

# Unity or Uniformity?

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## **Introduction:**

On 7 February 2024, Uttarakhand government passed UCC bill which lays down uniform laws for marriage, divorce, inheritance, amongst all the religions. Though these institutions were governed by personal laws of the respective religion, but now government is trying to strike Down those customary laws and bring uniformity in the country. India being a secular state allows every individual to profess their religion under the article 25 to 29. India is well known for its concept of Unity in Diversity which means that despite of cultural and religious differences, India is one. Here all the individuals are given equal rights, and every religion is respected equally, their customs, traditions and practices are taken care of. In this article, we will discuss the repercussions of UCC, where it takes our nation and how it challenges our constitution.

**On 26th of November 1949**, India adopted its constitution and the very first page of constitution is well-known as PREAMBLE.

Let's recall what Preamble states:

***“WE, THE PEOPLE OF INDIA*** having solemnly resolved to constitute India into a ***SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC*** and to secure to all its citizens:

***JUSTICE***, social, economic and political;

***LIBERTY*** of thought, expression, belief, faith, and worship;

***EQUALITY*** of status and of opportunity; and to promote among them all

***FRATERNITY*** assuring the dignity of the individual and the unity and integrity of the Nation;

***IN OUR CONSTITUENT ASSEMBLY*** this twenty-sixth day of November 1949, do ***HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.***”

Let's first come to **Secularism**,

It states that Indian state has no particular religion, and any affair(s) of the state should not be influenced by any religion. Although, this myth keeps busting time to time, whether it's the Prime Minister of this secular state being the ***Mukhya Yajman of Ram Lala Pran Pratishtha*** ceremony or laying the foundation stone of ***Shri Kalki Dham*** but at the same time remained quiet on the foundation stone for ***Masjid Mohamad Bin Abdullah***, though both the decisions were taken on the same date, and again, India is a secular state. Really?

Lately, Uttarakhand's legislative assembly passed the bill on UCC (Uniform Civil Code). Regardless of religion, **UCC offers uniform guidelines for all citizens regarding live-in partnerships, divorce, inheritance, and marriage, but Uttarakhand's bill exempts the Scheduled Tribes.**

We often say, “**Law is all about interpretation**”, keeping this in mind,

The **Article 44** of the Indian Constitution states,

*“The State shall **endeavour** to secure for the citizens a **Uniform Civil Code** throughout the territory of India.”*

Which is a DPSP (Directive Principle of State Policy), given in Article 37 of the constitution that, **it is not enforceable by the court of law.**

It's interpretation and implementation were left to the states themselves, and one of our secular states ‘**Uttarakhand**’ has recently passed this bill saying that this will bring Uniformity in laws related to **marriage, divorce, inheritance of property, and live-in relationships for all citizens, irrespective of religion** but why there is exemption to the Scheduled Tribes, are they afraid of them? Isn't it a violation of article 44 itself as if they are implementing UCC, there must not be any type of exemption as it is to be done for all the citizens, not targeting a particular religion.

If UCC is the need of the hour, then why is it kept away from tribes, isn't this violating their **right to equality**?

All these questions fail when it comes to interpretation, the state will always use this defense and it will end on communal riots, *Hindu Mussalman*, because the reality is that no other community is harmed by UCC, but only the personal laws of Muslim, simply hinduisation of all the laws.

Jawahar Lal Nehru in his book ‘The Discovery of India’, coined a famous phrase ‘**Unity in Diversity**’. This word covers India's unique blend of castes, languages, religions, and creeds, all of which coexist peacefully with a strong sense of national identity.

But now, the concept of uniformity is introduced, a killer to diversity of India, a killer to diverse faiths, beliefs, religions, thoughts (Violation of **LIBERTY** in Preamble) of the people.

This uniformity is more discriminatory in nature, as it is directly targeting Muslims by outlawing **The Muslim Personal Law (Shariat) Application Act, 1937**. While other communities are least affected.

#### **21<sup>st</sup> Law commissions' Report:**

**In August 2018, the 21st Law Commission** — led by former Supreme Court judge **Justice B.S. Chauhan** — had said the UCC “**is neither necessary nor desirable at this stage**” in the country. In a 185-page consultation paper on the subject, the commission emphasized that secularism could not contradict the plurality prevalent in the country. “**Cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of**

**the nation,”** it had said. The commission added that a unified nation did not necessarily need to have “uniformity” and that **“efforts have to be made to reconcile our diversity with universal and indisputable arguments on human rights.”**

Soon after BJP came into power, The 22nd Law Commission was notified in February 2020, but it was formally constituted in November 2022. In February 2023, the Centre extended its term to August 31, 2024. This law commission declared that a UCC is not only desirable but also necessary at this stage. Legal experts are skeptical that the Commission will discover sufficient justification in this brief time frame to reverse the sensible reasoning of its predecessor.

### **A Threat to Nation:**

The Constitution's guarantee of fundamental rights is violated by the UCC's implementation, including **Article 25** (right to openly declare and carry out one's religion) and; **Article 29** (the freedom to practice one's own culture).

Since India has Article 25 in its constitution, which grants the right to profess and practice one's religion, the drafting committee decided to schedule **UCC under the DPSP rather than making it a fundamental right**. They also felt that the institution of marriage, which is seen as a sacred institution, should be governed by customary law since there is already a special marriage act for those who go beyond their personal laws, so there is no need to outlaw those laws.

Article 29, which gives the right to have a distinct culture is clearly violated by the enactment of UCC because there would be no diversity left when UCC is implemented every person or every community will follow the same rules, regulations and hence India will end up to a dictatorial state with no personal laws and no fundamental rights.

The registration of live-in relationships, which raises constitutional concerns about personal liberty and privacy, is another topic of discussion surrounding the bill. We live in a state where adultery is not a crime, but two consensual adults must register their live-in relationship. On the one hand, we talk about privacy and consent and on the other hand we are depriving young adults of their privacy. Does it even make sense to register live-in relationships?

### **How should UCC be implemented?**

The 21st Law Commission underlined that rather than enacting a UCC, family laws of every religion must be reformed to make them gender-just. It talked about the **uniformity of rights, not laws**.

The report voiced concerns regarding the discrimination against women in all personal law matters pertaining to inheritance. It recommended standardizing the succession laws for Shias and Sunnis and codifying the inheritance and succession laws of Muslims. It held that succession and inheritance should be based on **“proximity to the deceased rather than a preference to male agnates”**. Furthermore, a Muslim widow should be entitled to inherit the deceased's property as a Class I heir even if she is childless. About Muslim polygamy, the Commission made the following insightful observation: **“Although polygamy is permitted within Islam, it is a rare practice among Indian Muslims. On the other hand,**

**it is frequently misused by persons of other religions who convert as Muslims solely to solemnize another marriage.”** Not forgetting Dilawar and Aisha’s Nikah, our dearest He-Man and Dream Girl.

**Uniformity must be brought in the minimum age of marriage.**

There must be a uniform age in all religions to marry, the universal adult franchise declares that people become adults at the age of 18, so it is essential to set a standard marriage age for all religions. Being married is a lifetime commitment, so it's important for people getting married to be mature enough. A uniform marriage age guarantees that people are emotionally, psychologically, and intellectually mature enough to make such a big decision. By guaranteeing that people are ready for the responsibilities that come with marriage, this strategy upholds equality and protects people's welfare regardless of their religious beliefs.

**If such a code is to be applied, it should be uniformly enforced across all personal laws.**

The existence of certain personal laws, such as the allowance to carry a Kirpan in Sikhism, while not permitted in other religions, raises concerns about security and uniformity. This discrepancy poses a potential threat to the security of the nation, as it becomes challenging to discern individuals who may pose a danger. Therefore, the application of this form of uniform civil code is not only essential for promoting equality but also for upholding the security and integrity of India.

**Conclusion:**

To sum up, the Indian government's efforts to create a Uniform Civil Code (UCC) are motivated by the desire for equality and uniformity in the legal system, but their current iterations also raise concerns about possible violations of religious freedom, individual rights, and cultural diversity. Regardless of tribe or religion, it should be made available to all Indian citizens if it is an urgent necessity. Without favoring any one religion or tribe over another, the personal laws of all the religions ought to be combined under one roof. The time has come to standardize Muslim law's minimum marriage age and widows' rights. If not uniformity across the board, then at least some of the 21st Law Commission's recommended reforms ought to be implemented. If we don't protect ourselves against this so-called secular government, India's diversity will be finished. We Indians should ask ourselves if we really need political uniformity or constitutional unity?