

THE UNIFORM CIVIL CODE : A MYTH OR REALITY

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ABSTRACT

This paper deals with various dimensions of UCC. The motive of this research is to impart the readers about the concept of uniform civil code, whether it is the appropriate time to implement it and the ways to implement the UCC. This research starts with the meaning of UCC. Then it explains the origin and historical evolution of UCC in India and why our country needs uniformity in personal laws. Further, it will cover the challenges which the UCC is witnessing such as diversity, rigid ideologies of some religions in personal laws, deeply instinct patriarchy, social taboos, wrong interpretation of secularism, beliefs of minorities that UCC will destroy their customs, politics based on vote bank and lack of political will, and it will also deal with hijab controversy. As we have a uniform divorce mechanism, how can we have a uniform code of conduct in personal laws as well. Then the research will move further as how UCC can be a way to eradicate discrimination against women, bring gender equality and promote religious harmony. After understanding the challenges this research aims to show the readers how India can work on these challenges with the motive of implementing the UCC. This research will also set forth the judicial pronouncements towards implementation of UCC. It will also take into consideration the places where its implementation is promoting peace and security such as Goa and other countries. Then research will provide the best version of UCC. Further it will also provide to the readers the advantages and disadvantages of UCC and then it will deal with suggested measures to implement UCC then it will conclude whether its implementation is a myth or reality as per Indian perspective.

"As long as there is a feeling of duality, unity is not possible"

-Swami Madhvacharya

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INTRODUCTION

The Uniform Civil Code (Samāna Nāgrika Samhitā) which is interpreted in many different senses but has one common aim i.e., the welfare of all communities and removing the social taboos such as gender disparities, looking at the positive side of secularism, taking the best version of personal laws and making one common code for all religions i.e., Hinduism, Christians and Muslims etc. Though India has a one common Criminal Code² it lacks in "one common personal law" as it is a home to Diversified religions practicing them differently which makes it difficult to implement the UCC. The UCC is generally understood with family related matters such as succession, inheritance, property rights, marriage and adoption etc., but its roots are not limited to these only as it also entails "festival conflicts" (Eid and Diwali), religious worship such as "Namaj" in mosques and "Puja" in temples where one regard it as "God is one and there is no other God" on the other the Hindus regard it as "vasudhaiva kutumbakam" i.e., the "whole world is one family" respectively. The UCC has constitutional sanction (Article 44)³ which the framers have mentioned it in chapter 4 i.e., Directive Principles of State Policy which can't be enforced in court of law as it only directs the Government to make policies for the implementation of UCC, but the structure of constitution promotes democracy which means what people think becomes the "law of the land". Strongest point of democracy is its people and their will, which nowadays has become the weakness of it as the government comes with the support of people and the constitution also supports the concept of federalism which means power is not centered but decentralized because of this various expectations arises, and such expectations cannot be meted out at the same time. This leads to too much Diversity as it gives them reasonable liberty to practice freedom of religion, and these religious practices support some customary practices which have become a challenge to socio-economic equality, gender equality, positive secularism, democracy, women empowerment, vote bank politics etc. This research paper will deal with each of these issues separately and will provide the suggestions for the implementation of UCC. The research question is whether it is possible to implement UCC in India.

² Indian Penal Code, 1860, No. 45, Act of Parliament, 1860 (India).

³ INDIA CONST. art. 44

ORIGIN & HISTORICAL BACKGROUND OF UCC

Before understating a concept, it's important to first understand its history. UCC is not a new concept in India. Its origin had started a long time ago. The idea of UCC came from the similar European codified laws.⁴ In colonial India for the very first time in 1935 the British Government presented a report for the codification of laws related to contract, penal laws, property laws etc., but the personal laws of Hindus, Muslims and other religions were excluded from it because of the reason that it may hurt the religious sentiments of people.

B.N RAO COMMITTEE

Again in 1941 B.N. Rao committee was formed. It recommended "*codification of Hindu laws*"⁵ which should not be male centralized and contain rights and recognition to women.

POST-INDEPENDENCE

Further after independence when the Constitution was framed, provision regarding UCC was provided. Article 44 of our Constitution lays down that the "State shall endeavor to secure a UCC for the citizens throughout the territory of India". As UCC was included in the DPSP's that's why the State was not obliged to introduce it immediately and there was room for the consent and negotiation of all religious communities in India.

THE HINDU CODE BILL

Again in 1951 the report was presented before the Select Committee headed by B.R. Ambedkar for discussion. During the debate, the Hindu Code Bill was lapsed, and it was reintroduced in the year 1952. Finally in the year 1954 Hindu Succession Act was passed which gave property rights for the first time to women applying to Sikh, Jains and Buddhists also. Nevertheless, personal laws of Muslim Parsis and Christians remain separated from the Bill.

⁴ Abhinav Mehrotra, *Uniform Civil Code (UCC) in India: An overview, or online. org*, ORF OBSERVER RESEARCH FOUNDATION, (Mar. 18, 2022, 3:10 PM), <https://www.orfonline.org/expert-speak/uniform-civil-code-ucc-in-india-an-overview/>

⁵ Rau Committee Report (1947). 13, 32–34, 156, 182.

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UCC IN GOA

In India, Goa is the first state, a shining example of an Indian State which has a UCC applicable to all, regardless of one's religion except the protection of certain limited rights. In Goa Portuguese introduced the Portuguese Civil Code⁶ in the late 19th and 20th century under which some parts have been repealed in 2016 and get replaced by Goa Succession Act, Special Notaries Act and Inventory Proceedings Act, 2012 which are more or less conforming to the Portuguese Civil Code.⁷

SHAH BANO & SARLA MUDGAL CASE

The Hon'ble Supreme Court has also asserted the need of UCC through various judgements. In the historical judgment of Shah Bano case Supreme Court dealt with the matter of maintenance under Sec 125 of CRPC⁸ under which the husband of Shah Bano gave talaq to her. The Supreme Court in this case observed that there must be a common civil code for equality and harmony. Another judgement was given in Sarla Mudgal Case where Supreme Court dealt with issue of polygamy after conversion into Islam. The Supreme Court has at various times put the stress on the government to introduce UCC. Many times, attempts were made but due to various challenges and "communal politics" nothing happened in this way.

NEED & ADVANTAGES

India is a home to many diversities and the diversified people practices some personal choices and customs which sometimes favorable to one class of people but unfavorable for another one such as "Triple Talaq" is more in favor of Muslim man but not for Muslim women, mandate of "dowry in Hindu Religion" (despite Dowry Prohibition Act) is favorable to the groom side but unfavorable to the bride side as well as for the large public interest. Further, the nation is burning in many other social problems such as rising "caste or religion-based vote bank," Therefore the need arises to provide a mechanism which will act as a medicine and will cure these social taboos from their roots. Then there will be an India "without caste-based politics", with treating their daughters, sisters and mothers with proper "respect and dignity",

⁶ Faizan Mustafa, *Explained: Why Goa's Civil Code is not as uniform as it is made out to be*, THE INDIAN EXPRESS (Last Visited April 20, 2021 7:41:46 am) <https://www.google.com/amp/s/indianexpress.com/article/explained/why-goas-civil-code-is-not-as-uniform-as-it-is-made-out-to-be-7279365/lite/>.

⁷ Ashok Kini, *no attempt made to frame UCC despite judicial extortion*, LIVE LAW (Last Visited March 18, 2022, 3:42 PM) <https://www.livelaw.in/top-stories/no-attempt-made-to-frame-uniform-civil-code--14804>.

⁸ The Code of Criminal Procedure, 1973, Sec 125.

with a positive side of secularism. If a nation wants to see its future like this, then it has to concede to the idea of UCC.

Above all “dvaita” (द्वैत) means seeing all separately and “advaita” (अद्वैत) means seeing one. As long as we are living in duality, the conflicts of mine-yours, honor-respect, happiness-sadness, profit-loss etc. keep bothering us. It is this duality that gives bondage, for liberation it is necessary to come in a non-dual spirit. Advaita itself is called “Ekatma Bhava”. “Ekatma” means that one soul is present in all living beings. So, the "concept of non-duality"⁹ is important for the peace and prosperity which prevails only in uniformity.

ADVANTAGES OF UCC

1. One of the biggest advantages of UCC is the welfare of women. It will eradicate the discrimination against women and would promote their equal status in their marital life.
2. UCC would reduce the distinction between religions in the matter of marriages, maintenance etc. and all will be dealt with by the same civil laws which would be helpful in the making of a uniform and homogenous society.
3. It will trigger the dirty communal politics of divide and rule in the name of religion, caste etc. And then the nation will focus on other important issues like health, education, spiritual development etc.
4. UCC will promote real Secularism which had not prevailed till now. In some aspects we are secular but in others there is no secularism. Implementation of UCC will promote the atmosphere of real secularism in which all citizens have to follow same set of laws whether they are Hindu, Muslim, Sikh, Christian or of any other religion.¹⁰
5. The implementation of UCC will remove the differences between various religions leading to a more unified and peaceful nation.
6. The development of a country is very much dependent on the empowerment of its women. As a UCC would promote women equality. It will lead to a more developed and prosperous nation where all women enjoy equal status as men.

⁹ B Shivkumar, *Dwait and Adwait*, THE TIMES OF INDIA (Mar. 19, 2022, 10:54 AM) <https://m.timesofindia.com/advaita-and-dvaita/articleshow/7352731.cms>.

¹⁰ Mayank Chandra, *UCC: India's Requirement*, LEGAL SERVICE INDIA (Mar. 18,2022, 5:18 PM) <https://www.legalserviceindia.com/legal/article-3916-uniform-civil-code-india-s-requirement.html>.

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7. It will clear the confusion created by the plurality of personal laws and the customs which are contradictory to other religions.
8. UCC will also promote the welfare of marginalized sections and minorities, though there has been an ideology that UCC would favor only mainstream religion but it's only the one side UCC would bring all the sections at one platform especially the women of marginalized communities which are the most suffered being.
9. UCC would promote the “integrity and unity” of our nation and would foster the dream of "One Nation One People"
10. Lastly, UCC is to secure the diversity but with certain equality among the distinct religions so that no person would have to face discrimination or injustice due to his/her religion.

DIVERSIFIED PERSONAL LAWS

The contradictions do not end here because personal laws of Hindu, Sikh, Jainism, Buddhism are different and other tribes such as tribes of Bhil, Kholcha, Bhel, Nayaka, Koknas, Vedch, Gamits, Warlis, and Chaudaris have different sets of beliefs and practices to follow. When it is difficult to first make uniform laws for these, how can Muslims be included in such uniformity?

As in one religion bigamy is a punishable offence but in another (Muslims) there is no such case. Therefore, in such a different religious ideologies', it is very difficult to make a "uniform set of laws" for the diversified communities.

UCC AND HUMAN RIGHTS

Inequality of women, their suppression and discrimination against them has always been the topic of debates in India. There are various examples where women are not treated equally with men despite the fact that our Constitution gives everyone the right to equality. But in reality, all these rights are on one side and the discriminatory personal laws on the another. Personal laws of every religion have been more or less male centric and ignored the status of women, their property rights etc. In Muslim personal laws polygamy is practiced only by males.

In Hindus mother is given the secondary status same as the case with Christians, Muslims and Parsis. Indian Women have frequently raised the voice against gender inequality and the need of UCC specially in Muslim personal laws. The UDHR gives certain human rights

to each and every person despite his religion, gender etc.¹¹ To properly enforce these rights, implementation of UCC could be a boon for the women. It would promote the human rights of women of every religion and give them an equal and dignified status in marriage related issues.

UCC AND SECULARISM

Secularism in the true sense is a belief system that separates religion from state and its civic affairs. The introduction of the word "Secular" by the 42nd Amendment simply made the secular nation of the Indian Constitution more apparent. It means that no religion is given special status in India as a state. There is no such thing as an Indian state religion particularly. This distinguishes it from theocratic regimes such as the Islamic Republic of Pakistan and other Islamic countries. But it is only one side of the coin. On the other side secularism is also the most misinterpreted term. Nowadays, religious controversies are at its verge. One of the main reasons is the contradictory customs and tradition. It is intolerable to see a person murdering his own mother by another who considered it sacred. Like murdering a cow (sacred among Hindus) but killing it is sacred among Muslims. So, we can also say that the concept of secularism which advocates the "equal respect for all religion" means to have eyes but let yourself blind when another is violating your religious principles then only respect for the "concept of secularism" is possible which is a harsh reality, can't be tolerated by a common man. That's why many riots take place. In a way it is also a vital challenge before UCC as the people of various religions don't want to leave their rigidness in the name of God and religion and don't want to settle for less, everyone wants that his/her religious practices must prevail in UCC which is not practically possible. We have to understand the true meaning of secularism and the people of our nation have to become aware and rational only then the dream of equality and uniformity could become possible. And for a true secular nation it becomes very important to have some homogenous customs which are not contradictory to each other.

MISINTERPRETATION OF UCC BY MINORITIES

Generally, the concept of UCC is misinterpreted by the minorities in a way that its implementation will only compile the religious practices and customs of the majority and their customs will get destroyed. With this they will be forced to practice the customary laws of other religions and it will infringe their freedom of religion given under Article 25. In India

¹¹ United Nations, 10 Dec 1948, Universal Declaration of Human Rights (217 A) available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

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majority of Muslims, Christians think that UCC will only give rise to the spread of Hindutva and their hegemony.

LACK OF POLITICAL WILL

From time to time the Constitution has been an expedient device for the politicians to veto anything they disapprove of. But they fail to see it in totality. *“Governments were formed and changed but the discussion towards the implementation of UCC has been only in theoretical aspects.”*¹² There was the absence of specifics of what changes to be done, what matters to be included, should gender equity be included and to what extent they must be done to satisfy each community of society.

But this couldn't go a long way due to lack of political will and the dirty politics of religious vote banks. The result is that the exercise of drafting a UCC is still a hope.

JUDICIAL STAND ON UCC

The Indian judiciary has always emphasized on the implementation of UCC. There are numerous cases where the Supreme Court has referred to Article 44 regarding the concept of UCC mainly to highlight the lackluster attitude of the Executive and Legislature in the implementation of the directive.

In **Shah Bano** case¹³ a 73-year-old woman Shah Bano was divorced by her husband using triple talaq. She approached the district court and the court gave a verdict in her favor. His husband appealed against the verdict in Supreme Court and contended that he has fulfilled all his duties according to Islamic laws. The Supreme Court, under Section 125 of CRPC which is about maintenance of wives' children and parents, favored her. Court further observed that “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.” This was the first historical judgement which led to huge debates and agitation and finally the government passed The Muslim Women's (Right to protection on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

The judgement of Shah Bano case was nullified by Section 3 of the **Muslim Women (Protection of Rights on Divorce) Act, 1986** which provides the maintenance to the Muslim

¹² Hitarth Dixit, *Is Article 44 a Myth? Origin of Uniform Civil Code or UCC Explained*, LIBERTATEM (June 5, 2021) <https://libertatem.in/articles/what-is-article-44-indian-constitution-uniform-civil-code/?amp>.

¹³ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SCR (3) 844.

women at the time of divorce. Sec 3 of the Act obligates the husband for “a reasonable and fair provision and maintenance to be made and paid within the iddat period.” which can vary from case-to-case basis and is open to judicial interpretation. This Act restricted the right of maintenance to Muslim women ‘by her husband’ until the iddat period only.

Further in case of **Daniel Latifi**¹⁴ in which constitutionality of Muslim Women (Right to Protection on Divorce Act) was challenged on the ground that it unreasonably discriminated against Muslim divorced woman and violated their rights granted under Articles 14, 15, and 21 of the Constitution and it also nullifies the judgement of Shah Bano case. But the Apex Court upheld the constitutional validity of the Act and it was held that the act doesn't nullify the judgment of shah Bano, it only codifies it.¹⁵

In **Sarla Mudgal case**¹⁶, the husband of a women Sarla Mudgal after converting into Islam practiced polygamy. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on the grounds specified under the Hindu Marriage Act 1955. Conversion into other religion and then marrying again will not dissolve the marriage under Hindu marriage Act and thus second marriage solemnized after converting to Islam will be an offence under Section 494 of the Indian Penal Code, 1860.

In **AWAG case**¹⁷ a Public Interest Litigation was filed challenging the gender discriminatory provisions in Muslim, Hindu and Christian personal laws. In this Court held that the matter of removal of gender discrimination in personal laws involves the issues of State policies also in which the court cannot interfere. This judgment was criticized as the court didn't play its role in protecting the principles of equality regarding gender related issues of personal laws of various communities in India.

In **Lily Thomas case**¹⁸ The court held that the desirability of UCC can hardly be doubted. But it can only become possible when the social atmosphere is properly built up by the society, leaders and politicians who instead of gaining personal gains rise above and awaken the masses to accept the change for the betterment of the nation at large.

¹⁴ Danial Latifi & Anr v. Union of India, (2001) 7 SCC 740.

¹⁵ Rachit Garg, *Daniel Latifi v. Union of India: A critical analysis*, IPLEADERS (Mar. 19, 2022, 12:22PM) <https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/danial-latifi-v-union-of-india>.

¹⁶ Sarla Mudgal v. Union of India, 1995, AIR 1531 1995 SCC (3).

¹⁷ Ahmedabad Women's Action Group (AWAG) v. Union of India, AIR 1997 SC 3614.

¹⁸ Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650.

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In **Ammini E.J. case**¹⁹ Kerala High Court struck down the Section 10 of Indian Divorce Act, 1869 as being violative of gender equality. Similar action was taken in case of **Pragati Verghese**²⁰ in which Bombay High Court struck down the Section 10 of Indian Divorce Act, 1869 on the ground that it is violative of gender equality.

In **John Vallamattom case**²¹ The then Chief Justice of India VN Khare had observed that "It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country." He also asserted that a common civil code will help the cause of national integration by removing the contradictions based on ideologies.²² In this case Section 118 of the Indian Succession Act was declared unconstitutional on the ground that it is violative of Article 14 of the Constitution of India. Despite the exhortations by the judiciary, legislatures have not taken any step in the direction of UCC. Courts of the country have been reiterating the need of UCC, now it's time to make it the reality for the nation.

SUGGESTIONS

Although the Law Commission of India had concluded in 2018 that a "UCC is neither desirable nor feasible"²³ No expert committee on the lines of the Hindu Law Reforms Committee of 1941 has ever been constituted²⁴, nor has any blueprint for a UCC been prepared. UCC is desirable, but the approach must be piecemeal. In the light of DPSP²⁵, there are following suggestions this research has concluded in order to make UCC a reality, namely: -

1. Progressive and Broadminded Outlook

There is a need of progressive and broadminded outlook which must be encouraged among the people to understand the spirit of the UCC. For this, education, awareness and

¹⁹ Ammini E.J. v. Union of India, AIR 1995 Ker.252.

²⁰ Pragati Verghese v. Cyrill George Verghese, AIR 1997 Bom. 349.

²¹ John Vallamattom v. Union of India, 2003.

²² Sandhya Ram, *UCC: The unique Goa experience*, LIVE LAW In (Mar. 18, 2002,2:27PM) <https://www.livelaw.in/uniform-civil-code-unique-go-a-experience/>.

²³ Law Commission of India, Consultant paper: Reforms on family law, Report no, 31 August 2018 at <https://lawcommissionofindia.nic.in/>.

²⁴ Faizaan Mustafa, *explained: Why Goa's Civil Code is not as uniform as it is made out to be*, THE INDIAN EXPRESS.(Apr.20, 2021) <https://www.google.com/amp/s/indianexpress.com/article/explained/why-goas-civil-code-is-not-as-uniform-as-it-is-made-out-to-be-7279365/lite/>.

²⁵ The Directive Principles of State Policy enshrined in the Constitution of India.

sensitization programmes must be taken up.

2. Work on Religious Divide

First of all, there is a division which already prevails in Hinduism which has to be sorted out then only the question of Muslims and Hindu unity comes into play. So Hindus have to make joint efforts to wipe out all of their conflicts so they could be able to discuss with the other sides. The matter of Uniformity being sensitive in nature, it is always better if the initiative comes from the religious groups concerned.

3. Discussions and negotiation

History is evidence that there were many wars which Hindu and Muslims had fought against each other, so it is the mandate of today's need that if we fight like that then there will be poverty, hunger, lack of women empowerment, no proper policies would prevail, and we would end up having nothing. Therefore, it is desirable to put forward the best version of each religion which can lead to peace and happiness. These discussions must be inclusive where all religions including tribal people should be given a chance to put forward their views and practices. A "committee of eminent jurists" may be constituted to maintain uniformity and proper care must be taken not to hurt the sentiments of any particular community.

4. Understanding religion with science

If diversified people have come on a single platform to understand the religion of other sides, then it would be most desirable to understand the religion with "science and progress". As the religion is a tool for mankind to attain either "salvation" or "Jannat", if it becomes hindrance for their upliftment and obstructing them to achieve the highest goal of their religion then practitioners have to choose which version of their religion and others religion can be helpful for them just like Gautam Buddha has understood various religions before attaining "buddhatva".

5. Understanding "Aham Brahmasmi"²⁶ (Universe in within Me)

It is the duty of an individual to protect its mother earth, their living entities including their mother, daughters and brothers. So, this can only happen if he connects himself with all the living beings rather than first identifying himself with a religion and understanding the

²⁶ Brihadaranyaka Upanishad 1.4.10 of the Yajur Veda.

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world. So he has to understand that he is neither first a Hindu nor a Muslim or Christian but only an individual who is connected to the cosmos. Otherwise, he would end up calling himself "I am a Muslim or Christian or American or Pakistani or Indian. Once the individual see himself within the limited identity, violence is the natural consequence and limited individuals would end up in conflict and wars. Because for them the other side is just an opposite version of them who doesn't belong to themselves but to another one. So, it is recommended from the author's side to first be a human having cosmic identity then let religion be your identity. To clear the doubts of readers, being a follower of "Sanatan" is not a religion but a way of living a life.²⁷

6. Preparing a draft

The UCC should be drafted keeping in mind the best interest of all the religions. After letting oneself connected with the whole cosmos, all communities have to decide where they have to go. What are those uniform sets of practices which are best for all human beings, especially Indians which are environmentally friendly. As humans can't ignore the importance of the environment. Then they can collectively make a joint effort to prepare a uniform code of conduct. It is highly recommended from the opinion of the author to make a code which lets each individual think clearly and makes them feel connected with all the living creatures, where not only women and children but animals are also priorities. Where the environment is also being paid due attention.

7. Joint efforts

Clapping with one hand is not possible unless the other hand also plays its role so the individuals, societies, governments, NGO's, judiciary has to play its collective role to educate the people about UCC benefits for their country and themselves. Instead of using it as an emotive issue to gain political advantage, political and intellectual leaders should try to evolve a consensus. The question is not about the "protection of minority, or even of national unity, it is simply one of treating each human person with dignity, something which personal laws have so far failed to do.

²⁷ ArushiLohia, *Meaning of AhamBrahmasmi: The philosophical words*, INDIATIMES (Mar. 19,2022, 1:24 AM) <https://www.google.com/amp/s/www.indiatimes.com/amp/lifestyle/the-meaning-significance-of-aham-brahmasmi-two-words-that-form-the-basis-of-hindu-philosophy-354883.html>.

CONCLUSION

UCC is possible but only with strong political will. Unfortunately, strong political will flows from the people, who are deeply tortured by the poverty and hunger, chooses their leaders in such a compulsion can't choose them with active participation and can't freely choose them without any such compulsion. When these people elect their people then political will has to work under the will of people. So ultimately the people of India have to awake themselves then only the "pious concept of UCC" can be possible. India has its unique blend of codified personal laws of Hindus, Muslims, Christians, Parsis. There exists no uniform family-related law in a single statute book for all Indians which is acceptable to all religious communities who co-exist in India. The argument of minorities that UCC is more in favor of Hinduism is correct because UCC and Hinduism both are progressive and believe in the concept of inclusiveness. The biggest hurdle in the implementation of UCC is the personal laws and personal practices which can't make UCC enforceable at least for now but the judiciary can be helpful like it did by interpreting Section 125 of CrPC. However, a majority of the Indian population believe that UCC is definitely desirable and would go a long way in strengthening and consolidating the Indian nationhood.