

GOOD VS BAD LAW INDIA DEBATES UNIFORM CIVIL CODE

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



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Indian Prime Minister Narendra Modi, while addressing booth-level workers of BJP in Bhopal on June 28, 2023, made a strong pitch for implementing the Uniform Civil Code (UCC) – a proposed law that deeply worries minorities, particularly Muslims.¹ Besides, the reservations of the minority communities, this statement of the Prime Minister assumes more significance because elections for the 18th Lok Sabha are just a few months away.

Addressing the gathering, Prime Minister Modi asserted that political parties in India were using minorities only for the sake of their vote bank, and for this, they have been criticizing the Bharatiya Janata Party as it advocates UCC. Before this statement, the 22nd Law Commission of India², headed by former Karnataka High Court Chief Justice Ritu Raj Awasthi had also invited views of religious organizations and the public on UCC on June 14, 2023.³ Following the deadline i.e. July 28, 2023, the Law Commission received around 7.5 million responses.⁴ Interestingly, the same matter was also

¹ 'Country Needs Uniform Civil Code, Asserts PM Modi', *The Hindu*, 27 June 2023, sec. India, <https://www.thehindu.com/news/national/wont-adopt-the-path-of-appeasement-and-vote-bank-pm-modi/article67014799.ece>.

² The Law Commission of India is an executive body which is established by an order of the Government of India. The commission's main task is to research and advise the government on legal reform. It is headed by a retired judge with legal experts as its members.

³ 'Law Commission Seeks Views on Uniform Civil Code: What Is the UCC and the Debate around It', *The Indian Express*, 18 June 2023, sec. Wxplained Desk, <https://indianexpress.com/article/explained/explained-law/law-commission-uniform-civil-code-8671382/>.

⁴ 'Will Modi's Uniform Civil Code Kill Indian "Secularism"?', 17 August 2023, sec. Features, <https://www.aljazeera.com/features/2023/8/17/will-a-uniform-civil-code-end-indian-secularism>.

referred to the 21st Law Commission, which was headed by former Supreme Court judge Justice B.S. Chauhan. The Commission had already termed UCC as “neither necessary nor desirable,” in 2018.⁵

Last year, BJP member Kirodi Lal Meena introduced a private member bill for the implementation of UCC across India on December 9, 2022.⁶ The bill was vehemently opposed by all political parties including the Marumalarchi Dravida Munnetra Kazhagam (MDMK), Indian Union Muslim League (IUML), Communist Party of India (Marxist) (CPI(M)), Samajwadi Party (SP), Dravida Munnetra Kazhagam (DMK), Trinamool Congress (TMC), Rashtriya Janta Dal (RJD), Nationalist Congress Party (NCP), and the Indian National Congress (INC) who viewed the bill as “leading towards disaster and disintegration of the country,” “deliberate provocation,” “bill will burn the country,” “detrimental to national interest,” and “not in consonance with democracy.”⁷

The Uniform Civil Code refers to a uniform legal framework, particularly in the matters of marriage, divorce, adoption, maintenance, or inheritance for all citizens of India regardless of their religion. At the moment, all these laws are governed by separate provisions under religious customary laws about each religion. Historically, the idea of UCC was inspired by similar codes that were drafted in European countries in the 19th and early 20th centuries. The French Code of 1804 had eliminated all forms of customary or statutory laws prevailing at that time and replacing it with a uniform code was a reference in particular.⁸ Following India’s independence in 1947, while drafting the Constitution, it was felt that it was near impossible to bring all communities under one umbrella in one go and therefore, it was felt more prudent to leave UCC as an inspirational goal. If implemented, besides religious minorities, various castes, tribes, and state-specific communities as well as the LGBTQ community would also come under the ambit of UCC.⁹

5 ‘Uniform Civil Code Neither Desirable nor Necessary at This Stage, Says Law Commission’, *The Hindu*, 31 August 2018, sec. India, <https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article61498390.ece>.

6 ‘BJP Member Moves Private Member Bill on Uniform Civil Code in Rajya Sabha, Draws Stiff Resistance from Opposition’, *The Hindu*, 9 December 2022, sec. India, <https://www.thehindu.com/news/national/private-members-bill-on-uniform-civil-code-introduced-in-rajya-sabha/article66242700.ece>.

7 ‘BJP Member Moves Private Member Bill on Uniform Civil Code in Rajya Sabha, Draws Stiff Resistance from Opposition’.

8 Abhinav Mehrotra, ‘Uniform Civil Code (UCC) in India: An Overview’, *Observer Research Foundation*, 6 January 2022, https://pure.jgu.edu.in/id/eprint/3654/1/Uniform%20Civil%20Code%20%28UCC%29%20in%20India_%20An%20overview%20_%20ORF.pdf.

9 ‘From Marriage to Adoption, How Uniform Civil Code Could Subsume Personal Laws across Religions’, *India Today*, 29 June 2023, sec. Law, <https://www.indiatoday.in/law/story/uniform-civil-code-subsume-marriage-divorce-succession-adoption-inheritance-2399376-2023-06-29>.

Some BJP-ruled States, like Himachal Pradesh, Gujarat, and Uttarakhand have already begun the process of developing UCC for their respective states. Uttarakhand started the process of consultation in June 2022 by setting up a panel of retired judges and experts.¹⁰

Those who see UCC in a favorable light maintain that imposition of UCC is mandatory as is mentioned in Article 44 of the Indian constitution (one of the Directive Principles of State Policy) which clearly states: “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”¹¹ They believe that different laws in one country are an affront to India and UCC would ensure integration and unity of the country.

Those who do not view UCC very favorably argue that following the demolition of Babri Mosque and revocation of Article 370 in Indian-occupied Jammu and Kashmir, the implementation of the UCC has become an upcoming project of BJP as well as Sangh Parivar. They argue that this advocacy for UCC is not driven by the desire to bring betterment in the lives of minorities, particularly women but “by a lust for uniformity in the Hindutva mould.”¹² The basic aim is to further weaken Muslim identity and ultimately erase it altogether. They maintain that UCC would serve as a black spot on values like unity in diversity which is the mainstay of India. Questions have also been raised that when the matter has already been settled by the 21st Law Commission, then why the government has tasked the 22nd Law Commission with the same duty? It is also highlighted that despite Article 44, the UCC would be in direct contradiction with Article 25¹³ and Article 26¹⁴ of the Indian Constitution which ensures the freedom of religion of Indian people. It is believed that the issue of UCC is being used by the BJP only for its political advantage with upcoming elections in sight. While responding to Law Commission’s request seeking response on UCC and reminding the BJP observations of the last Law Commission, The All India Majlis-E-Ittehadul Muslimeen (AIMIM) president Asaduddin Owaisi observed: “Our belief is that this political exercise which is going on is to impose an unnecessary 'mahaul' (atmosphere) in the country before the Lok Sabha elections so that the public attention is

¹⁰ T. K. Rajalakshmi, ‘Uniform Civil Code Bill in Parliament a Step Forward for Sangh Parivar Agenda’, *Frontline*, 28 December 2022, <https://frontline.thehindu.com/politics/uniform-civil-code-bill-in-parliament-a-step-forward-for-sangh-parivar-agenda/article66310063.ece>.

¹¹ ‘Article 44 in The Constitution Of India 1949’, Indian Kanoon, accessed 24 August 2023, <https://indiankanoon.org/doc/1406604/>.

¹² A.G Noorani, ‘Hindutva’s Stick’, *FrontLine*, 11 November 2015, <https://frontline.thehindu.com/the-nation/hindutvas-stick/article23593545.ece>.

¹³ ‘Article 25: Freedom of Conscience and Free Profession, Practice and Propagation of Religion’, Constitution of India, accessed 24 August 2023, <https://www.constitutionofindia.net/articles/article-25-freedom-of-conscience-and-free-profession-practice-and-propagation-of-religion/>.

¹⁴ ‘Article 26: Freedom to Manage Religious Affairs’, Constitution of India, accessed 24 August 2023, <https://www.constitutionofindia.net/articles/article-26-freedom-to-manage-religious-affairs/>.

diverted from issues such as poverty, unemployment, price-rise, and China which has occupied our land.”¹⁵

Similarly, the All India Democratic Women’s Association (AIDWA) also expressed its reservation over the BJP’s claim of UCC as a step to resolving issues faced by women like instant triple talaq saying uniformity does not always mean equality. It also expressed its surprise over the manner in which the 22nd Law Commission sought opinions and expressed its apprehension that it was only a formality as the Prime Minister himself and BJP-ruled states have already expressed their desire to implement it albeit against the wishes of women rights groups and minority communities.¹⁶

It is believed that since following demolition of Babri Mosque, beginning of the construction of Ram Temple, and the abrogation of Article 370, UCC is the last ideological agenda of the BJP, therefore, BJP would keep the issue alive till the upcoming Lok Sabha elections. The drive for implementing UCC could also be related to Islamophobia. It is propagated that since Muslims are allowed to keep four wives at a time, the Muslim population would soon surpass the Hindu population. Slogans like “*Hum paanch, hamare pachees* (we 5, our 25) or *hum chaar, hamare chalees* (we 4, ours 40)”¹⁷ are used by right-wing Hindu leaders to instill fear of Islam becoming the predominant religion of India in the future. Needless to say this is contrary to the facts as Tribals, Buddhists, and Jains have a far higher percentage of polygamy as compared to Muslims. Terms like “Love Jihad”¹⁸ are used to stigmatize, and in most cases target, young Muslim men who wish to marry a girl belonging to the Hindu faith.

Hence, in a highly polarized environment, any attempt to introduce UCC would not only raise questions over the intentions of the government but would further shrink the space for minorities in society. As India is all set to become the fourth largest economy in the world¹⁹ and has become the

¹⁵ “‘Centre Trying To Divert Public Attention’: A Owaisi On Uniform Civil Code Push’, *NDTV.Com*, 14 July 2023, sec. India News, <https://www.ndtv.com/india-news/to-divert-public-attention-asaduddin-owaisi-on-centres-uniform-civil-code-push-4206961>.

¹⁶ “‘UCC Is Merely an Attempt to Undo the Existing Muslim Law, Sixth Schedule Laws’”, *The Wire*, July 2023, sec. Law, <https://thewire.in/law/ucc-is-merely-an-attempt-to-undo-the-existing-muslim-law-sixth-schedule-laws>.

¹⁷ S.Y. Quraishi, ‘Uniform Civil Code: Law Of No Returns’, *Outlook India*, 31 May 2023, <https://www.outlookindia.com/national/uniform-civil-code-law-of-no-returns-magazine-290735>.

¹⁸ Love Jihad is a conspiracy theory propagated by right wing Hindu organizations. According to this theory, Muslim men lure Hindu women on false pretense in order to convert them to Islam.

¹⁹ Michelle Toh Ziad Hanna, ‘Why Everyone in Business Loves India Right Now’, *CNN Business*, 30 April 2023, <https://www.cnn.com/2023/04/29/business/india-economy-global-businesses-investment-intl-hnk/index.html>.

first country to land its spacecraft in the lunar South Pole region,²⁰ it would be more fitting for India to recognize the fears of its minorities and ensure that they lead their life with dignity and in accordance with their religious beliefs as is guaranteed by the Constitution of India.

²⁰ 'Chandrayaan-3: India Makes Historic Landing near Moon's South Pole', *BBC News*, 23 August 2023, sec. India, <https://www.bbc.com/news/world-asia-india-66594520>.