

**UNIFORM CIVIL CODE: INDIA BEYOND RELEGIOUS PRACTICES**

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**ABSTRACT**

*The debate for a Uniform Civil Code, with its diverse implications and concerning secularism of the country i.e. Indian Democracy and its people, is one of the most controversial issues in the 21st century Indian politics. The major problems for implementing it are the country's diversity and religious laws, which not only differ sect-wise, but also by community, caste and region.*

*Hence the researcher tries to study the feasibility of enacting a Uniform Civil Code for all the citizens throughout the territory of India and all the substantial steps that have been taken or can be taken to ensure the same.*

*The researcher also tries to analyse the reasoning behind the distinctiveness and exclusivity of personal laws and its reference in modern society. And further analyse the nexus of the society and the requirement of the Uniform Civil Code.*

*The research focuses on whether India needs an Uniform Civil Code to essentially provide with equality or equal protection of Law to its subjects i.e. the People in their Civil Matter. And if incase an effective and reasonable legislation called the Uniform Civil Code is applicable in India then, would it help in erasing the discriminatory practices as practiced under different Personal Laws or specific Customary Laws, without disturbing or interfering in the basic tenants or freedom in community's religious aspect?*

*This research has been done in respect to Indian context and has analysed various Law Commission Reports on the Uniform Civil Code along with many judicial pronouncements pertaining to same.*

**Introduction**

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One of the most controversial and debatable issue in the Indian Politics is implementation of Uniform Civil Code which concerns about the secularism of the people of India. The country at present is facing a lot of difficulties to impose Uniform Civil Code throughout the territory of India due to various religious laws which not only differs sect wise but also by community, caste and region wise. Therefore there is a need of taking fruitful steps in order to ensure that the Uniform Civil Code is enacted for the citizens of India.

This paper deals with the need of implementing Uniform Civil Code in order to ensure equality among its citizens and also if such an effective legislation called the Uniform Civil Code is applicable then whether it solves the problems of discrimination faced by the people of India under their respective personal laws or specific customary laws without hampering their freedom to practice any religion guaranteed under the Constitution of India?

The paper also deals with analyzing various Indian Law Commission Reports on Uniform Civil Code and various judicial decisions pertaining to the same.

### **Need Of Uniform Civil Code**

The Constitution of India guarantees under Art 44 of the Directive Principles of State Policy that "*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India*",<sup>2</sup> this is because there is no *lex-loci* in India in matters of succession, family relations in order to achieve consistency and uniformity of law in Civil Sphere.

There is a dire need of disposing off the inconsistencies and biasness in the religious system of India in order to attain national unification. The Uniform Civil Code deals with some arrangements and common guidelines for the citizens of India which must be independent of their religion, position and so on. The Uniform Civil Code is an expression derived from the idea of Civil Law Code.<sup>3</sup>

The further requirement of Uniform Civil Code is to accomplish the following:

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<sup>2</sup> Nithya N. R., 'Gra -Global Research Analysis on Uniform Civil Code for India: Prospects and Constraints' (2013).

<sup>3</sup> The Ignited Mind, Need for change (The Ignited Mind Mar., 2016) available at: [www.itshardii.wordpress.com](http://www.itshardii.wordpress.com) (last visited on March 12, 2020).

- In the matters of marriage, divorce, inheritance etc, discrimination must be avoided.
- Void spaces in the personal laws to be filled.
- Gender Justice must be ensured.
- Violence against women must be eradicated from the society.
- Ambiguity in laws which has arisen due to different interpretations of various personal laws to be settled.
- The personal laws must be modernized with the change in the society.

### **Where The Problem Lies?**

India is a secular country as mentioned in the Preamble of the Constitution and is the second most populous country of the world with largest democracy with diversity of languages, cultures and religions. India is lead by its religions which not only has become the foundation of the culture in the society but has a huge impact on the Indian politics. Under such circumstances it has become difficult to enforce Uniform Civil Code in India.

The major problem lies in the male dominated Muslim culture which discriminates against the women personal laws and claim themselves as the orthodox bosses who strongly oppose against the implementation of Uniform Civil Code on an obnoxious ground of suppression of minority community by the majority. In order to successfully implement Uniform Civil Code it is essential to understand that one must come above the communal line of Hindu-Muslim issue.

### **Historical Development Of Uniform Civil Code**

Being a secular country religion has become a lifestyle in India and also a basic part of the whole Indian tradition.

- **Pre-Independence Era**

The need for Uniform Civil Code began way back in the colonial period in India. The East India Company (1757-1858), tried to reform local, social and religious

customs.<sup>4</sup> Also the long practice of sati which is death of the widow on her husband's pyre was suppressed by Lord William Bentinck, the then Governor-General of India by passing The Bengal Sati Regulation, 1829 which even got extended outside Bengal to all English territories in India.<sup>5</sup>

The importance of codifying the Indian laws, relating to evidences, crimes and contracts was emphasised in the Lex Loci Report of October 1840 but it laid down few recommendations such as excluding the personal laws of Hindus and Muslims.<sup>6</sup>

In uplifting the status of Hindu discriminated women in the area of inheritance, remarriage and divorce, British and social reformer like Ishwar Chandra Vidyasagar played an essential role in transgressing such orthodox customs by passing reforms through legislative processes.<sup>7</sup> The Indian Succession Act 1865 played the first role in shifting the personal laws to realm of civil by ensuring economic security to women. Other reforms like Indian Marriage Act 1864 laid down the procedures and reforms for Christian marriages.

Various legislations like The Hindu Widow Remarriage Act of 1856, Married Women's Property Act of 1923 and The Hindu Inheritance (Removal of Disabilities) Act, 1928, were passed to benefit the women of Indian society and guaranteed them the right to property.<sup>8</sup>

The need of having a common Hindu Laws was laid down by the formation of B. N. Rau Committee which came into existence after the passing of Hindu Women's right to Property Act of 1937, also known as the Deshmukh Bill. The committee emphasised on the need for Uniform Civil Code which would help in giving equal

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<sup>4</sup> Social and Economic Impact of British Rule in India, available at: <https://www.historydiscussion.net/british-india/social-and-economic-impact-of-british-rule-in-india/1595>, (last visited on March 12, 2020).

<sup>5</sup> The abolished 'Sati Pratha': Lesser known facts on the banned practice, available at: <https://www.indiatoday.in/education-today/gk-current-affairs/story/sati-pratha-facts-275586-2015-12-04>, (last visited on March 12, 2020).

<sup>6</sup> *Anil Chandra Banerjee, English Law in India 134 (Abhinav Publications, 1984).*

<sup>7</sup> Perversion of Secularism and the non-implementation of Uniform Civil Code, available at: <https://bharatabharati.wordpress.com/2016/07/31/perversion-of-secularism-and-the-non-implementation-of-a-uniform-civil-code-nithin-sridhar/>, (last visited on March 12, 2020).

<sup>8</sup> J.D.M. Derretí, 'Essays in Classical and Modern Hindu' Vol. IV, *IMW*, 54 (1978).

rights to women and reforming the laws with the changing trends of the modern society.

Civil Marriage became an option for Indian citizens after the enactment of the Act of 1872.<sup>9</sup> Initially the Act was limited only to Hindus but later on after the passing of The Special Marriage (Amendment) Act, 1923 its application got widened and even included Buddhists, Sikhs and Jains along with the Hindus. Now citizens of such religions can either marry under their personal laws or under this Act without renouncing their religion and even retaining their rights of succession.

- **Post-Independence Era**

After Indian Independence, Uniform Civil Code became the debatable issue in Indian Parliament.<sup>10</sup> On one hand the Uniform Civil Code got full support from the noble identities like Dr. B.R. Ambedkar, prominent patriots like K.M. Munshiji, Gopal Swamy Iyenger, Anantasayam Iyengar and others. Whereas on the other hand the usage of Uniform Civil Code faced rejection by Muslim fundamentalists like Pocker Sahib and individuals from different religions.

The framers of the Indian Constitution got a set back after including the establishment of a Uniform Civil Code in the Directive Principles of State Policy in Article 44 of the Constitution as the then government in power i.e. the Congress Party allowed the Muslims to practice Islamic Laws. The idea of the markers of the Constitution about implementing Uniform Civil Code by an influential legitimate provision<sup>11</sup> found a trade off.

After various discussions on the report of Hindu Law Committee during 1948–1951 and 1951–1954 sessions, the supporters including women of the first Prime Minister, Pandit Jawahar Lal Nehru wanted the implementation of Uniform Civil Code. It was then decided to pass the Hindu Code Bill by the Parliament in 1956 in the form of separate Acts such as The Hindu Marriage Act, Succession Act, Minority and

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<sup>9</sup> Special Marriage Act, 1872.

<sup>10</sup> Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach, available at: <https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>, (last visited on March 13, 2020).

<sup>11</sup> D.D. Basu, *Introduction to the Constitution of India*, (Universal Law Publishing Company, New Delhi, 20th Edition, 2009).

Guardianship Act and Adoption and Maintenance Act. Also the Art 44 dealing with the implementation of Uniform Civil Code was added as a Directive Principles of State Policy in the Indian Constitution.

After the implementation of Hindu Code Bill, Pandit Nehru felt that it was not impeccable as it lacked certain reforms which could shake the specific communities and it even failed to control the wide spread gender discrimination in the society.

According to Pandit Nehru Uniform Civil Code if implemented would be ineffective as its implementation would be imposing force upon certain communities which are not ready for such reforms. Even though Uniform Civil Code was a necessity still his vision of imposing uniformity in family laws was not achieved.

In 1954, The Special Marriage Act was enforced with necessary modifications and was extended to whole of India except Jammu and Kashmir.<sup>12</sup> It provided a form civil marriage to every Indian irrespective of their religion and thus allowing every citizen to marry outside their personal laws.

The Special Marriage Act, 1954 in many aspects was similar to the Hindu Marriage Act, 1954 which deals with secularising of Hindu laws. Also under this Act the Muslim women were highly benefitted as they could now retain the protections which were not given to them in their personal laws.

### **Legal Developments Towards Uniform Civil Code**

After the passing of the Hindu Code bills, the personal laws in India had two major areas of application: the common Indian citizens and the Muslim Community whose laws were kept away from any reforms.

- **The Shah Bano Case, 1985**

Until the pronouncement of judgment of this case, there were frequent conflicts between secular and religious authorities over the issue of Uniform Civil Code.

Facts:

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<sup>12</sup> The Constitution of India, Art 370.

Bano was a 73-year-old woman who sought maintenance from her husband, Muhammad Ahmad Khan soon after he divorced her by the practicing Tiple Talaaq (saying "I divorce thee" three times), that too after 40 years of their marriage and also denied her regular maintenance. This sort of unilateral divorce was permitted under the Muslim Personal Law at that time.

Relief:

1. In 1980, the verdict passed by local court granted maintenance to the plaintiff was challenged before the Supreme Court of India.<sup>13</sup>
2. The Supreme Court passed a judgment in favor of Bano and granted her maintenance by virtue of section 125 of the Code of the Criminal Procedure 1973. This section contains provisions for the "maintenance of wives, children and parents". The Code applies to all citizens irrespective of their religion.
3. The court further recommended setting up a Uniform Civil Code in India.

- **Section 125 of Code of Criminal Procedure, 1973**

Section 125 of CrPC provides maintenance to wife.

1. This provision is applicable uniformly across the nation and makes provisions for all the women irrespective of their caste or religion. It is not specific to any woman of any particular religion or caste.
2. The main objective behind this provision was to provide assistance to women who were in need of such help after the divorce.
3. The constitutional validity of this section has been challenged in many cases which were upheld by the courts stating that this section has a very important role to play in our society.

- **Dispute Post – 1985**

The Shah Bano case became a widely debated controversy and soon turned into a nationwide political issue. This case soon came in limelight and attracted public and political interest.

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<sup>13</sup> *Mohd. Ahmed Khan v/s Shah Bano Begum*, AIR 1985 SCR (3) 844.

The minorities in India and Muslims being major part of those minorities were threatened and felt the need to safeguard their culture after the anti-Sikh riots in 1984. Muslim conservatives were supported by the All India Muslim Board who accused the government of promoting Hindu dominance over every Indian citizen at the expense of minorities and also favoured the application of their own laws.

The members of the Muslim board, including Khan (Bano's husband), started a campaign for complete autonomy in their personal laws. This was due to the reason that the orthodox Muslims were afraid that if their personal laws were governed by judiciary, their communal identity would be at stake. It soon gained a nationwide importance, by consulting legislators, ministers and journalists.

An independent Muslim parliament member proposed a Bill to protect their personal laws in the parliament. The Congress supported this Bill while the Hindus, the Right, the Left, Muslim liberals and women's organisations strongly opposed it.

- **The Muslim Women's (Protection of Rights on Divorce) Act, 1986**

As a result of the chaotic situation, the Muslim Women's (Protection of Rights on Divorce) was passed in 1986, which stated that Section 125 of the Criminal Procedure Code will be inapplicable to Muslim women. This debate now centered on the divinity of their personal laws.

After the pronouncement of the judgment, Bano gave the statement that, "she rejected the Supreme Court's verdict". This showed the utmost disrespect towards the justice delivery system. It also led to a political disturbance in the country. Women's movement in the 1980s was drastically hampered by the introduction of Muslim Women Law.

- **Daniel Latifi v/s Union of India**

The constitutional validity of Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged in this case,<sup>14</sup>

It was held by the Hon'ble Supreme Court that:

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<sup>14</sup> *Daniel Latifi v/s. Union of India*, AIR 2001 3958.



*“Clause (1-a) of Section 3 requires the husband to make necessary arrangements for the entire life of the wife until she gets remarried. It does not limit the duty of the husband to payment of maintenance & other necessary arrangements during the iddat period only”*

It was also observed that Clause (I-a) requires the husband to make necessary arrangements for the wife which includes arrangements for her shelter and the similar means. It also requires the husband to pay the maintenance to the wife.

In this Case it was also emphasized that the woman whose marriage is still subsisting cannot file application under the Act of 1986 and the provisions of the Act are only available to the divorced woman.

- **Sarla Mudgal v/s Union of India**

In this case,<sup>15</sup> the husband converted his religion to Islam to perform the second marriage. He performed his second marriage after the conversion without dissolving the first one. It was questioned that whether such marriage is a valid under Hindu Marriage Act, 1955 or not.

1. The Hon’ble Supreme Court held that if in any case there is a conflict between two personal laws, then the law which serves the purpose best shall prevail.
2. So, it was held that a conversion to Islam does not amount to automatic dissolution of the marriage performed under Hindu law and hence was liable for bigamy.
3. The Hon’ble Supreme Court also directed to take a fresh look at Article 44.

- **Triple Talaq: Present Scenario in India**

The use and status of triple talaq in India has been a subject of controversy and debate. The debate has involved the Government of India and the Supreme Court of India and is connected to the debate about the need of Uniform Civil Code in India.

In the controversial case of Shayara Bano v/s. Union of India & others<sup>16</sup> a multifaceted 5-judge bench was constituted. Though the two judges upheld the validity of instant

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<sup>15</sup> *Sarla Mudgal v/s. Union of India*, AIR 1995 SC 1531.

<sup>16</sup> *Shayara Bano v/s Union of India*, 2017 9 SCC 1.

triple talaq, the other three judges held that it was unconstitutional, thus barring the practice by 3:2 majority.

Hence in response to this The Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed on 26 July, 2019 after a very long discussion and opposition. It made triple talaq illegal in India on the 1<sup>st</sup> of August, 2019.

### **The Present Need And Ways To Implement Uniform Civil Code**

India's diversity & religious laws vary not only from sect-to-sect but also differ by community, caste & region, which is the major hindrance in the implementation of UCC.

This issue is only based on their rights and security, irrespective of its politicisation, said the Women's rights groups. The arguments given by them are:

1. Its mentioned in Article 44 of the Constitution;
2. Need for strengthening the unity and integrity of the country;
3. Rejection of different laws for different communities;
4. Importance for gender equality and reforming the archaic personal laws of Muslims, which allow unilateral divorce and their belief in polygamy.

Religious authorities & secular sections of the society consider the demand of Uniform Civil Code negative because of Identity Politics.

Interestingly, Goa is the only state in India which has a uniform civil code. The Goa Family Law, is the set of civil laws, originally the Portuguese Civil Code, which continued to be implemented even after its annexation in 1961.<sup>17</sup>

### **Suggestions**

Suggestions for implementation of Uniform Civil Code:

- Firstly, Uniform Civil Code shall provide a minimum standard of civil rights & obligations irrespective of religion, caste, creed, sect etc which should be enforceable before Court of Law.

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<sup>17</sup> Chavan & Kidwai, "Call to implement Goan model of civil code", New Indian Express, 15 May 2012.

- Secondly, the Uniform Civil Code should adhere to the constitutional mandate & be a blend of all personal laws, picking up the best elements from them which shall be based on gender equality & impartiality with regard to religious & political considerations.

- The provisions shall be made for compulsory registration of marriages.

The registration of a marriage is of utmost importance & has a great evidentiary value. It helps to curb many crimes in the society and ensure the prevention of child marriage, checking illegal bigamy/polygamy, enabling married women to claim their right to live in the matrimonial house, maintenance etc., empowering widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husbands, deterring men from deserting women after marriage and preventing guardians from selling young girls to any person under the garb of marriage.

- The Special Marriage Act, 1954 is a good example of it. The Act applies to whole of India except the State of Jammu and Kashmir irrespective of the religion, community or caste etc. It provides for a marriage outside the realm of any specific religion. This Act contains provision stating polygamy as illegal. Whereas, succession is governed by the Indian Succession Act, 1925. Such law, with necessary modifications if necessary, may be compulsorily applicable to all.

- Thus, the Uniform Civil Code is an imperative for the country. The State shall formulate it & take prompt action without any delay. It should be successfully drafted, and enforced by reconciling the divergent laws and formulating a common code acceptable to all the communities. The State should do no more delay in formulating it and should take prompt action for it.

### **Conclusion**

Uniform Civil Code is a dire need of the country as it would create a harmony between protection of fundamental rights & different religious ideologies of people. At this point of time, mere three words and the country break into frenzied celebration. The Uniform Civil Code has social, political, and religious angle. Besides that the Uniform Civil Code aims at guaranteeing equity, solidarity and integrity of the country and equality to both men and women. The Uniform Civil Code can be

effectively presented simply in the wake of accomplishing enhanced levels of proficiency, awareness on different socio-political issues, edified dialogs and expanded social portability.

The makers of the Constitution included Uniform Criminal Code in the DPSPs as the constitutional makers were of the view that it was not the right time to implement the same but now the nation is ready to adopt the same.

The constitutional makers have included the provisions relating to amendment in the constitution because they knew that the law would require changes with changing dimensions of the society. Hence, now the time has come that the government should not think about polarisation and communal rather about secular politics. The people of the country shall understand that it is a step forwards towards secularism rather than just a communal action. So Uniform Civil Code is necessary curb the evil from the society, not only against the women, but against the anti feminist orthodox practices as well. These practices could even be against the men in the society.

So the country and its people demand Uniform Civil Code. It is now upon the government that how it implements Uniform Civil Code in the country with the help of consultative and all legal methods. The minority or any person from any religion needs not to worry regarding suspension of their customs by Uniform Civil Code. Everything would be the same, except the unnecessary discriminatory practices.