

THE INTERSECTION OF HUMAN RIGHTS AND RELIGION: A STUDY ON INDIA'S UNIFORM CIVIL CODE

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Abstract

The profound intricacies embedded in India's legal framework, particularly concerning the proposal and implications of a Uniform Civil Code (UCC), have raised significant human rights questions since the framing of the world's most voluminous Constitution. While discussing the minutiae of unification of personal laws by the distinguished members of the Constituent Assembly, it is the question of human rights and the complex culture, religion, and society of Indian sub-continent which is the real concern. The push for enforcement of Article 44 of the Constitution demanding a UCC has been hotter recently than it used to be before mostly because of considerations of its possible effects mostly on basic the human rights including; the rights to equality, freedom of religion, and self-determination. The new Uniform Civil Code in the state of Uttarakhand raises the question of how the rights of individuals are respected if the traditional principles of the local communities take precedence and when speaking of human rights and equality or non-discrimination does it address the issue adequately? Constitutional implications are very important as indicated by UCC which is an issue of conflict between human rights and religious freedom and cultural differences. This research explores the historiography, the present rationality, as well as the constitutional logic of the UCC, inasmuch as, how it may advance human rights even if it operates within a culturally diverse society's framework, such as India. Thus the study attempts to unveil a balanced perspective of the opportunities and a full understanding of the challenges to provide a fair appraisal of how human rights envision Uniform civil code for India.

Key Words: UCC, Human Rights, Constitution, Religion

INTRODUCTION

“There are certain individuals who appear to have thought that for one to be free in exercising his/her religious rights, government must ensure that our lives remain religion-free. Our government was based on faith Out of all the British colonies in North America. Government must not favour one religion Over the other, and it must not place the believer in a worse off position than anyone else because he is a believer.”¹

¹ Remarks to the National Association of Evangelicals in Chicago, Illinois, from March 3, 1992.

- President George H. W. Bush

A Uniform Civil Code or UCC is legal code to be applied to vary communities of the country for marriage, divorce, succession, adoption etc., in order to protect human right like right to equality, right to freedom, right to freedom of religion, right against gender discrimination etc. These objectives of the UCC also accord with the broader principles of human rights because, by equally applying the above laws to all the citizens irrespective of their religion, the UCC eliminates discriminations of religion, caste, or gender. In India the issue of UCC arises from the necessity to do away with differentiation in Personal laws which infringe the provisions of the Constitution particularly the rights of women and other vulnerable groups. Opinion supporters also posit that a UCC would enhance the protection of human rights as would enhance the policy and parity before the legal process, social cohesion and equity. Critics however, are in agreement that religion and cultural rights may be violated in the interest of attainment of the ideal human rights.²

The issue of diversity is central to the debate on the adoption of a Uniform Civil Code in the constitution of India. Due to its diverse culture and religion and having many languages, traditions and customs this they require a comprehensive approach while considering the aspect of human rights in relation to a UCC. It is a daunting task to attempt to implement the desirable objective of having the scope for embracing and implementing the innovations of uniform civil laws in India without undermining the intrinsic fundamental principles of civil rights embodied in the Indian Constitution and adherence to the Letters:commitment to the cardinal principles of religious and cultural liberties as enshrined in the International Bill of Rights.³ It is therefore important that these rights be balanced in a way that delivers parity to all the citizens without fueling social inequalities. In addition, to advocate for gender justice using a UCC there is the need to appreciate the plight of women irrespective of their religion or culture.As for the gender equality, the proposed legal framework needs to address the ways in which the current system of personal laws has oppression the women's rights, why the UCC can as serve to remedy those injustices, but without negating the cultural diversities. Thus, it is imperative to understand the relationship between human rights and legal pluralism in order to adopt the guidelines for forming a UCC that do not only establish equality and justice but also admit the multicultural and multiracial structures of the Indian society.⁴

THE BATTLE OF UNIFORMITY: HISTORY OF THE UNIFORM CIVIL CODE DEBATE

²ManekaGuruswamy, *The Uniform Civil Code Debate in India: Constitutional, Secularism, and Human Rights*, 4 *Int'l J. Const. L.* 557 (2006).

³Deepa Das Acevedo, *Secularism in the Indian Context: A UCC and Personal Laws*, 32 *Law & Soc'y Rev.* 217 (1998).

⁴Neha Gupta, *Legal Pluralism and Gender Justice: Towards a UCC in India*, 5 *ASIAN J. COMP. L.* 321 (2015).

The debate on the formulation of UCC has its roots pre-1947 independence period in India. During colonial rule, the British introduced a uniform criminal law, however, they limited their interference with the personal laws that were thereby left almost untouched and were only intended to be regulated by religion. However the arguments in support of a UCC saw further momentum during the Indian struggle for independence as leaders like Mahatma Gandhi and B. R. Ambedkar commented on the need for social reform and parity in the new India.⁵

The approaching towards the framing of the Indian Constitution in the year of 1950 of the Constituent Assembly witnessed fiery discussions and formulation on the question of UCC. Although the Constitution of India through Article 44⁶ has a directive concept that challenges the state to strive and seek to enact a UCC for the inhabitants of India, the writers of the Constitution understood the sensitivity and the complications of personal laws and therefore left it for the government to implement the UCC.

After independence, the subject of the UCC remained an issue of debate even though there was a social-political transition in the country. During the first three decades of its formation, Nehruvian administration focused on nation building and on the policy of secularism, however, it was reluctant to adopt UCC which could have aroused antagonism in at least one major religious minority. Thereafter, many governments have from time to time taken up the issue that has been expectedly followed by occasional demands for change and codification of personal laws.

The UCC issue came into the lime light again during the early 1980s during the Shah Bano's case.⁷ The controversy surrounding the Apex Court's decision to provide maintenance to a divorced Muslim lady, Shah Bano under the same secular law again favoured the demand for the UCC. But due to the political influence and recent hostility from religious conservatives, any substantial legislative progress towards the same was held back.

In the recent past, debates on UCC have been triggered by a number of socio-political factors such as; court directions, public interest litigations and in particular, for gender justice and equity. While the supporters stress the need to guard the constitution's principles of separation of religion and state and equality, the opponents raise concerns about the infringement of rights of freedom of religion, and cultural diverse origins.

In conclusion, the historical narrative of the UCC debate in India can be analysed in terms of colonial inheritances, construction of nationalism, religious communalism and constitutionalism, which continue to animate the contemporary contestation over the change of personal laws and the search for one law for all in India.

⁵A.K. Giri, Historical Roots of the UCC Debate: A Colonial Legacy, 12 S. Asian J. Socio-Pol. Stud. 65 (2012).

⁶India Const. art. 44.

⁷Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

UCC AND HUMAN RIGHTS: STRIKING A BALANCE BETWEEN TRADITION AND EQUALITY

The controversial topic of the Uniform Civil Code (UCC) has been under discussion in India for decades covers personal laws of marriage, divorce, inheritance, and adoption. Supporters of the UCC believe that its implementation is good for the nation, as well as for promoting women's rights; on the other hand, the opponents appeared to be concerned with the violation of the rights of freedom of religion and cultural diversity. Nevertheless, yet another dimension that is emerging in this discourse is that of connection between the UCC and human rights. Some of the fundamental tenets that arise from human rights include equality and non discrimination, the issue seeking religious liberty as well as cultural rights in relation with a debate on a UCC. The purpose of this chapter is to assess the extent to which the laws and legal frameworks of the UCC aver society's international and national Human Rights Laws, treaties and legislation.

The current document on human rights is the Universal Declaration of Human Rights or the UDHR which was drawn in 1948 by the United Nations.⁸ The declaration highlights that all people are Now protected by the law⁹, marriage and also have a right to a family¹⁰ and are equal with no discrimination rights¹¹. These principles are in consonance with the concept of the UCC, for the reasons of yielding equal justice to all irrespective of religion, caste or gender. Specifically, the UCC could be construed as an instrument for the "advancement of the equality of women and non-discrimination of women" in those personal laws that accord more favorable treatment to men especially in marriage and family issues such as divorce and succession.

The International Covenant on Civil and Political Rights (ICCPR)¹² with which India is a party also enshrines similar principles as the ones presented in the UDHR. In the same meaner, the ICCPR requires the state to respect the equal right of women together with men to access civil and political rights in equal way.¹³ This is in line with the UCC which seeks to harmonize civil laws as well as do away with the various religious personal laws that discriminatory women in favor of men. Thus, the equality has been provided in ICCPR and sends out a message against discrimination in the aspects which includes religion as part of the UCC debate.¹⁴ Therefore, from an international human rights' standpoint, the unevenness

⁸*Universal Declaration of Human Rights* (1948).

⁹Universal Declaration of Human Rights, art. 7 (1948).

¹⁰Universal Declaration of Human Rights, art. 16 (1948).

¹¹Universal Declaration of Human Rights, art. 2 (1948).

¹²International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

¹³International Covenant on Civil and Political Rights art. 3, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁴International Covenant on Civil and Political Rights art. 26, Dec. 16, 1966, 999 U.N.T.S. 171.

throughout India could be seen as the UCC moving India in a positive direction toward attaining equality before the law.

These laws are inapplicable with the international laws such as the CEDAW¹⁵, which India ratified. CEDAW has to do with the scrapping of discrimination of women in matters concerning marriage and family.¹⁶ A UCC by recognising women of all communities for rights would go a long way in furthering India's commitment to the CEDAW. For instance, value or protection that comes with property inheritance, divorce, and custody are tremendous under a UCC and all women regardless of religion would be protected instead of being discriminated as it happens in matters of personal laws.

Still making the equal rights argument, the UCC also poses questions concerning religious liberties, one of the essential aspects of individuals' freedom in general, let alone in the country that is bound both domestically as well as internationally by the norms of human rights. The UDHR has a section that covers the protection of the freedom of thought, conscience and religion and this is under article eighteen. Likewise, the Constitution of India prescribes the right to freedom of religion including the right to propagate religion.¹⁷ The opponents of the UCC regard the proposed common civil code as an intrusion into the fundamental rights of religious minorities as well as the denial of their freedoms to exercise their respective personal laws. The UCC may cause apprehension as to imposition of uniform laws on various religious groups, but it has the potential to bring about the process of integration of personal laws with Article 14 of the Constitution¹⁸ which guarantees equality to all sexes and Article 21¹⁹ which deals with right to life and personal dignity. The difficulty arises in seeking to design and apply a UCC that will consider the aspect of religious diversity and at the same time eliminate discrimination.

Some of the countries in the world with a mix of religious population have however been able to adopt civil codes for protection of rights of individuals as well as culture. For instance, Turkey in 1926 introduced a civil code that abolished Islamic laws and replace them a secular law that empowered women a lot especially on issues to do with marriage and inheritances.²⁰ In the same way, Tunisia a predominantly Muslim country liberalized its personal laws through the Code of Personal Status (1956) that improved women rights while they accepted some religious practices. Such cases illustrate that the introduction of a UCC does not mean a violation of religious freedom or cultural rights. France has civil code for the citizens of the

¹⁵Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

¹⁶Convention on the Elimination of All Forms of Discrimination Against Women, art. 16, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁷India Const. art. 25.

¹⁸India Const. art. 14.

¹⁹India Const. art. 21.

²⁰Turkish Civil Code (1926).

country regardless of their religious status but at the same time it has respect for religious practices in the private sphere similarly Germany too has civil codes which are applicable to every individual without any respect to religious values. India can refer to these examples in order to devise the UCC that would be compatible with pluralistic nature of the Indian state while at the same time incorporating and protecting the principles of human rights.

Multifaceted connection exist between the UCC and Human rights. On one hand a UCC can enhance human rights through advocating for and opening the doors for gender equality, non discrimination and equality before the law. On the other hand it poses questions regarding the freedom of religion and the maintenance of cultural rights. Nevertheless, certain rights and relief are stated in the UDHR, CEDAW and the ICCPR, which in turn can act as guidelines for establishing a proportional UCC that will take into consideration both individuals' rights and religious and cultural distinctions. Hence, the real challenge for India is to formulate a UCC which will balance these competing claims and at the same time protect the rights of the individuals in the country.

JUDICIAL INTERVENTIONS IN THE EVOLUTION OF INDIA'S UNIFORM CIVIL CODE

The elaboration of the UCC in India has also been defined to a considerable extent by the activity of judges in regard to the discrepancies between the personal legislation and fundamental rights. Nonetheless, the Indian judiciary through the interpretation of the Constitution has supported equality, gender justice, and non-discrimination; the judiciary at most of the times has demanded the repeal of the personal laws in favour of UCC. This chapter focuses on the main legal decisions arising out of the struggle over UCC with the emphasis on the judiciary as a leader in human rights and constitutionalism regardless of the odds offered by politics and social setups.

Shah Bano Begum case (1985) is a way of education of freedom of Muslim women from abuses by their own male members concerning the maintenance after divorce given by the Indian Supreme Court. In the given case, a 62 year old woman by the name of Shah Bano initiated a proceeding for maintenance under section 125 of the Criminal Procedure Code²¹ after being divorced by her husband through triple talaq. The Court also gave her favour and said that a divorced Muslim women could claim maintenance, this goes against the provisions of the personal law. This decision resulted into huge controversy particularly touching on the Uniform Civil Code (UCC) owing to the fact that the Court highlighted the importance of the UCC in order to deliver justice and fairness for all parties. It was considered a landmark judgement returning the power of personal laws to people's essential rights enshrined in Articles 14 and 21 of Indian Constitution and stressed on gender justice and protection of human rights of women irrespective of the community.²²

²¹Code of Criminal Procedure, 1973, § 125 (India).

²²Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.

Likewise, in the *SarlaMudgal v. Union of India* (1995) many questions relating to Hindu law and bigamy and evasion of this law through conversion to Islam were involved. The petitioners contested this with the argument that Hindu men were converting to Islam specifically with the aim of marrying another wife without having to divorce the first wife according to the regulations of Hindu Marriage Act, 1955²³ which frowns at bigamy. The Supreme Court observed that such conversion for the purpose of bigamy were unlawful and restored the operation of criminal law against such deeds. The Court further stressed on the need to have the UCC to address this injustice and lack of equality as state believes that this injustice goes in the favor of women, but in fact it only exploitation of women. The judgment reaffirmed the provisions of the Constitution of India under Article 44 whereby civil laws were called for to be standardized to afford protection on human rights; women rights inclusive of, equality, dignity, and non-recognition of any form of discrimination.²⁴

That was followed by the *Danial Latifi v. Union of India* (2001) providing validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986²⁵ enacted in response to the Shah Bano case. As per the above-noted facts, the petitioner, namely, Danial Latifi contended that the Act of the Government of India was unconstitutional as it derogated the equality of the Muslim women and allowing them mere maintenance for only iddat period which is three months from date of divorce. The Supreme Court however gave a liberal construing to the Act whereby a Muslim woman was entitled to dissolve maintenance for her entire life or till she remarried in case she was unable to earn for herself. This interpretation sought to make the personal laws conform to human rights laws so that Muslim women rights which include rights to dignity, equality among others were protected. It discussed on conflicts between personal laws and the proposition of UCC clarifying the fact that any uniform civil law has to protect basic rights including gender justice and equality.²⁶

After almost two decades, the Supreme Court of India in a landmark judgment in *ShayaraBano v. Union of India* said that the practice of instant triple talaq (talaq-e-biddat) is unconstitutional. This step is direction in protecting human rights particularly of women and gender equality. Although the judgment did not enforce the Uniform Civil Code (UCC), it again put the debate on with regards to the need for the UCC so that there is temporal uniformity for the governing of personal law and to eliminate gender bias that is necessarily inherent in some religious practices. The case brought out the need to ensure that the personal laws conform to the Constitution by safeguarding rights of all in the society especially those in the vulnerable positions such as women in patriarchal societies.²⁷

²³Hindu Marriage Act, 1955, Act No. 25 of 1955 (India).

²⁴*SarlaMudgal v. Union of India*, (1995) 3 S.C.C. 635.

²⁵Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25 of 1986 (India).

²⁶*Danial Latifi v. Union of India*, (2001) 7 S.C.C. 740.

²⁷*ShayaraBano v. Union of India*, (2017) 9 S.C.C. 1.

Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, (2019) the Hon'ble Supreme Court of India, pointing out that Goa is a state which has adopted the UCC for all its residents irrespective of their respective religion. The Court further expressed that Division of civil code in Goa which arose from the Portuguese civil code has been useful in providing uniformity in the laws governing persons relating to marriage, divorce and succession. The judgment recalled the constitutional directions contained in Article 44 to enact UCC across India stating that the code would further non-discrimination based on religion or gender and hence protect humanrights of individuals would be protected. The Court noted that a UCC would advance the demand under Article 14 for equality and under Article 21 for life and dignity.²⁸

The famous Ashwini Kumar Upadhyay v. Union of India of 2023 is a case filed by the lawyer and BJP leader Ashwini Kumar Upadhyay which talks about the enforcement of the Uniform Civil Code in the country. Upadhyay contended that Sanghparivar opposes the UCC and any attempts at its enactment because it infringes the constitutional rights of citizens especially women since it permits the personal laws to specify rights to a particular religion and gender. He argued that UCC would bring about the much needed change of equality, gender justice as well as protection of human rights enumerated in Article 14 – right to equality, article 15 – non discrimination and article 21 – right to life with dignity. The Supreme Court, however, did not pass any directions to the government as the formulation and the implementation of the UCC is in the realm of policy for the legislative. The case explores conflict between freedom of religion and legal non-discrimination, which is vital to human rights, both around the world and in the India.²⁹

From all the above analysed landmark cases it can be asserted that the role of judiciary has been crucial to ensure that the campaign for UCC continues as it safeguards the vulnerable groups most of whom are women affected by the outrageous personal laws. In the existing legal structure, the courts constitutional and supreme, have not only emphasized on the existing lacunas but have also underlined the need to have UCC as secularism, justice and equality. Though it is the legislative branch that has the function of implementing a UCC, the judiciary's function of constantly demanding legislative reform remains the primary force that continues to fuel the process to reduce the existing unfair differences in legal systems for citizens.

THE BEGINNING OF THE END: UTTARAKHAND UNIFORM CIVIL LAW BILL

In a historic episode under the banner of secular democracy on the 7th February 2024, the Uttarakhand state legislative assembly passed a bill to start the process of the contentious Uniform Civil Code (UCC) which will scrap all the religious or personal laws relating to marriage, divorce, adoption, succession, and other issues.³⁰ The change will ensure that all

²⁸Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, (2020) 5 S.C.C. 599.

²⁹Ashwini Kumar Upadhyay v. Union of India, Writ Petition (Civil) No. 1126 of 2020.

³⁰President Approves Uttarakhand's UCC Bill, *The Hindu* (March 14, 2024), <https://www.thehindu.com/news/national/president-approves-uttarakhands-ucc-bill/article67947099.ece>.

the communities fall under one nation and legal system and thus everyone will be subject to the particular law regarding those behaviors. Indian politicians and other leaders of the Muslims have already come out in the open to resist the proposed bill. The BJP led by the Indian prime Minister Narendra Modi has sought to model the hill state of Uttarakhand on the adoption of Uniform Civil Code (UCC) across the nation, particularly in those states ruled by BJP. Nowadays we are getting news from states such as Assam and Gujarat, which are planning to introduce, own UCC bill and they are eager to adopt the Uttarakhand Code with or without minor differences as per their necessities. If passed by India's legislature, the UCC proposed by the BJP may seem fairly benign, but it poses a significant risk to the nation's religious pluralism.³¹

Part III which is on 'Live-in Relationships' has also attracted public concern and is part of the proposed UCC Bill. Until today there was no law governing the live-in relationships as per Indian law. The State's recognition of live in relationships is positive, however the provision of the draft UCC bill is a concern. The three major areas of concern are located in Part III of the current draft of UCC Bill.³² For instance, registration of live-in relationships; secondly, informing the parents of the applicant for registration for live-in relationship; thirdly, sanctions for failure to register. Section 378 of the UCC Bill forces the partners of a cohabiting relationship to fill a 'application for registration of live-in relationship' to the Registrar. When the registrar receives such a statement, he or she will register it unless the partners are related; one or both partners is under 18 years; or the consent of one partner was obtained by force, fraud, coercion, or undue influence or the other partner's identity was misrepresented. The draft UCC bill has provisions which compel individuals practicing live-in- relationships and or those that engage in co habitation to register and penalize anyone who fails to do so. As per section 387, if the partners staying in live-in relations wish to stay longer than 1 month, and they do not register then they can be imprisoned for 3 months at most and can be fined uptoRs. 10,000. That the state prosecutes individuals who are alive with their partners but do not register their partnership is wrong. An unauthorized conduct does not have to be a criminal crime. An act shall only be criminalised, if it is injurious to the/each member of the society, creates a disincentive for the conduct, and done with a vicious or immoral purpose. It should have been better for making the consequences of non-registration as a civil wrong that can be enforced to have a fine.³³

A UCC has invariably propagated apprehension in religious minority groups in particular the muslims in India. Muslim politicians and religious leaders have argued that a UCC would be

³¹Indian Express, *What Is Uniform Civil Code?* (Sep. 8, 2023), <https://indianexpress.com/article/explained/everyday-explainers/what-is-uniform-civil-code-gujarat-uttarakhand-8238306/>.

³²*Uttarakhand UCC Bill: Law, Implications for Uniform Civil Code in India*, Frontline (Aug. 29, 2024), <https://frontline.thehindu.com/politics/uttarakhand-ucc-bill-law-implications-for-uniform-civil-code-in-india-women-marriage-relations/article67899026.ece>.

³³*Uttarakhand, Uniform Civil Code, and Personal Laws: Implications and Analysis*, LiveLaw (March 13, 2024), <https://www.livelaw.in/articles/uttarakhand-uniform-civil-code-and-personal-laws-implications-analysis-252125>

inappropriate intrusion into their culture and Patriarchal system with regard to some rights related to marriage, divorce and inheritance. The Uttarakhand legislation also applies to live-in couples, which it recognises despite the fact that the Hindu community does not approve of the practice.

The ruling party at the centre level has been actively pursuing three controversial objectives that disproportionately affect the Muslim community: abrogation of article 370 of Indian constitution, construction of Ram temple in Ayodhya on the site of demolished Babri mosque and coming up of a Uniform Civil Code for the country. It met the first goal in 2019 and the Ram Temple in Ayodhya had its ‘coming of age’ in the last week of February 2024. Uttarakhand passing a UCC is the Abbottabad Parliamentizing away of one of the BJP’s most significant poll planks and also a component of every BJP manifest for the last three decades. As for the other state that now has a UCC it is Goa, but Goan common law dates back to the nineteenth century and the territory was under the Portuguese rule at the time. While some other states ruled by the BJP have also begun formulating their UCC, a pan-India UCC will still may be in the offing. Nowadays Indian political climate is much more receptive to the concept of a UCC than it was before. However, the situation is not different with other religious groups like the Sikhs, indigenous people and the Dalit group who are worried that a UCC will complicate religious and cultural freedoms.³⁴

COMPLEXITIES AND THE NUANCE: THE HURDLES OF IMPLEMENTATION AND THE WAY FORWARD

“Therefore, when there is impact between two civilizations or between two cultures, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.”

- ***Shri AlladiKrishnaswamyIyer (Member, Constituent Assembly of India) -***

According to acclaimed historian RomilaThapar, “Religion impinges on every human right in the civil law — whether it's birth, death, marriage, or divorce — religions have laws on all of these.” Securing universal human rights in India requires the adoption of a Uniform Civil Code (UCC), which ensures equal rights for all citizens without exceptions. A UCC is somewhat essential to the protection of human rights, because it entails delimitation of religion from social vital agencies. The application of the UCC would give people the deserved protection in issues to do with marriage, divorce, inheritance, adoption, property,

³⁴*Explained: The Goa Civil Code — The New Model for a Uniform Civil Code*, Hindustan Times (Sept. 1, 2024),<https://www.hindustantimes.com/india-news/explained-the-go-a-civil-code-the-new-model-for-a-uniform-civil-code-101652304333768.html>.

and many a times maintenance regardless of the religion they belong to making a stand on the right to non-discrimination and equal protection under the law worthwhile.³⁵

India still lacks Uniform Civil Code owing to the fact that many of the minority still consider civil code as intervention to their personal laws that they consider as part of their religion and culture. If a UCC were passed then it would mean equal to equally all the citizens regardless of their religion so extraneous influences in personal legal matters are eliminated. This concern was as a result of an argument that the UCC would encroach on the rights of individuals especially on matters pertaining to religion and therefore human rights like right to family life, inheritance and physical and materials aspects of religion. However, even in this regard, a cross-section of successive governments of India has shied away from discussing in detail and our communal laws and human rights at large.³⁶

India's Constitution states it as a sovereign socialist secular democratic republic which means that the State of India is not affiliated to any religion. Regarding to this, the opponents of the UCC state that the UCC can be regarded as imposing a typical state law that may violation of the freedom of religious belief. Some critics said that such a UCC could erode human rights by curtailing cultural and religious liberty of the minorities as per the Articles 25 & 26 of the constitution of India which provides the freedom to profess, practice and propagate religion. Nevertheless, this interpretation cannot be correct. The UCC would not bring about a common religion but it would maintain the doctrine of the secular state. It would make sure that the state did not interfere with the religious matters though it addresses the aspect of injustice in personal laws and the unfair treatment of women, children and other socially vulnerable groups.³⁷

The UCC would not impune individual faiths or try to meddle with basic civil liberties of an individual. However, it is in consonance with India's affirmative concept of secularism where the State has a duty to ensure that religion does not impede the inclusive social progress or the provision of rights to freedom to all citizens especially in matters concerning gender equity and non-discrimination. This kind of secularism is different from the secularism of other developed countries like United States of America and European countries where there is a policy of neutrality in matters to do with religion. These countries have gone through historical changes which included the renaissance reformation and enlightenment which helped shape there law and religious connection. India on the other hand has a different historic-cultural scenario and therefore state intervention may be required in some aspects of religion in order not to infringe on the constitutional rights of free speech, equality and non-discrimination.³⁸

³⁵Rohit Bhandari, The Debate on Uniform Civil Code: Balancing Rights and Religious Freedoms, 33 *Mod. L. Rev.* 456 (2021).

³⁶ K. C. Suri, Uniform Civil Code: Challenges and Prospects, 18 *Indian Const. L.J.* 89 (2015).

³⁷Neha Gupta, Uniform Civil Code and Women's Rights: An Analysis, 27 *Asian L. Rev.* 334 (2017).

³⁸Madhavi Sunder, Piercing the Veil: The Supreme Court and the Uniform Civil Code, 112 *Yale L.J.* 1399 (2003).

The law on uniformity, therefore, would not trample on the human rights of the citizens, or infringe on the right to freedom of worship. But passage of the amendment would enhance the protection of human rights by making the freedom of religion not a tool of perpetuating injustices through personal laws that date back to marriage, succession and adoption laws that deny vulnerable groups, particularly women, their due rights. Article 1 CEDAW lays down that ‘the state parties condemn discrimination in all its forms and all forms of discrimination of women in matters concerning marriage, family and divorce.’ A UCC would be a progress towards meeting India’s human rights obligation under the treaty such as CEDAW that focuses on providing equal rights to all Indian irrespective of gender or religion.³⁹

The article 44 of the Indian Constitution that says that the state shall strive to adopt a Uniform Civil Code based on the principle that the state shall regulate its relations with religious groups in a manner that doesn’t permit the individuals’ civil rights to be subjugated to religious laws. Marriage, Inheritance, and family life issues are secular issues, and people should be free to get married or live the way they want to live without government interference and the state should not single out some people for different treatment but should have laws of all its citizens. Therefore, by passing a UCC, the State will be able to discharge its obligation to protect human rights in as much as it seeks to curtail the existing discriminations in the society through personal laws disparaging women and discriminating on the bases of religious beliefs.⁴⁰

In conclusion, it could be said that implementing of the UCC in India will not harm the rights of religious minorities and human rights. Instead, it would improve the legal rights of the persons with special reference to women and other backward sections of the society by providing equal status to them under the laws governing marriage and divorce. The UCC is not anti secularism; on the contrary it is the prerequisite for the protection of human rights across different faiths. A UCC would help India to be closer to the doctrine of Human rights for all and the country would be in a position to do what is required by its constitution as well as bit international human rights law.

³⁹A.M. Shah, Uniform Civil Code: A Necessary Step Towards Gender Justice, 45 *J. Indian L. & Soc.* 123 (2019).

⁴⁰Manju Jain, *Uniform Civil Code and Secularism: A Balancing Act*, 45 *Jindal Global L. Rev.* 567 (2014).