.

In case of inheritance, if the wife that dies and there exists a lineal descendant, the husband receives quarter of the property; if no lineage exists, the husband receives half of the property, while the widow receives just 1/8th. If an intestate property is left behind, the

⁶ de Silva, Rangita and Jaising, Indira, The Role of Personal Laws in Creating a 'Second Sex' (September 2016). New York University Journal of International Law and Politics (JILP), Vol. 48, Pg. 1085, 2016, U of Penn Law School, Public Law Research Paper No. 16-40, Available at SSRN: <https://ssrn.com/abstract=2854330>

⁷ "Uniform Civil Code Towards Gender Justice." Law Corner, lawcorner.in, 3 Apr. 2021, https://lawcorner.in/uniform-civil-code-towards-gender-justice/#GENDER_INJUSTICE_AND_UNIFORM_CIVIL_CODE_CONFLICT.

⁸ Religion, state, and the problem of gender: new modes of citizenship and governance in diverse societies. (n.d.) > *TheFreeLibrary*.(2014).Retrieved Apr222022 from <https://www.thefreelibrary.com/Religion%2c+state%2c+and+the+problem+of+gender%3a+a+new+modes+of+citi+zenship...-a0132872721>

daughter is entitled to half of it; but, if there is a son, the daughter becomes residuary, and the son is entitled to twice as much as the daughter. Prior to the enactment of the Muslim Personal Law Act in 1937, women had no right to inherit⁹. A significant breakthrough in Muslim personal law is the *Shah Bano* case¹⁰, in which the Supreme Court ruled that the wife divorced by triple Talaq is eligible for maintenance under section 125 of the Code of Criminal Procedure, 1973. Polygamy was outlawed in India prior to this breakthrough judgement, with the exception of Islamic males who may have more than one wife. Women do not have this right.

The father is the primary natural guardian, as per Hindu law, Section 6 of the Hindu Minority and Guardianship Act, 1956. Women are robbed of their natural protective role as a result of this decision. It not only reflects patriarchal values, but it also goes against constitutional principles.

Previously, women were not considered as family heirs. Only a male may be a coparcener and have birth right to the property. Men were given priority over all rights in the ancient times, while women were considered second-class citizens. Women were made to be men's property and liabilities. The man was the family's Karta, and all family decisions, particularly those concerning women, were made with his consent exclusively. In Hindu law, Mitakshara and Dayabhaga are the two inheritance systems followed. Mitakshara determined the property rights of the deceased Karta's family members, and it bases its beliefs on the doctrine of representation, which stipulates that following the death of the father or grandfather, or both, the portion of the property passes to the son, son's son, and son's grandson.¹¹ It expresses clearly the traits of a male-dominated society. The principle of religious efficacy is followed at Dayabhaga School, which asserts that the person who is able to offer duties to the family's deceased head member will be allocated the property shares. According to Hindu law, only the male heir of the family is allowed to perform religious offerings, not the female heir. Then, in 1956, the Succession Act was passed, which expanded the concept of order of succession to include women's rights. However, following the Hindu Succession Amendment Act of 2005, the deceased's daughter was given the right to be a

⁹ "A Critical Study on different modes of transfer of Properties under Customary and Islamic Law - Best Free Essays Examples. (2019, June 7). N&S Digital Essay Service. <https://northandsouthdigital.com/a-critical-study-on-different-modes-of-transfer-of-properties-under-customary-and-islamic-law/>

¹⁰ Ahmad Khan v. Shah Bano Begum, 1985 (2) SCC 556

¹¹ Rai, Lavanya. "Schools of Hindu Law: Mitakshara and Dayabhaga – Legal Study Material." Legal Study Material, [legalstudymaterial.com](https://legalstudymaterial.com/schools-of-hindu-law-mitakshara-and-dayabhaga/#Mitakshra_School), 20 Apr. 2021, https://legalstudymaterial.com/schools-of-hindu-law-mitakshara-and-dayabhaga/#Mitakshra_School

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coparcener by birth, with the same share and liability as a son or other male coparceners. The court interpreted the goal of the 2005 Amendment Act, which is to remove gender bias and disparities between men and women. But it took nearly 50 decades to remove the gender bias in this aspect.¹²

Next, in the landmark case of *Sarala Mudgal v. Union of India*¹³, the Supreme Court of India raised the application of the Uniform Civil Code. It ruled that marriages entered into by a Hindu male after converting to Islam with the goal of engaging in polygamy are null and void. If a Hindu male converts to Islam while his first marriage is still active, there has been an injustice to his first wife, and his second marriage is regarded null and void. This demonstrates how individuals are attempting to take advantage of personal law loopholes.

Gender bias is also prevalent in Christian divorce laws. In case of men, adultery can be used to obtain a divorce whereas, for women, it is not permitted to divorce only on the grounds of adultery. It should be based upon either bestiality, sodomy, or abandonment¹⁴.

Many elements of specific personal Parsi laws also contain gender bias; for example, if a Parsi female marries a non-Parsi male, she loses both her property rights and her religious freedom. A Parsi man marrying a non-Parsi woman is a different story. In terms of possibilities, this is only the tip of the iceberg. These demands do not cover the entire extent of discrimination that personal laws imply and have to remember that personal laws reflect the beliefs and faith of one's community. They come in a range of shapes and sizes.

THE ROLE OF PERSONAL LAWS IN PROMOTING GENDER INEQUALITY IN THE CASE OF TRANSGENDER

Gender-based rules have been in place in India for a long time. This is not limited to property, adoption, or succession rules. It pervades both criminal and labour laws (e.g., the Indian Penal Code, Code of Criminal Procedure, Workmen's compensation Act 1923 and the Factories Act, 1948.). The Hindu Succession Act and the Hindu Marriage Act 1955, which govern personal rights, are perhaps the most visible examples of this. Under Section 13 of

¹²“Uniform Civil Code Towards Gender Justice.” Law Corner, lawcorner.in, 3 Apr. 2021, https://lawcorner.in/uniform-civil-code-towards-gender-justice/#GENDER_INJUSTICE_AND_UNIFORM_CIVIL_CODE_CONFLICT.

¹³ *Sarla Mudgal v. Union of India*., AIR 1995 SC 1531

¹⁴ Susruthan, N., & Sundaram, A. (2018). UNIFORM CIVIL CODE TOWARDS GENDER JUSTICE Introduction. *International Journal of Pure and Applied Mathematics*, 120(5), 4793–4807. <https://acadpubl.eu/hub/2018-120-5/4/391.pdf>

the General Clauses Act, for example, any expressions importing the male gender must be understood to include females, according to the law. The use of terminologies like male and female, on the other hand, reveals inherent prejudices in law formulation. Section 13 clearly excludes transgender people and applies only to males and females.

Aside from utilising gendered language, legislations also differ in how they handle people of different genders. As this section demonstrates, both male and women have different inheritance rules. This not only an exclusion of the third gender but also leaves a vacuum of uncertainty which questions how they are to inherit property if at all they are included. The 174th Report of the Law Commission of India, the 207th Report of the Law Commission of India, and the Consultation Paper on Family Law Reform have all noted that this is not a new problem¹⁵.

This is especially important considering that the Constitution forbids discrimination on the basis of religion, race, caste, gender, or place of birth. This says that the state cannot enact legislation that treats people differently based on the distinctions stated above which may have exceptions in some particular circumstances. Because gender is defined in Article 15 of the Indian constitution 1948 in the context of sex, legislation shall not discriminate against transgender individuals purely on the basis of their identities.

The Hindu Succession Act, 1956 which governs the rights of Hindus, Sikhs, Buddhists, and Jains, spells out all of the succession regulations in great detail. Transgender persons, on the other hand, are not covered in the Act's framework. The defining phrase, which states that the successor must be male or female, exemplifies this. It also creates agnates and cognates' rights based on a binary gender paradigm. Furthermore, the Act treats men and women extremely differently. However, the Act is unclear on whether a transgender person who identifies as a male is eligible to inherit under Section 8. This answer is also not accessible in the General Clauses Act, which provides definitions for particular statutes that are absent.

Recently, the Madras High Court interpreted the term "bride" under Section 5 of the Hindu Marriage Act 1956 to include transgender people in a landmark judgement given in 2019. However, with this ruling, a new ground has been established. The Madras High

¹⁵ Sharma, S. (n.d.). A CRITICAL ANALYSIS OF THE 174TH REPORT OF THE LAW COMMISSION OF INDIA Subject: Family Law. *Www.academia.edu*. Retrieved April 22, 2022, from https://www.academia.edu/7575974/A_CRITICAL_ANALYSIS_OF_THE_174TH_REPORT_OF_THE_LAW_COMMISSION_OF_INDIA_Subject_Family_Law

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Court based its judgement on three historic decisions in favour of LGBTQ+ rights: the NALSA decision, the K.S. Puttuswamy Case (privacy under Art. 21), and the Navtej Singh Johar decision. Although these judgements have been given, the government has not included transgender marriage provisions in the 2019 Transgender Persons (Protection of Rights) Bill, which was proposed to protect the trans community and pave the path for a much more progressive legal system.¹⁶

As a result, Indian law prohibits transgender people from marrying, either in letter or spirit. If they are not allowed to marry, which would be a considerable legal problem in and of itself, their inheritance rights would be jeopardised. This is due to the fact that personal laws (such as marriage and inheritance) are frequently intertwined. Property is bestowed on designated relatives, including marriage partners, under inheritance laws. As a person they cannot claim any part of their deceased partner's property without a lawful marriage.

The treatment of male and female adoptees is different under the law. Like, a single male can only adopt a female if he is at least twenty-one years older than the person to be adopted, according to the Hindu Adoptions and Maintenance Act, 1956. Similarly, there must be a twenty-one-year gap between a single adoptive mother and a male child. Furthermore, the Juvenile Justice Act's 2015¹⁷ Adoption Regulations restrict a single male from adopting a female kid. This restriction does not apply to a female adopting a male child. Gendered sections are frequently used in both Acts (and regulations). Similarly, a person who is not legally recognised as the child's adoptive parent may be unable to inherit the latter's property if the latter dies¹⁸

¹⁶ Sharma, Devika, and Editor. "Madras HC | Transgender Female Is a 'Bride' under Hindu Marriage Act; No Impediment in Registration of Transgenders Marriage | SCC Blog." SCC Blog, www.scconline.com, 25 Apr. 2019, <https://www.scconline.com/blog/post/2019/04/25/transgender-female-is-a-bride-under-hindu-marriage-act/>.

¹⁷ Juvenile Justice (Care and Protection of Children) Act, 2015

¹⁸ Karan Gulati, and Tushar Anand. "Inheritance Rights of Transgender Persons in India." NIPFP Working Paper Series, 26 Aug. 2021, https://nipfp.org.in/media/medialibrary/2021/08/WP_350_2021.pdf.

NEED FOR UCC TO PROMOTE GENDER EQUALITY

The need for the implementation of UCC was felt since the creation of the constitution, the objective of which was to bring parity to the women who was severely underprivileged in all aspects. We shall now discuss how UCC will positively impact India. As there is flip side to everything the disadvantages of UCC also shall be looked into and how the advantages will eventually outweigh the negative aspects.

1. To bring equality irrespective of any gender divide

Implementation of a Uniform Civil Code will ensure in the equality treatment irrespective of the religion, place of birth, gender etc. The implementation of UCC will bring forth the true intent of the secular state.¹⁹

2. It will help in bypassing the personal law and promote gender equality

Because women are subjugated in all religions, and because the foundation of all personal laws is anchored in religion, these personal laws are profoundly discriminatory and undermine their rights. With its implementation, UCC can correct the unfair pedestal that males have been granted in terms of succession and inheritance as compared to their females.

3. It will portray and facilitate the aspirations of the youth

As one of the world's oldest civilizations, the Indian Civilization has more than half of its population under the age of 25. They're on the lookout for a new identity. Young people's societal perspectives and ambitions must be moulded by global principles of equality, humanism, and modernism in order to keep the country together. UCC will undoubtedly give young people the opportunity to employ their full potential in the service of country building if it is implemented.

4. To further the unity of the nation

UCC will allow for the non-politicization of a variety of issues, such as specific advantages enjoyed by certain communities as a result of their personal laws. The notion of equality will triumph over all anti-national and anti-social features in all of its expressions with the implementation of UCC.²⁰

¹⁹ Alim, A. (2021). Towards the Uniform Civil Code and Personal Laws in India: Gender Equality Perspective. *Annals of Bioethics & Clinical Applications*, 4(4). <https://doi.org/10.23880/abca-16000206>

²⁰ Team, ClearIAS. "Uniform Civil Code (UCC): Pros and Cons in a Nutshell - Clear IAS." ClearIAS, www.clearias.com, 23 Mar. 2017, <https://www.clearias.com/uniform-civil-code-ucc/>.

SOME OF THE DISADVANTAGES OF UCC SHOULD ALSO BE LOOKED INTO WHICH ARE –

1. Problem in accommodating the vast diversity of India

Considering the vast diversity of India, the cultural, habitual and customary practices will make it cumbersome to implement. To transition from ingrained traditional practices to a uniform civil code will be received with much friction. An example of which can be marriage.

2. Perception of curtailing religious freedom

Many communities, religious minorities and other people have a fear of the idea that implementation of the UCC will suppress their religious freedom. This fear though genuine is to some point valid because, the influence of the majority will always have its influence on the government, and this might cause a bending of the law to accommodate more of the majority practices in the UCC. It will take some time to have a tolerant attitude to the establishment and implementation of UCC via minority groups in particular.²¹

UCC AS A WEAPON TO KILL GENDER INEQUALITY

The Uniform Civil Code has been debated in different forums for many years regarding the minority rights against uniformity, secularism against religion, modernization versus traditional views. The need of Uniform Civil Code was mainly to level the gaps created by religion at different strata. From 1960 onwards the All-India Women's Conference started pressing for the implementation of the UCC as a means to ensure gender just laws for women from all backgrounds. The AIDWA recommended that a two-pronged strategy is needed for achieving unifying gender laws as well as making internal reforms also they specifically suggest that Muslim personal law be reformed within the scope of the religion. This method is effective in bringing parity to minority identity in context of the dominant fundamentalist and it will create a space for distancing the feminist position from the conservative Hindus

²¹ Team, ClearIAS. "Uniform Civil Code (UCC): Pros and Cons in a Nutshell - Clear IAS." ClearIAS, www.clearias.com, 23 Mar. 2017, <https://www.clearias.com/uniform-civil-code-ucc/>.

demand for UCC. Flaves Agnes who is a women rights lawyer also is of the strong belief that implementation of UCC must be for achieving gender justice and not only for uniformity's sake²². She suggests that reform from within each community, by piecemeal legislations, personal civil code could help with the needs and contribute towards the bigger picture. An appropriate notice time and marriage registration will be one of the benefits of a standard civil code. Ceremonies will be made optional. However, as a ceremony, parties can have rituals of their choosing, such as Hindu—Saptapadi; Muslim—Nikah; Christian—Church blessing, and so forth. However, the registration and compliance with what is needed of notice, etc., as set forth in the unified civil code, shall stand as proof of the marriage. Monogamy will indeed be required, and divorce rules will be the same for men and women, resulting in social coherence and non-fragmentation. Both men and women must have equal property rights which can be legally enforceable, and it will be a huge step forward for women.²³

However, as we have shown, implementing a consistent civil code would be difficult. In 1972, the government enacted comprehensive adoption legislation. It said that the Hindu adoption law will be abolished. There would be only one law that applied to everyone in India. Despite the fact that it was just an enabling measure, the Bill was sent to the Select Committee and was defeated. A purely secular bill failed to pass because one group objected on religious grounds, claiming that while Islam prohibits adoption, a terrible Muslim may adopt anyhow. A Muslim community member even went so far as to state that no such rule should exist that allows any community “the liberty of forsaking their particular beliefs.”²⁴

The time has come to fulfil the promise of equality given to Indian women and enshrined in the Constitution. Personal laws, in my opinion, should be consistent with fundamental right to equality, and if there is a conflict, equality should prevail. I ask the present administration to take the lead and create a uniform civil code.

The government must take severe measures to ensure the well-being of its citizens, which will benefit not only present but future generations. Personal interests may take precedence over collective interests until a legislation to address these situations is

²² Sunder Rajan, R. (2000). Women between Community and State: Some Implications of the Uniform Civil Code Debates in India. *Social Text* 18(4), 55-82. <https://www.muse.jhu.edu/article/31888>.

²³ “Is Uniform Civil Code the Path to Gender Justice? - Sayfty.” Sayfty, sayfty.com, 14 June 2021, <https://sayfty.com/is-uniform-civil-code-the-path-to-gender-justice/>.

²⁴ Südasien-Chronik. “Dead Letters? The Uniform Civil Code through the Eyes of the Indian Women’s Movement and the Indian Supreme Court.” Edoc.Hu-Berlin.De, <https://edoc.hu-berlin.de/bitstream/handle/18452/9168/61.pdf?sequence=1&isAllowed=y>. Accessed 19 Mar. 2022.

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implemented. Hence, adoption of the Uniform Civil Code is an urgent requirement. The ultimate goal is to create ideals of equality that will balance genders as well as religious organisations, which UCC hopes to achieve. Until and unless these institutions are modernized, democratized, and elevated, there will be no change in UCC's outlook. UCC must improve women's standing and dignity, establish social harmony, and promote secularism.²⁵ Traditional communities are resistant to change. Furthermore, if UCC is made necessary, it will be extremely difficult to achieve the stated goal. As a result, it must be marked optional first. With the passage of time, it will be adopted by the entire society. UCC may become a reality in a country like India. It requires a will, which our government, sadly, lacks.

CONCLUSION

Now is the time to put into effect what the Indian constitution has envisioned from its inception: a commitment to gender equality. Most developed countries have already adopted UCC; so, India, as a true secular society, must soon follow, and can look to Goa as an example, as it is the only state in India to do so, which is commendable.

In our opinion, the country's age-old religious norms and personal laws, which have generally favoured men, particularly Muslim men, require significant reform. We strongly believe that the UCC will be the vehicle through which women's conditions in the country can be improved. Also, customs and traditions that are no longer relevant in today's modern society must be abandoned, and women must be granted equal rights. Furthermore, a uniform civil code will not only benefit women in India by improving their situation, but it will also strengthen national unity and uphold true secularism. By integrating UCC, we may also be able to remove prejudices towards many cultures and faiths. Everyone would be able to enjoy the same rights as those provided under a single piece of legislation. The constitutional goals of unity, integrity, and fraternity will be more fully achieved as a result.

²⁵ India International Centre Quarterly, Vol. 31, No. 4 (SPRING 2005), pp. 40-54