



# UNIFORM CIVIL CODE AND GENDER JUSTICE

The Future Of Legislation And Impacts On Gender  
Justice

## ABSTRACT

*A Uniform Civil Code could be a way forward to ensure that age-old beliefs of inequality among different humans. In a pragmatic sense bringing a Uniform Civil Code will not guarantee the squashing of gender disparities and discrimination but the code could provide a a basis for a legal reform.*

**Aarti Verma**

wordsmithaarti@gmail.com

## UNIFORM CIVIL CODE AND GENDER JUSTICE

by

Aarti Varma

*“State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India” - Article 44 Constitution of India*

As humans, we were never born bearing the marks of differentiation. We are all born humans, equal in the eyes of the world. I was not born bearing the mark of Hinduism and neither was the child born in another ward born with a tattoo of Islam on his or her body. Based on our potential reproductive abilities we are assigned a gender at birth. A method to identify and segregate us based on our procreating functionality. What's forgotten is that segregation of identity does not account for negative differential treatment of these identities. So irrespective of which family a child is born into, bearing whichever gender, he/she/they deserves to be treated, regulated, and allowed to live with as much dignity and opportunity as the other child born anywhere in the country. The concept of the Uniform Civil Code strives to achieve this very notion.

The Uniform Civil Code is a concept that is a work in progress in Indian policy making, that encapsulates the creation of one law for the nation. This implies that every Indian, irrespective of their religion, caste, class, race, gender, and any other parameter of distinction, will be governed by one law that will be applicable across the country. Then why was a uniform set of laws not created while drafting the constitutional shape of the country?

When the constituent assembly first curated independent India's Constitution, erstwhile India's political leaders saw the need for a Uniform Civil Code to achieve the basic principles of equality and justice. Deliberation on this led to a decision that India had not yet reached a stage to push through a policy change such as this, as the conditions were not in the favour of it. Since the Indian society was looked upon, by its internal elements, from the lense of tradition and an astute “Indian culture”, certain facets such as the customary laws and religious practices have always been very closely upheld by the people. If the lawmakers decided to outlaw these personal laws, it would probably initiate another civil war, which the newly partitioned country was not ready for. This led to the drop of this policy, but considering the modernization and awareness of rights across generations, citizens have realized the value of being treated at par with each other. Hence the idea of the Uniform Civil Code.

In today's world with the dynamicity of the 21<sup>st</sup> century, the relevance of the Uniform Civil Code reflects in bringing all Indians under the purview of one standardized system of being treated under the eyes of the law, one law! Article 44 of the Constitution of India, falling under part IV which is also referred to as the “Directive Principles of State Policy (DPSP)”, in its

very essence talks about having a common system of regulation for all Indians across the territory of India. DPSPs by their statutory nature are not enforceable as they are, but can be brought into execution by passing a law that reflects its essence. Additionally, a Uniform Civil Code falls in line with an already existing and enforceable law, Article 14 of the Constitution of India which ensures all individuals are treated before the law. But another interpretation of this law is also what may cause the hindrance to the establishment of the Uniform Civil Code. This fundamental right also encompasses “equal protection of laws within the territory of India”, giving each sect, rather than recognized religion to have its own set of laws which will be protected equally by the Constitution of India.

The 42<sup>nd</sup> amendment to the Constitution of India had inserted a word in the Preamble to the Constitution. This word was the philosophy of our democratic leaders, it reflected the voice of the nation when in consensus we declared the nation to be “Secular”. By adding the word “Secular” to the Preamble we emphasized the fact that India as a nation would have zero tolerance towards disrespect of any religion, thereby practiced and professed by the citizens of India. Articles 25 to 28 guarantee the freedom of religion and thereby lets anyone practice the faith they have faith in. But every religion comes with its own set of laws within the ambit of its control.

The Hindu law, the Sharia law, and the different sets of laws for Christianity, Zoroastrians, and Jews are some sets of personal laws under which any person identifying by the said religion is governed. Each of these laws per religion has a different treatment for marriage, divorce, inheritance, custody, and abortion. This implies that while we all swear our allegiance toward the Constitution of India, we are in certain matters, not governed by the Indian law, but are governed by the laws of a religion, a religion which is a matter of our faith (something one may concern personal to an individual).

If we look at the ambit of these personal laws, for instance, marriage, divorce, inheritance, custody, and abortion, what's a matter a of confusion here is that none of these issues are all universal and legally recognized social institutions, which does not affect just one person but every individual involved in such a case. How is it then, that if one person is guaranteed relief concerning custodial battles, another person feels that the decision in their favor may be discriminatory, considering these are two different decisions in the same country for two different sets of people while both claim allegiance to the same constitution and are both guaranteed equality in front of the law? While this discriminatory treatment is very pertinent in India due to the upholding of the personal laws, most of these discriminations are seen on the lines of gender differentiation in a negative connotation. Personal laws in general, not only reflect a positively linear bias towards the male community but are also a substantially unfavorable set of beliefs and practices towards the female and trans community.

The issue revolving around personal laws and gender has been brought up because most personal laws are created keeping in mind the male population's or a man's superiority, thereby sidelining the interests of women, transgenders, and anyone identifying differently from a gender they were assigned at birth. Gender justice is not the only forefront concern to the establishment of a Uniform Civil Code, there is religious concerns, as well. A recent example

would be from AIMIM Chief Asadudin Owaisi's interview on April 30, 2022, where in an interview he dismissed the need for a uniform civil code and cited strong objections to its need<sup>1</sup>.

But more importantly, the main challenge to the establishment of a UCC is simply the lack of a strong political support to the idea, throughout the Indian polity. The concern and support to the idea of UCC is not widespread and needs more discussion<sup>2</sup>.

The establishment of a Uniform Civil Code would hamper the vote bank and electoral donations from the high and mighty who have benefitted from the non-existence of this code. To understand this, we must first understand the issue of gender justice much more closely from the purview of personal laws. But the progressive leaders are still pushing for it. The discussion on uniform civil code lives on. The CM of Assam had recently made a statement urging the need for a uniform civil code to end polygamy and other social evils<sup>3</sup>.

The Hindu law, until it was codified by the way of various acts of marriage, succession, adoption, etc., had allowed polygamy (till 1956), disbarred women from inheriting anything property, disallowed women co-parceners from demanding ownership in Hindu family business and disallowed single women from adopting children. While changes to the current version of the codified Hindu laws "allow" women rights that they any way should have possessed by the virtue of birth, many laws do not allow this kind of treatment for women.

A Muslim woman governed under the Sharia, in case of succession would inherit half of what her male counterpart would inherit. That is in the case of the demise of the property holder when the heirs of the property inherit them, the male sibling will inherit twice what the female sibling would inherit. The most controversial treatment of women was seen with the prevalence of *talaq-e-mughallazah*<sup>4</sup>. This right was given only to the man in the marriage who could at any time any place and in any situation pronounce this verdict and leave his wife, without the wife's say in it. A one-sided decision that has an impact on two lives. The custody rights also in such cases fall in the favor of the paternal claim. It was in the case of *Shah Bano, (Mohd. Ahmed Vs Shah Bano)*<sup>5</sup> that Chief Justice Chandrachud had to urge the parliament to seriously consider having a uniform civil code in place to solidify social harmony and equality. However, this was not taken seriously at that time. Several other cases tried to initiate a dialogue on the

---

<sup>1</sup> Owaisi's remarks are more political in tone as a means to reprimand BJP on how the BJP being the ruling party should focus on economy and employment instead of being worried about UCC.

<sup>2</sup> This idea has been picked from Hasan Suroor's [article](#) in the FirstPost, dated May 10, 2022. It is a relevant idea that is the core of the UCC issue.

<sup>3</sup> Source: theprint.in's recent interview with Himanta Biswa Sarma, the CM of Assam, as featured on May 01, 2022.

<sup>4</sup> The triple talaq or the irreversabel talaq, which once pronounced by a man cannot be revoked.

<sup>5</sup> "Muslim Personal Law-Concept of divorce-Whether, on the pronouncments of "talaq" and on the expiry of the period of iddat a divorced wife ceases to be a wife". Source: [indiankanoon.org/doc/823221/](http://indiankanoon.org/doc/823221/)

same and to prove the need for a civil code. In the case of *Smt. Sarla Mudgal, President, ... vs Union Of India & Ors*<sup>6</sup>, there was a push to adopt a uniform code based on the Hindu model.

While the triple talaq has been squashed by the Supreme Court of India in the *Shayara Bano versus Union of India*<sup>7</sup>, the mere existence of such elements in personal laws shows a negative bias towards women. The Christian personal law allows a woman to seek divorce on the claims of marital rape, recognizing it as an act where a husband cannot forcefully sexually violate his wife, without consent at a said time, as marriage entails partnership but not consent to sex for every second that passes by in the married life. This right is not available to women identifying with other religions thereby reflecting discrimination in the provision of justice to issues claimed by women of the same country. This entails unequal treatment of individuals by Indian law. What's even more concerning is that while inconsistency of rights is visible as far as women are concerned, the absence of rights concerning the transgenders or people who identify differently from the biologically assigned gender makes it an, even more, a relevant issue concerning personal laws being discriminatory towards another segment of the population.

Though in the case of *Abc vs State(Nct Of Delhi)*, the Supreme Court had allowed a single mother of Christian faith to be the sole guardian of her child. It was ready to overlook the absence of such considerations of a single, well-educated, financially secure woman's ability to take care of her child on her own under the Guardians and Wards Act. In this case, as well the court was able to make a point about the need for a uniform civil code.

The fact that there are no rules governing succession, marriage, divorce, adoption, etc., concerning transgenders reflects the binary attitude of India's legal system towards the provision of justice. It shows that we aren't equipped to, in a real sense, be ready to treat all Indian citizens alike. This is exactly why a Uniform Civil Code would be required. The existence of different ideologies and cultures makes it all the more a reason to have a common set of laws governing all aspects of human lives that demands protection and justice not only in criminal matters but also in matters that are currently handled by the personal law. The claim of our country's "unity in diversity" would hold no meaning without a Uniform Civil Code. But what would having a Uniform Civil Code mean? Would it mean, as interpreted by popular belief, that all citizens of India would be governed by the Hindu law, because that is the law of the majority? To be precise this game of majority and minority is exactly what bringing in the Uniform Civil Code will end. The creation of such a set of laws means that a person can practice their faith as a faith, but when it comes to matters of disturbances and grievances that require legal interventions, the interventions would be governed by a common legal set, thereby making sure that any one seeking justice or protection would be served the same, exactly in the manner it is being served to any other person by the country.

---

<sup>6</sup> In this petition, the Supreme Court had tried to urge the government to form a uniform civil code based on the hindu code.

<sup>7</sup> This is a landmark case in which the petitioner, Shayara Bano approached the Court to assail the divorce pronounced by her husband under the Sharia law.

The Uniform Civil Code will be sensitive to the requirements of “Humanity before Religion” and therefore will adopt all positive aspects of all religions recognized in India, thereby letting all individuals in the country enjoy the same legal opportunity. Concerning gender issues and Uniform Civil Code will first recognize all genders on an equal front. Women will be able to seek legal recourse on matters of marriage, divorce, adoption, and succession without being hindered by the concept of male superiority. No religion would then be able to direct a woman on whether she has the right to get divorced, to seek support after divorce, to seek custody of her child, and demand her rightful inheritance. This would not just be a recourse to make the legal system more women-centric, but the adoption of a Uniform Civil Code would mean that men can seek legal recourse against any discrimination being done towards them based on gender, as well.

*A Uniform Civil Code could be a way forward to ensure that age-old beliefs of inequality among different humans are an act of necessity. It could ensure that we as humans and more so as citizens of India are bound by one set of laws that treat us, regulates us, provides us justice and security, and reprimands us all equally with no bias. In a pragmatic sense bringing a Uniform Civil Code will not guarantee the squashing of gender disparities and discrimination, this in itself will require a paradigm shift in the thought process and psyche of Indians across the nation. But what the code will do is provide a start, a basis, a legal reform, an official standard that India does not accept inequality, that India stands for “Justice for One, Justice for All”!*

