

UNIVERSALISM AND CULTURAL RELATIVISM IN THE CONTEXT OF THE UNIFORM CIVIL CODE IN INDIA

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ABSTRACT

This paper delves into the complex interplay between universalism and cultural relativism within the context of India's Uniform Civil Code (UCC). The UCC proposal in a way supports the universalism concept and seeks to establish a single set of personal laws for all the citizens of the country, transcending religious and cultural differences. But, advocates of cultural relativism argue for the preservation of diverse religious practices, fearing potential infringements on minority rights and cultural identities. Meanwhile, proponents of universalism advocate for a uniform code, emphasizing the need for a common legal framework that upholds individual rights and ensures gender equality. This study critically examines the multifaceted debates surrounding the UCC, exploring the challenges and benefits of implementing the UCC using the two contradicting concepts Universalism and Cultural Relativism. By analysing the varying viewpoints and implications, this research aims to shed light on the potential pathways to strike a balance between the two contrasting ideologies in India's quest for legal reforms.

INTRODUCTION

The Uniform Civil Code (UCC) in India was designed with the idea of "One Country, One Rule" at its core. At first look, the progressive principle of treating everyone equally appears promising, with the potential to contribute to national upliftment. However, the implementation of a stringent code like the UCC in a country like India raises an important question: will it truly serve the well-being of a nation that is known for its diversity?

The Uniform Civil Code aims to replace the personalized laws based on religious scriptures and customs that currently govern different religious communities in India. Presently, individuals seeking to register their marriages must navigate through different laws depending on their religious affiliation. Hindus are governed by the Hindu Marriage Act of 1955, Muslims and Christians follow the Muslim Personal Law (Shariat) Application Act of

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1937 and the Indian Christian Marriage Act of 1872, respectively, while inter-religious marriages are regulated by the Special Marriage Act of 1954¹. Implementing the UCC would eliminate this confusion, ensuring that all citizens are governed by the same set of laws. Embedded within the Indian Constitution, Article 44² includes a provision for the Uniform Civil Code as a Directive Principle of State Policy, stating that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Goa³ currently stands as the sole state in India that has implemented such a code.

The debate surrounding the UCC centres around two contrasting concepts: universalism and cultural relativism. Advocates of cultural relativism argue for the preservation of age-old customs, emphasizing that different religious groups should have their own set of laws tailored to their specific customs and religious sentiments. They believe that these laws are meticulously crafted, taking into account the unique needs and traditions of each community. However, controversial cases like the Shah Bano case⁴ in 1985 have raised important questions about existing personal laws. The UCC has since become a prominent topic of discussion in Indian politics, addressing the need to apply certain laws to all citizens without infringing upon their fundamental right to freedom of religion. Particularly, the focus has shifted to the Muslim Personal Law, which allows for unilateral divorce and polygamy, practices that are considered legally valid under Sharia law. This discussion highlights the necessity of evolving laws in response to societal changes, as religious laws may no longer align with contemporary values.

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The need for a Uniform Civil Code is an evident need in any diverse society, including India. Proponents of the UCC argue that it represents a path towards growth, promoting the implementation of universalism—the notion that a single law should apply to all citizens, transcending religious boundaries. In light of India's unique tapestry of cultural and religious diversity, it is vital to carefully consider the advantages of a Uniform Civil Code throughout this current discussion. A balanced strategy that supports the ideals of equality, fairness, and personal freedom while preserving the history and traditions of all people can only be developed by careful examination of the implications.

¹ Saxena, S. (2022) 'India needs a uniform civil code to prevent conflicts between personal laws and promote secularism', International journal of health sciences, pp. 9713–9726. doi:10.53730/ijhs.v6ns1.7269.

² Article 44 in The Constitution of India 1949

³ Debroy B and Sinha A, 'One Nation, One Law' [2023] Outlook India <<https://www.outlookindia.com/national/one-nation-one-law-magazine-290554>> accessed 18 July 2023

⁴ Mohd. Ahmed Khan vs Shah Bano Begum (1985) AIR 945, 1985 SCR (3) 844

RESEARCH QUESTION

1. What are the benefits and concerns of implementing a Union Civil Code in India, considering the concepts of Universalism and Cultural Relativism?

RESEARCH OBJECTIVES

1. To understand Universalism and Cultural Relativism and their underlying principles and implications.
2. To discuss the benefits and concerns of implementing UCC in India using the concepts of Universalism and Cultural Relativism.

UNDERSTANDING UNIVERSALISM AND CULTURAL RELATIVISM

The phrases "universalism" and "cultural relativism" are frequently used while addressing the area of human rights, but they also apply to larger philosophical issues. These ideas represent numerous viewpoints on how humans view and comprehend the world, having an effect on many academic fields.

Universalism is grounded in three fundamental jurisprudential theories: natural law theory, rationalism, and positivism⁵. One of the key aspects of universalism is the belief in objective moral principles that transcend individual cultures and societies. It suggests that there are fundamental human rights and ethical standards that should be universally upheld. These principles are often derived from notions of inherent human dignity, justice, and fairness. Universalism seeks to establish a common framework for moral and legal judgments that can be applied across diverse cultural contexts.⁶ Universalism in counselling emphasizes the importance of recognizing and respecting the shared humanity and rights of all individuals, fostering inclusivity, and avoiding cultural biases in therapeutic practices.

Additionally, universalism has emerged as a key viewpoint in the definition of multiculturalism. It acknowledges that while it is important to celebrate and cherish cultural variety, there are some universal rights and values that should not be sacrificed. Universalism seeks to strike a balance between the preservation of cultural identities and the promotion of a

⁵All Answers Ltd, 'Universalism and Cultural Relativism in Human Rights' (Lawteacher.net, July 2023) <<https://www.lawteacher.net/free-law-essays/international-law/universalism-and-cultural-relativism-in-human-rights-international-law-essay.php?vref=1>> accessed 17 July 2023

⁶ Marchenko, A. (2022) 'Religion and human rights in discourse and practice of cultural relativism and Universalism', *Sophia. Human and Religious Studies Bulletin*, 20(2), pp. 36–40. doi:10.17721/sophia.2022.20.8.

common ethical framework that upholds human dignity and equality. central perspective in defining multiculturalism. On the other hand, cultural relativism asserts that human values are not universal but rather vary significantly based on different cultural perspectives. The idea that culture is something static and unchanging is one of cultural relativism's drawbacks. Culture actually develops through time through historical development, adaptation, and evolution. This viewpoint neglects to acknowledge how culture may adapt to societal shifts and new ideologies. Cultural relativists contend that because cultures are essentially different from one another, so are the moral frameworks that govern relationships within communities. Cultural relativists in international relations assess an action's "rightness" or "wrongness" by comparing it to the moral norms of the society in which it takes place. Nevertheless, the validity of making value judgements across cultural boundaries is still up for discussion. Note that moral relativism should not be confused with cultural relativism, which argues that there are no moral absolutes guiding individual behaviour.⁷

The tension between universalism and cultural relativism becomes particularly apparent when considering the protection of human rights and the accommodation of cultural diversity. Universalism emphasizes the application of consistent standards across all individuals, promoting equality and avoiding cultural biases. Cultural relativism, on the other hand, highlights the need to respect and understand different cultural perspectives, acknowledging that what may be deemed acceptable or desirable in one culture may differ in another.⁸

THE CASE FOR UNIVERSALISM: BENEFITS OF A UCC

Universalists argue that certain moral principles and rights are inherent to all human beings, and as such, they should be universally upheld. The concept of universalism draws from three fundamental jurisprudential theories: natural law theory, rationalism, and positivism.

Once upon a time, Geneva's legal system underwent a transformation from rigid Calvinist laws to more progressive ones over time. The city was ruled by conservative Calvinist ideals, which had a significant impact on its judicial system during that time. However, as the influence of Calvinism waned, social and cultural changes led to a gradual shift towards more liberal and secular values. The outcome of this evolution was a legal system that is more inclusive and representative of current cultural ideals. This evolution displayed improvements

⁷ Ibid

⁸ Ghafournia N, 'Culture, Domestic Violence and Intersectionality: Beyond the Dilemma of Cultural Relativism and Universalism' (2014) 11 The International Journal of Critical Cultural Studies 23

in many areas of law, including personal liberties, religious tolerance, and individual rights. Today, Geneva's legal framework embraces a more diverse and forward-thinking approach that respects the rights and beliefs of its multicultural population.⁹ Just as Geneva evolved from strict Calvinist laws to more progressive ones to accommodate societal changes, India, with its incredible religious and cultural diversity, could also benefit from such a transition. All personal laws have evolved within specific social and historical contexts, and as societies progress, so must these laws. The resistance to change is not a valid argument for persisting with outdated practices.

One of the primary benefits of a UCC is that it promotes genuine secularism. Currently, India practices selective secularism, where secular principles apply in some areas but not in others. Implementing a uniform civil code means that all citizens of India, regardless of their religious affiliation, would be subject to the same laws. This approach is fair and truly secular, as it does not limit individuals' freedom to follow their religion but ensures that every person is treated equally under the law.¹⁰ Equality is another fundamental principle upheld by a UCC. India's current personal laws are based on certain faiths, which results in unfair treatment of people. For instance, whereas Muslims are permitted to marry more than once in India, Hindus or Christians may be subject to legal repercussions if they do the same. This disparity contradicts the principle of equality. All Indians would be subject to the same rules on marriage, inheritance, family, and land under a unified civil code. Such a code is essential to ensure that all Indians are treated the same.

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One of the main aspects would be that UCC would contribute to improving the rights of women in India. The implementation of a UCC is crucial for overcoming discrimination and gender inequality. The current society is deeply patriarchal and misogynistic, and allowing archaic religious rules to govern family life perpetuates the subjugation and mistreatment of women. A UCC would promote the same civil laws for all religions, preventing discrimination against women and uplifting their status in society. In today's modern world, a country needs laws that promote unity, peace, and progress. Personal laws, rooted in old customs and traditions, are not suitable for the changing times. A UCC signifies a move towards modernization, removing the influence of personal laws and steering the nation away from politics based on religion and caste. It aims to prevent discrimination not only against

⁹ Debroy B and Sinha A, 'One Nation, One Law' [2023] Outlook India <<https://www.outlookindia.com/national/one-nation-one-law-magazine-290554>> accessed 18 July 2023

¹⁰ Dr. Debasis Poddar, 'UNIFORM CIVIL CODIFICATION: READING THE REGIONAL CONTEXT FOR PROSPECTIVE TEXT AHEAD' (2017) Volume(I) ILI Law Review

women but against every individual based on caste and religion, enabling people to enjoy true secularism.¹¹

Implementing a UCC aligns India with other modern nations that have embraced such codes. It signifies progress and a departure from caste and religious politics. In fact, it could be argued that India has reached a point where it is neither fully modern nor traditional. Adopting a uniform civil code would propel the nation forward, aligning it with the goal of becoming a developed and progressive country.

THE CASE FOR CULTURAL RELATIVISM: CONCERNS ABOUT THE UCC

Cultural relativism, a philosophical concept that emphasizes the variation of human values and moral frameworks across different cultural perspectives, raises significant concerns when considering the implementation of a Uniform Civil Code (UCC). The diverse nature of India, with its wide range of cultural differences from state to state and community to community, poses a considerable challenge in achieving a unified personal law.¹²

One of the primary concerns from a cultural relativist perspective is the potential interference of the state in personal matters. The constitution of India guarantees the right to freedom of religion, allowing individuals to practice their religious beliefs and follow their own personal laws. Imposing a uniform code could restrict this freedom and be seen as an infringement upon the rights of individuals to govern their personal lives according to their religious customs and traditions.¹³

Additionally, proponents of cultural relativism argue that people from different communities may not be willing to adopt secular laws separate from their personal laws. Each community has its own set of traditions, practices, and religious beliefs, which form the basis of their personal laws. Imposing one group's traditions upon others is considered unfair and could lead to the assimilation of minority groups into the dominant Hindu culture, thereby undermining the principles of cultural diversity and cultural autonomy. Critics argue that the focus should be on addressing other less contentious issues that Indian society is currently facing, rather than imposing a uniform code that may disrupt social harmony. Critics also

¹¹ Chhavi Ahlawat (2022) 'Changing Dynamics of gender biasness and laws in India vis-a-vis uniform civil code', International Journal For Multidisciplinary Research, 4(6). doi:10.36948/ijfmr.2022.v04i06.2300.

¹² Bukuluki, P. (2013) 'Negotiating universalism and cultural relativism in peace and development studies', International Letters of Social and Humanistic Sciences, 10, pp. 1–7. doi:10.18052/www.scipress.com/ilshs.10.1.

¹³ Choudhary R, 'Uniform Civil Code' [2020] SSRN Electronic Journal

contend that implementing a UCC could potentially erode cultural identities and undermine minority rights. Personal laws are deeply rooted in religious beliefs and are seen as a way for communities to maintain their distinct cultural practices and traditions.

Furthermore, opponents argue that general laws already exist to protect human rights and address social obligations. For instance, laws prohibiting child marriage, domestic violence, or discrimination apply to all citizens, regardless of their personal laws. These general laws provide a bottom-line policy to ensure the protection of basic human rights and principles. Critics of the UCC assert that imposing a uniform code would be unnecessary interference, as these general laws already safeguard the essential rights and values that society upholds.

From a cultural relativist standpoint, the implementation of a UCC also raises concerns regarding the secular nature of the country. India prides itself on its commitment to secularism, allowing individuals the freedom to practice and follow their religious beliefs. Introducing a UCC that overrides personal laws could be seen as a violation of Article 25 of the Indian constitution, which guarantees the freedom of religion. Critics argue that such imposition goes against the secular foundation of the nation and may create tensions among different religious communities.¹⁴

In conclusion, critics of the UCC from a cultural relativist perspective argue that personal laws are derived from religious beliefs and should remain untouched. They emphasize the importance of respecting diverse cultural practices and religious freedoms and express concerns about potential infringements upon minority rights, erosion of cultural identities, and disruption of social cohesion. They contend that personal laws are deeply rooted in religious traditions and provide a means for communities to govern their personal lives according to their customs and beliefs. From this perspective, the focus should be on preserving cultural diversity and ensuring the protection of individual and community rights, rather than imposing a uniform code that may disregard the sentiments and cultural practices of various religious and ethnic groups.

¹⁴ Chishti AJ, 'What Are All India Muslim Personal Law Board's Various Objections Against Uniform Civil Code?' (LiveLaw India, 6 July 2023) <<https://www.livelaw.in/news-updates/all-india-muslim-personal-law-board-objections-uniform-civil-code-232080>> accessed 18 July 2023

BALANCING UNIVERSALISM AND CULTURAL RELATIVISM

Striking a delicate balance between universalism and cultural relativism is no easy feat, particularly when it comes to implementing a Uniform Civil Code (UCC). The challenge lies in respecting universal ideals while celebrating the rich tapestry of cultural diversity that characterizes a nation like India. Let's explore some potential strategies and approaches to address concerns from both perspectives, fostering inclusivity and preserving cherished cultural practices.

One effective strategy is inclusive policy-making that invites representatives from diverse communities and religious groups to the decision-making table. By ensuring that all voices are heard and valued, policymakers can gain valuable insights into the unique needs, traditions, and values of different cultural communities. This approach allows for a code that truly reflects the diverse fabric of society while upholding universal principles of equality and human rights. Community consultations can also play a pivotal role in building bridges of understanding. By engaging in open and respectful dialogues, policymakers can gain a deeper appreciation for the cultural nuances and sensitivities surrounding personal laws. These consultations provide an opportunity to listen attentively to the concerns and aspirations of various communities, fostering a sense of shared ownership over the process of code formulation.

Preserving certain cultural practices within the framework of the UCC is an essential aspect of striking a balance. It is vital to identify and protect aspects of cultural traditions that do not infringe upon fundamental human rights. By recognizing and safeguarding these practices, the UCC can ensure that cultural autonomy is respected, enabling communities to continue celebrating their heritage and customs within the bounds of universal ethical standards. Drawing inspiration from successful examples in other jurisdictions can provide valuable guidance. Canada, known for its multicultural policies and the Canadian Multiculturalism Act, demonstrates a commitment to respecting cultural diversity while upholding universal human rights. By valuing the principles of equality, freedom, and respect, Canada exemplifies how a nation can embrace multiculturalism without compromising on universal ideals.¹⁵

¹⁵ Whitt, R. (2021) 'What we can learn from Canada's Multiculturalism Policy', UNM Newsroom. Available at: <http://news.unm.edu/news/what-we-can-learn-from-canadas-multiculturalism-policy> (Accessed: 19 July 2023).

South Africa offers another noteworthy example. During its transition from a system of legal pluralism to a unified legal framework after apartheid, the country navigated the complexities of balancing diversity and universality. Through its constitution, South Africa acknowledges cultural rights and diversity while establishing a legal system that upholds fundamental human rights and promotes equality. This approach highlights the importance of constitutional provisions that recognize and protect cultural identities, offering a roadmap for reconciling universal principles with cultural relativism.¹⁶

Fostering communication, understanding, and respect amongst various ethnic groups is essential for achieving a state of equilibrium. By promoting empathy and mutual appreciation, bridges of communication can be built, bridging the gap between universalistic ideals and cultural diversity. Open and inclusive debates allow for the establishment of nuanced policies and legal frameworks that respect cultural diversity while respecting universal human rights and ethical principles. It is obviously difficult to strike a balance between universalism and cultural relativism. However, through inclusive policy-making, the preservation of cultural practices, and drawing insights from successful examples, it is possible to navigate this complexity. A UCC that respects and honours the cultural variety of India may arise through embracing diversity and maintaining universal ideals, establishing a community where each person feels valued.

CONCLUSION

This article highlights key findings and arguments regarding the balance between universalism and cultural relativism in the context of the Uniform Civil Code (UCC). It underscores the importance of respecting diverse cultural practices and religious freedoms while acknowledging concerns related to minority rights, erosion of cultural identities, and social harmony.

The complexity of implementing a UCC lies in safeguarding minority rights and preserving cultural diversity. Critics argue that imposing a uniform code could undermine the autonomy and practices of minority communities, potentially leading to cultural assimilation. To address these concerns, the article emphasizes the need for informed and inclusive dialogue, stakeholder consultations, and the careful consideration of diverse perspectives. Through

¹⁶ Mngadi, A. (2022) A comparative study of multiculturalism in South Africa and Canada: evaluating successes and failures. [Preprint].

engaging representatives from various communities and religious groups, policymakers can gain valuable insights into the specific needs, traditions, and values of different cultural communities. This inclusive approach ensures that the UCC reflects the rich tapestry of cultural diversity while upholding universal principles of equality and human rights. By respecting and cherishing the cultural identities and practices of all citizens, a UCC can foster social harmony, inclusivity, and a sense of shared ownership.

In summary, the article underscores the delicate balance between universalism and cultural relativism in implementing a UCC. It highlights the importance of respectful dialogue, stakeholder consultations, and the preservation of cultural diversity. By striking a balance between universal principles and cultural autonomy, policymakers can create a UCC that upholds human rights while respecting the diverse cultural identities and practices of the nation.



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