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Is Uniform Civil Code a need or a propaganda?

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Introduction

The Uniform Civil Code or the UCC is a called for by the NDA government that aims at replacing personal laws followed by different religions and sects with a single code of laws that would apply to all citizens. Interracial marriage is a sensitive subject of discussion in India because it may affect the religious demography of the country and the personal laws.

As per the provisions of the UCC all legal provisions regarding rights and fundamental freedoms shall be equal and open to all the citizens of the country without any discrimination of religion, caste or sex. Speaking on this issue the Indian Constitution under Article 44 provides for a Uniform Civil Code^{1 2} for the whole of India in the following words: "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India". To date, India has distinctive codified personal laws for Hindus, Muslims, Christians, Parsis and Jews giving rise to concern of marriage and divorce, and also issues of succession and adoption. The UCC is inclined to remove all personal laws so that there would be a series of regulations which govern everyone.

¹ Shika Goyal, What is Uniform Civil Code?, JAGRAN JOSH.BLOG, (July, 2024), https://www.jagranjosh.com

² Uniform Civil Code, WIKIPEDIA, (July 2024) https://en.wikipedia.org/wiki/Uniform Civil Code.

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UCC has been in debate for the very reason that the citizens are concerned about their religious sentiments.

UCC works upon a very thin line between providing religious freedom and curbing it. In this research paper we will deeply analyse the pros and cons of UCC, is it necessary for India and what are its impacts on states which have already imposed it.

Research Questions

- 1. Is it necessary for India to have UCC?
- 2. What are its impacts on states which have already imposed it?

Research Objectives

- 1. Analyzing deeply the pros and cons of UCC.
- 2. Comparing the position of state before and after UCC.

Research Methodology

This research is a cross-sectional study conducted with use of qualitative data and the information required was obtained from secondary sources involving journals, newspapers & websites to provide a background to the UCC, the laws, and existing or past debates on the issue. The information is synthesized in a systematic manner in order to predict the key issues or claim(s) or consequence(s) of implementing harmonised civil codes in the country.

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History and Debate

We know UCC from the recent debates and headlines, but only a few knows that the first idea of UCC was presented a long time ago in front of the drafting committee for our constitution. At that time also it became the topic of long-standing discussions and the great leaders we know from Jawaharlal Nehru to Dr. B. R. Ambedkar all agreed to include UCC in Directive Principles of State Policies (DPSP) (that is non- Justiciable) because of religious debates³, which we see in current time too. After independence there are few changes only; in 1955 the Hindu Code Bill and in 1954 the Special Marriage Act came into force where civil marriage was made legally valid outside the purview of the religious personal law. It has been a long-standing agenda on BJP and the speech of PM Narendra Modi in Madhya Pradesh recently provoked the UCC issue again⁴.

Historical Context

It was established during the colonial era. The Lex Loci Report of 1840 asserted the rationality of codification in various branches of Indian law but made an exception for the personal law. The objective of the British administration sought to standardize criminal laws and tolerate religious law governing the personal laws of the population, hence resulting in the creation of differentiated personal laws for Hindus and Muslims in British India⁵.

There was a civil bill passed in 1937 known as the Muslim Personal Law (Shariat) Application Act which intended to establish Islamic law to govern Muslims in India. Yet, it faced disparities when applied to local

³ Ammarah Ishaq, Mohammed Salman Siddiqui, The Uniform Civil Code - Reigniting Debate, LIVELAW. BLOG, (July, 2024), https://www.livelaw.in/articles/uniform-civil-code-reigniting-debate-252705.

⁴ Uniform Civil Code: History, implications, and minority perspectives, FRONTLINE, (July, 2024) https://frontline.thehindu.com/the-nation/uniform-civil-code-history-implications-and-minority-perspectives/article67090521.ece.
⁵ Supra at 3.

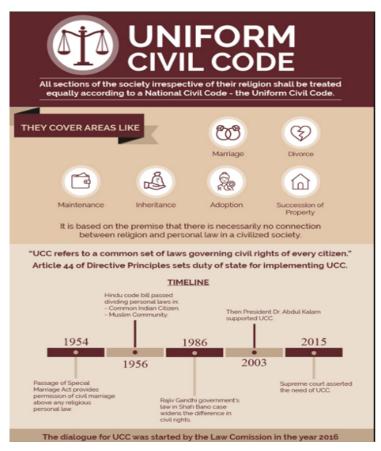


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courts because of culture, and acceptability for varied reasons. In the year 1941, the B N Rau Committee was appointed to draft Hindu Code which led to formulation of Hindu Code Bill after independence for justice to women as spouse and heirs.

Post-Independence Debate

After gaining independence in the year 1947, the UCC reemerged as a topic of 'discussion' during the framing



of the Constitution. This move did have the support of famous faces like Jawaharlal Nehru and Dr. B. R. Ambedkar, but it was opposed by different factions especially by minority groups. There was a heated debate in the Constituent Assembly over the formulation of the UCC with some of the arguments made being "The protection of religious self-governance and minorities was a concern" in the formulation of the UCC. In fact, the UCC was incorporated in Article 44 of the Directive Principles of State Policy or the provision that is unenforceable.

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⁶ *Id*.

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Contemporary Issues

The controversial UCC has become an issue of much discussion in recent years especially after the Shah Bano case of 1985 where the issue of reform in the personal laws of the country was brought into the forefront. On the positive side, people that are in support of this type of union argue that the formation of UCC will enhance gender equity and national integration but on the negative side, opposition feels that the imposition of a set of laws to various religious groups is argumentative. The debate over whether or not the UCC should be mandatory, or declarative is therefore still a matter of discussion, which only serves to fuel tensions among the minority parties.

This is evident from the history of the evolution of the UCC debate in India, which is a battle between its desire to maintain the secular fabric of the nation while preserving the cultures of diverse religious beliefs across the country.

Understanding the need, and the Pros & Cons of Uniform Civil Code

Need of the Uniform Civil Code

The paper issued by the NDA government establishes the need for the Uniform Civil Code (UCC) in India based on several factors. First, it works for the delivery of justice and equality since it will apply to everyone with the same authority without having regard to the religion, caste or sex which will promote equality in the society and eradicate inequality on the basis of religious sentiments⁷. Secondly, the UCC implies that women shall enjoy the rights such as marriage and divorce, guardianship and inheritance etc. which will help to reduce

⁷Bibek Debroy, Aditya Sinha, Opinion: Why India Needs A Uniform Civil Code, NDTV. BLOGS, (July 2024) https://www.ndtv.com/opinion/why-india-needs-a-uniform-civil-code-4161333.

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gender-based discriminations associated with most of the country's personal laws which discriminate against women. On the same line of GST, they give the reasoning that with different personal laws in place, there is confusion and complexity in the current legal systems, a UCC would help strip down these laws simplifying legal processes as well as improving on legal security for all individuals. Moreover, a UCC unites the masses, implying that people in India need to have a single identity regardless of their religious or ethnic backgrounds. Finally, it suggests a new legal order that reflects modernity in order to fit into the society's ideal type of a progressive country. Though there is a concern in the implementation of the UCC, its need cannot be overemphasized especially in the areas of equality, justice and social integration of the diverse Indian society.

Pros in implementing Uniform Civil Code

- Promotes democracy since all persons in the country have equal rights under the laws regardless of his or her belief, Caste or sex as provided by the constitution.
- Serves the interest of the women by explicitly extending equality rights to them in areas like marriage, divorce and inheritance etc. Thus, eradicating discrimination prevalent in many personal law statutes⁸.
- It demarginalizes procedures by eradicating the system where numerous personal laws existed beside the Indian secular laws and makes Legal justice attainable for everyone.
- Grants an up-to-date perspective of the regulation of the legal norms in the context of the values and missions of the present society which is essential for a progressive state.
- It removes the contradicting legal system of India where on one side it says it is secular and on other end it has different laws for different religious populations.

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⁸ *Id*.

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Cons in implementing Uniform Civil Code

- Given that the country is very diverse, and the institution of personal laws is recognized, it can be extremely difficult to apply general marital rules across the country.
- At the current stage, there are concerns that a UCC may erode on the rights of special sequential activities that belong to the minority groups and completely prejudice their rights to religious liberty.
- Stakeholder approach that one requires to be sensitive and keen especially when handling a number of entities⁹.
- Issues of location which might have resulted in the development of the standard code of conduct mainly due to the rich cultural, social, religious, and practice diversity within India.
- Fears which suggest that instead of shielding people from each other, legal assimilation will be served by the state for unwanted purposes against certain living cultures.

The controversy regarding the UCC mirrors the tensions of equity, discrimination, and freedom of religion in a multicultural context in India. Despite this, the fact remains that the UCC has the capacity to foster gender equality, as well as promote national integration, if and only if; its implementation is going to be sensitive to the difficulty of all the broken communities.

What is the impact of the Uniform Civil Code?

To deeply analyse the impact of UCC we firstly need to look into the legal systems that have already implemented UCC. Goa being the first state to have implemented UCC in the year 1867 by Portuguese¹⁰ will not be the correct state to see the impact of UCC as the current society is much more different and evolved as

⁹Id.,

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compared to the society back at that time. So, we are left only with Uttarakhand the second and only state which have implemented UCC recently as recent as February 2024¹⁰.

Legal System of Uttarakhand before the implementation of the Uniform Civil Code

Prior to the establishment of the Uniform Civil Code in the Uttarakhand state, the legal structure was bifurcated to include the religious as well as the secular laws and personal laws those were pertaining to a specific religion. Aspiring for their respective persona for the issues of marriage, divorce, inheritance, and child adoption every religious group, Hindus, Muslims, Christians, and other religious groups existed.

The population that followed Hindu beliefs were governed under the Hindu Marriage Act, Hindu Succession Act, and other related statutes. The laws legalised some practices such as joint family systems, rights of inheritance for males, and permissible grounds for divorce. The ones who followed Muslim beliefs were governed by the Shariat which provided procedure of *nikah*, *iddah*, and *triple talaq*. These laws made legal regulations for marriage and divorce which have provisions that were considered unfair to women and not equal to those applicable to men. The citizens who had Christian or Parsi belief system were ruled under the Indian Succession Act while following the procedure of marriage under their specific acts, which were different from the Hindu and Muslim laws of marriage.

There also existed secular laws for inter-faith activities like marriage etc. they were Special Marriage Act, 1954 that permitted inter-religious marriage and gave the legal structure of civil marriages, without referring

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¹⁰Aarathrika Bhaumik, What does Uttarakhand's UCC entail?, THE HINDU, (July 2024) https://www.thehindu.com/news/national/other-states/what-does-uttarakhands-ucc-entail/article67832247.ece

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to the personal laws. However, usage of such laws was contradicting the personal laws resulting in legal incongruities and problems in issues of divorce, succession and custody.

The existence of multiple personal laws leads to the establishment of a fragmented legal system, coupled with injustice especially to women. For instance, women under Hindu law had restricted access to the ancestral property; women under Shariat law faced issues regarding divorce and maintenance. That is why the absence of a single legal environment created inequality in the administration of justice leaving citizens struggling to know their rights and responsibilities.

The introduction of the UCC in the state of Uttarakhand seeks to redress these imbalances by extending a standard legal regime to all comers and hence accord everyone in the state basic equality, justice, and gender rights.

Legal System of Uttarakhand post implementation of the Uniform Civil Code

The UCC passed by the government of Uttarakhand in February 2024 has brought a new law in the state and turned into a new prospect of the civil laws, leaving behind the prior religion-based law applicable to the citizens of the state and law governing marriage, divorce, and inheritance.

Key Changes:

Marriage and Divorce: UCC made it compulsory for the couples to register their marriage within 60 days, non- compliance to which may attract penalties. UCC clearly prohibited bigamy and declared extra judicial ways of divorce such as talaq-us-sunnat, talaq-i-biddat, and customary divorce practices

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as illegal. It laid down specific grounds for divorce including religious conversion and specific instances of spousal misconduct¹¹.

- 2. <u>Inheritance</u>: UCC brought both ancestral and self-acquired property to be treated similarly under one scheme, abolishing the coparcenary system under Hindu law. It gave equal rights to acquire property to children, parents and spouses irrespective of their gender.
- 3. <u>Guardianship</u>: UCC did not touch the pre-existing guardianship laws and left them as they were with a few changes that provided equal rights to mothers in case of child custody after divorce¹².
- 4. <u>Exemption for Tribal Communities</u>: To protect the interests of scheduled tribes (2.9% of the UK population), UCC exempted them from its purview and gave them freedom to practise their own personal laws.

Impact on Personal Laws

UCC has impacted the personal laws to a large extent.

 It made the inheritance laws of all community uniform and also removed Hindu Succession Act of 1956¹³.

¹¹ What does Uttarakhand's UCC entail? LIVELAW.IN (July 2024) https://www.livelaw.in/articles/uttarakhand-uniform-civil-code-and-personal-laws-implications-analysis-252125.

¹² Bansuri Swaraj, UCC Debate | Why Uttarakhand's Uniform Civil Code is a progressive leap into the future, HINDUSTAN TIMES, (July 2024) https://www.hindustantimes.com/opinion/ucc-debate-why-uttarakhand-s-uniform-civil-code-is-a-progressive-leap-into-the-future-101707838298021.html.

¹³ Kannan Krishnamurthi, *Uttarakhand's Uniform Civil Code: Unifying laws or dividing communities? FRONTLINE, (July 2024)*https://frontline.thehindu.com/politics/uttarakhand-ucc-bill-law-implications-for-uniform-civil-code-in-india-women-marriage-relations/article67899026.ece.

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2. It criminalised the practice such as nikah halala, iddat, and triple talaq that were prevalent under Muslim personal laws¹⁴.

3. It promotes equality between men and women and bars discrimination in marriage, divorce and inheritance cases.

Challenges and concerns

While the UCC aims to promote equality and national integration, its implementation faces some challenges: Issues being raised by the minority groups on how their religious and cultural rights may be infringed upon. Implementing challenges of developing a single set of rules that should apply a code across various religions with various practices seems like an impossible task. Concerns regarding the state's ability to force citizens in diverse groups to adhere to legal conformity is looked upon in a negative way showing things are done against their will.

The case of the Uttarakhand UCC is thus seen as a positive development towards the formulation of a common civil code in the country, which would be useful for any of the willing states. Nevertheless, the social implications of the UCC for cohesion and rights of individuals today remain a question as the state tries to manage equal opportunities for diverse people in the sphere of law.

Analysis and Findings

UCC has therefore, as per my findings, emerged as one of the most complex and debated legislations in India that seeks to abolish all the individual laws dealing with marriages and divorces as well as succession and

¹⁴Uttarakhand Uniform Civil Code (UCC) Bill: Key Provisions, Significance & Concerns, NEXT IAS, (July 2024) https://www.nextias.com/blog/uttarakhand-uniform-civil-code-ucc/.



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adoption that exists in India. Thus, this paper explores the history, the legal analysis, the social effects, and the politics of UCC to make an understanding of possible advantages of the instrument and the difficulties that can be met in its application.

The genesis of the UCC can connect with colonial legislations of India when the British section laboured to standardize and codify the laws of India. Nevertheless, they decided to continue with personal laws which were drawn from religious practices making the legal system to be compound or rather split. The Indian Constitution adopted in 1950 provided for a Uniform Civil Code in its Directive Principles of State Policy under Article 44 'the State shall endeavour to provide for the citizens of India a Uniform Civil Code throughout the territory of India' This appeared to be a progressive step towards providing equality and justice for all Indian citizens but again this was not made enforceable and therefore in a way became more of appendage as it was not justiciable.

Discussion on UCC began in the context of post-independence India and majorly occurred after certain liberal cases such as 'Shah Bano case' in 1985 which underlined the shortcomings of the system of personal laws, especially for women. The Shah Bano case decided by the supreme court in 1988 which granted maintenance to a divorced woman and an unfit husband triggered debates for the passage of UCC for gender justice. But the consequent furore from the conservative Islamic organisations resulted in enacting of Muslim Women (Protection of Rights on Divorce) Act 1986, which was intended to safeguard personal law but actually exposed the necessity of change.

Thus, the objective of the UCC is to develop a legal system of laws in civil matters so that any citizen will receive equal treatment in a civil lawsuit as any other citizen. Particularly today, personal laws vary among religious groups, which causes inequality in people's rights and duties. For instance, according to the Hindu



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law, the women have restricted rights of inheritance concerning the ancestral property; the Muslim women also have numerous problems with reference to Shariat law regarding divorce and maintenance. According to the UCC, it wants to do away with these anomalies it wants to put in place one legal system that states that everyone is equal before the law regardless of his colour, origin, marital status, property owning status, marital status, occupation, or origin amongst others in respect to matters arising from marriage, divorce, succession and adoption.

Among the goals of the UCC, the foremost one is to vindicate the rights of women by giving them civil equal rights. Under the personal laws, women have always been socially and economically exploited where issues to do with inheritance and marital rights are mostly denied. Thus, the legal actions that would occur under the UCC regime would enhance the status of women to that of men with regard to property and family law. Such change is essential in the promotion of women's rights and in the reduction of inequality within the society. This paper has demonstrated that the UCC has social significance since it redresses various age-old concerns with regard to gender prejudice. The supporters of the bill opined that for the nation to attain social justice, especially in the area of marriage and family laws, there is need to enact the UCC. There are some arguments in its favourable side by asserting that women's rights organizations have for long called for a UCC in order to seek justice and do away with oppressive practices embedded in some personal laws, particularly those affecting the Muslim women.

Furthermore, there is a possibility for the UCC to help in national integration since it is cross-religious and cross-ethnic. Thus, the concept of multiple personal laws is particularly problematic in multicultural nations such as India, as it results in fragmentation of the society and deepens the divide. A UCC would therefore contribute to the development of a shared identity of the people thus enhancing equality and unity in diversity.



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With this, the UCC has the potential to come up with uniform legal structures, which could ease social relations between the various demography notwithstanding.

But the realisation of the UCC is not without challenges as this paper also seeks to establish. The naysayers claim that the UCC is likely to impugn the rights and parity of other significant minority practices, preeminently religion and culture. The fear of such a prospect dismissing the UCC as an attack on their cultural values makes conservatives antsy about the proposed legislation. The issue thus rests on how to encourage change and break the social bias whilst at the same time observe cultural relativism that is present in India.

The political issues in the UCC's context are quite sensitive and sometimes controversial. Current political parties have taken time to address the issue of the UCC relating it with political stand and using it to attract supporters. The BJP government has been quite supportive of the UCC claiming that the move will help in elimination of gender bias and to usher in national integration. The support for the implementation of the UCC thereby corresponds with its major goals of Hindu nationalism and therefore targets the party's core supporters. On the other hand, the leaders of the opposition parties criticized the UCC in terms of its impact on the secular structure of India and the rights of the minorities. They said that the provisions of the UCC could result to the dilution of religious liberty and culture, especially for those with ethnic diversity. This division of political ideologies labelling makes it difficult to find common ground on the issue of UCC hence a hard time for a common policy to be passed.

In addition, a general ignorance of the UCC significantly adds to the contentiousness of the issue. Some of the citizens may lack adequate knowledge regarding the UCC or the very things that the UCC can bring in their region, thus may have wrong perception or not accept it. Analysing the main findings, it is necessary to state

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that the public has to be engaged and educated concerning the UCC and its possible outcomes to create a more informed debate.

The Cross-Selling Bizarre apprehensively faces these challenges in the successful implementation of the UCC. One of the main challenges is the pursuit of the religious people's unity of the different communities with different beliefs. Getting to agreement on a set of laws that will be standard and at the same time which will not interfere with the culture and tradition of different people is very hard. The challenges that arise when developing drafting a special code of law that will recognize the differences of any religion across the globe are hurdles.

Also, there is concern regarding the ability of the state to maintain legal conformity in a repulsive manner. Fears of abuse and domination, as well as the attempts to impose majority's model, may result in opposition from minorities. That is why it will be crucial to establish trust and to make sure that the UCC will be applied in a manner that will encourage diversity.

Thus, it is possible to conclude that the assessment of the Uniform Civil Code gives a complex image of the topic that is fully interconnected with legal amendments, social inequality, and politics. The UCC in this sense has the advantage of spearheading the cause of equality, women, and national integration since it will standardize the legal system for all Ghanaians. But it should be noted that to implement this strategy, one has to be sensitive to the various cultures in India as well as its political climate. Since the UCC has to be applied in different communities, it has to gain consensus in all these communities it aims to work with; secondly, the contentious issues of religious freedom are part and parcel of its set up; and thirdly, the public has to be educated on issues of its operation which are some of the factors that make up challenges that will dictate the



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success or failure of the UCC. With gender equality and social justice being a burning topic in the Indian context, UCC stands as one of the timely debated topics in the long run toward social justice and equality.

Conclusions and Recommendations

The UCC is a comprehensive proposal in Indian legal framework that seeks to do away with the plurality of the personal laws prevalent over weddings, dissolution of marriage, succession and adoption widespread across the country subjecting such matters to the bar of a particular set of laws irrespective of the religion of the parties involved. The following research work has discussed the background, legal requirements, social consequences, and political issues on the UCC, both its functionalities and its prospects and its setbacks in promoting it.

To understand the essence of what the UCC is all about, it seeks to foster equity and justice, a thing that is enshrined in India's constitution. Through harmonisation of laws through the UCC, it was hoped to do away with the inequities occasioned by having several the personal laws each with its unfair provisions for women and the marginalised. The prevailing system, which is the personal laws that are a result of cultural practices and mostly religious in nature, have upheld inequality, especially in aspects such as succession and marriage. However, the enhancement of Gender equality in the UCC is considerate to enhance women right in civil matters and in turn create a society that is free from ill treatment and discrimination on grounds of gender. Also, one of the social functions of the UCC is that it can lead to the advancement of national integration, which is free from religious and ethnic prejudices. As the constitution has recognized different personal laws of different religions in this culturally diverse country like India, then people will be divided on different legal aspects. Therefore, through the elements like the establishment of a common legal identity and the formulation

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of similar legal frameworks, the UCC can facilitate social integration and coexistence between people of different cultures. It is especially important in today's India because questions of identity politics and communalism are ripe.

Nevertheless, a major issue relating to the UCC is the manner in which it is being rolled out. The requirement of gathering of various religious groups is the major challenge as it becomes hard to get agreement on various laws that accommodate different cultures. Some of the criticisms made concerning multiculturalism are commonly seen as the infringement of religious liberty and decline in cultural integrity of specifically ethnic minorities. Such worries point to the urgent need to examine the UCC with care and consideration for marginalized groups as well as guaranteeing that relevant legislation considers all stakeholders' opinions.

The political processes as to the implementation of the UCC also present quite a challenge. The UCC has assumed this political dilemma whereby various political parties are using it to gain political support. While proponents like the ruling Bharatiya Janata Party (BJP) have passionately bursting the debate as an instrument that will help to advance issues of gender and national integration, the opposition have prickly concerns on secularism and minority issues with the implementation of the UCC. Such political partisanship is indicative of a need to decentralize the actual focus on the social justice that UCC should ideally represent and move away from the partisanship.

Thus, the complexity of the issues discussed remains concentrated in the preparation of the Uniform Civil Code that continues to be an essential focus of India's pursuit of the principles of social justice and equality. While it means the beginnings of progress toward the establishment of an improved legal structure, the task's execution falls within the realities of Indian cultural diversity. These are crucial to push the full realization of the UCC potential in changing shape the Indian society in order to enhance agreement, allay fear as to religious



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liberty, and educate the populace. Thus, the trouble of India to acknowledge the gender inequalities and justice for women and lower castes UCC becomes an important focus for attaining a harmonized civil society of a nation that aspires for equality and justice for each of its inhabitants.



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