



UNIFORM CIVIL CODE: A DEBATABLE ISSUE

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ABSTRACT:

“One nation one law”¹, the ideology behind Uniform Civil Code says that a country’s citizens should be governed by one uniform law irrespective of their caste, sex and religion. Uniform Civil Code acts as an umbrella in the form of personal laws such as marriage, divorce, adoption, inheritance, succession and maintenance governing the whole nation.

India being a secular country gives freedom to practice and propagate any religion of one’s choice. The implementation of the uniform civil code goes back to the British period where in the Lex Loci Report of 1840², it was emphasised that the criminal and contractual matters will be governed by one single codified law of the country, but the personal laws of different religious communities would be kept aside and excluded from such a unified law. However, the Queen’s Proclamation of 1859 had ensured that religious matters would not be interfered into.

Through this article, we seek to throw light upon the only state in India having a uniform civil code. This article talks about whether a uniform civil code should be implemented in India, if implemented, the challenges which

can be faced by the people of the country. It also discusses about the arguments for and against uniform civil code and the legal perspectives involved with it.

Keywords: One nation one law, Uniform Civil Code, personal laws, secular, challenges faced.

INTRODUCTION:

Unity in diversity is a phrase used for India as it is rich in its various culture, traditions and religions. The concept of a uniform civil code was long introduced during the British colonial era where religious matters were not interfered with and every religious community had their own set of rules and laws to govern them. With the independence of India from the clutches of the British in 1947, the need for a uniform civil code was stressed upon by the imminent personalities who played a major role in the drafting of the framework of the Constitution of India, like Pandit Jawaharlal Nehru and B.R. Ambedkar. Finally, it was inserted in Article 44 of the Constitution of India under the Directive Principles of State Policy (DPSP). It was felt by the makers of the Constitution that the uniform civil code should be kept as a part of DPSP as there were a lot of political opposition and unawareness of the people at large.

The issue of a uniform civil code has been a topic of debate since a very long time and the

¹Namita Bhandare, Uniform Civil Code: One nation, one law, (Feb.2,2020, 4:07 PM), <https://www.livemint.com/Opinion/5pwNnS5hmjm4iOtnsvWo0M/Uniform-civil-code-One-nation-one-law.html>

²Uniform Civil Code Debate, Uniform Civil Code - Challenges, Suggestions & Debate On UCC, (Jan. 21, 2020, 10:54 PM), <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>



Bharatiya Janta Party (BJP)³ is in favour of the enactment of a UCC. They strongly believe that through UCC, gender equality and issues of unequal treatment meted out to various sections of the society can be brought under control.

The verdict given by the apex court in the famous case of Shah Bano, which deals with the maintainability of divorced Muslim woman and her children was overruled by the then government in power. It was so because of the internal turbulences that took place in the country which brought immense disturbances in the Muslim community. The Muslims were of the view that by this verdict, the Indian judiciary is now trying to intervene in the Muslim religious and personal matters. They objected the judgment and hence, the then government in power was compelled to pass the *Muslim Women (Protection of Rights on Divorce) Act, 1986*.

SECULARISM IN INDIA:

“We, the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic.”⁴ The Constitution of India declares India to be a secular state. This means that India has no religion of its own. It neither intervenes nor promotes any religion. However, it does not curb the freedom to profess, practice or propagate any religion. It treats every religion equally. India intends to create a harmonious atmosphere so that the brotherhood of the

nation is kept intact. This leads to the citizens of the country to live peacefully and with dignity.⁵

So, the laws applied in India are same for all the religions. It does not change on the basis of religion except in personal laws of religion. Religions have different set of personal laws when it comes down to marriage, divorce, succession and inheritance. This means that the individuals of India get governed by their own religions’ personal laws. So, the people of the same country get governed by different laws when the question is about personal laws of religions.

Thereby bringing the controversy of Uniform Civil Code, supporters of UCC are of the belief that India being a secular country should govern Indians with the same laws irrespective of their religion. According to them, India should have an UCC that would help in executing the idea of ‘one nation, one law’.

GOA CIVIL CODE:

Goa is the only state in India having a uniform civil code also known as the Goa family law. It is a uniform law made for all the residents of Goa irrespective of their religion and ethnicity. The Goa civil code came from the Portugal civil code. Before 1961, Goa was governed by the Portuguese and hence the Portugal civil code came into existence in Goa.

³C.K. Mathew, Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach, (Jan.20, 2020, 10:44 AM), <https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>

⁴Preamble, The Constitution of India, 1949 (Feb. 2, 2020, 3:29 PM), <https://indiankanoon.org/doc/237570/>

⁵Aniketsml, Secularism, Secularism and Constitution of India (Jan. 26, 2020, 9:06 PM), <http://www.legalservicesindia.com/article/1964/Secularism-and-Constitution-of-India.html>



In 1961, Goa became a part of the union territory and the Parliament authorized the Portuguese civil code of 1867. It was also authorized to be amended and repealed by the competent legislature.

In Goa, marriages are a contract like in Islam. So, if two people who are of different sex come together with a purpose of living and constituting a family has to register their marriage before the office of Civil Registrar. The rules that are made should be accepted and followed by both the parties. If the rules are accepted by both the parties then the couple can start to live as husband and wife. This rule is very different from rest of the laws in India, thus making Goa different from others in the matters of marriage, divorce and succession.⁶

REFORMS BROUGHT ABOUT DURING THE POST COLONIAL PERIOD:

With the independence of India in 1947, the Hindu Code Bills were introduced and passed which aimed to reform the Hindu personal laws in India. There was a lot of opposition from the Hindu masses that their laws needed a reform which was finally implemented through the B.N Rau Committee⁷ set up in 1941. This committee suggested a codified Hindu law which would cater to each and every section of the society, including giving equal rights to women. Jawaharlal Nehru and his government understood the need for such codification and hence, came up with four

Hindu Code Bills which became acts, aiming to unify the Hindu community and also the nation as a whole. The four acts are the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956.

1. The Hindu Marriage Act, 1955:

This Act was enacted with a view to codify the law relating to marriage among Hindus and also among the Sikhs, Jains and Buddhists. It amended the previously existing Sastric law, bringing about new provisions relating to separation and divorce. This Act applies to a Hindu in any form, which also includes a Virashaiva, Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj. It also applies to any person who is a Buddhist, Sikh or Jain by religion. This Act excludes from its purview any person who is a Muslim, Christian, Parsi or Jew by religion. This Act provides for various provisions relating to solemnisation of marriage, judicial separation, registration and many more.

2. The Hindu Succession Act, 1956:

This Act was enacted to codify the law relating to succession, intestate or unwilled among the Hindus, Buddhists, Jains and Sikhs. This act provides for a uniform law of succession and inheritance for all Hindus. This Act gave absolute rights to a Hindu female to acquire and possess property⁸ and also to dispose of it at her own will. Further, subsequent amendments gave daughters and

⁶Ms. Chitraloungani, Uniform Civil Code in Goa, Uniform Civil Code in Goa, (Jan. 26, 2020, 11:00 PM),

<http://www.legalservicesindia.com/article/2157/Uniform-Civil-Code-in-Goa.html>

⁷C.K. Mathew, B.N. Rau Committee and Codifying Hindu Law, Uniform Civil Code: The Importance of an

Inclusive and Voluntary Approach, (Jan.27, 2020, 8:05 PM),

<https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>

⁸Hindu Succession Act, 1956, (Feb.2, 2020, 5: 30 PM),<https://indiankanoon.org/doc/685111/>



sons equal rights and liabilities to the property of a deceased person and brought about equality in the rights of Hindu males and females.

3. *The Hindu Minority and Guardianship Act, 1956:*

This Act talks about the relationship between minors and their guardians and defines various terms of their relationship. A minor is defined as a person who has not attained the age of eighteen years and a guardian is a person who is in charge of taking care of the minor or his property or both, a guardian includes:

- (a) A natural guardian,
- (b) A guardian appointed by will by the minor's father or mother,
- (c) A guardian appointed by the Court,
- (d) Any person empowered to act relating to any Court of Wards.⁹

This Act also applies to all Hindus, including Buddhists, Jains and Sikhs. For a legitimate minor, the father acts as the primary guardian and the mother is the secondary guardian, but for all children below the age of five years, the mother is the primary guardian. For an illegitimate child, the mother acts as the primary guardian and the father acts as the secondary guardian. For a married woman, the husband is the guardian and in case, a parent ceases to be a Hindu, he or she shall lose out on his or her guardianship rights.

4. *The Hindu Adoption and Maintenance Act, 1956:*

This Act deals with the procedure of adopting¹⁰ children by a Hindu adult and also the provisions of maintenance by a Hindu for the various members of the family like the parent-in-laws wife, children, etc. This Act also applies to all Hindus, along with Buddhists, Jains and Sikhs. Muslims, Christians, Jews or Parsi are not entitled under this Act. Also, if the wife is not a Hindu, she is not entitled for maintenance under this Act.

With the discussion on the four Acts of the Hindu Code Bill, the *Special Marriage Act of 1954* also needs to be enlightened. This Act provides for a civil marriage among all citizens irrespective of their religion, thus allowing people to marry outside their communities and boundaries. There are four conditions for a marriage under this Act to be solemnised:¹¹

- (a) The parties must not be bound by any subsisting valid marital bond.
- (b) The bride and the bridegroom should be of 18 years and 21 years respectively.
- (c) The parties must be competent to give consent for their marriage.
- (d) The parties should not be within the levels of prohibited relationships.

⁹Definitions, The Hindu Minority and Guardianship Act, 1(Feb.2, 2020, 5:48 PM), <https://www.vakilno1.com/bareacts/hinduminorityact/hinduminorityact.html>

¹⁰Adoption under the Act, The Hindu Adoption and Maintenance Act, 1956, (Feb.2, 2020, 5:59 PM), [https://www.toppr.com/guides/legal-aptitude/family-](https://www.toppr.com/guides/legal-aptitude/family-law-II/the-hindu-adoption-and-maintenance-act-1956/)

[law-II/the-hindu-adoption-and-maintenance-act-1956/](https://www.vakilno1.com/bareacts/hinduminorityact/hinduminorityact.html)

¹¹Solemnization of Special Marriages, The Special Marriage Act-1954, (Feb.2, 2020, 6:05 PM), <http://keralaregistration.gov.in/pearlpublic/downloads/The%20Special%20Marriage%20Act.pdf?tok=49sdh3ss34ff>



In the landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum*¹², Shah Bano was divorced by her husband Mohammed Ahmed Khan and unable to maintain herself and her children, she had filed a suit against her husband under *Section 125 of the Code of Criminal Procedure*. The lower court as well as the High Court of Madhya Pradesh gave the ruling in her favour. On an appeal to the Supreme Court by the husband, it was held that according to Section 125 of the Code of Criminal Procedure, it was the duty of a Muslim husband to maintain his wife beyond the iddat period. However, with the enactment of the *Muslim Women (Protection of Rights on Divorce) Act, 1986*, it was observed that the Muslim husband is entitled to maintain the wife only till the iddat period unless both the husband and wife brings to the knowledge of the Court that they wish to be governed by the Code of Criminal Procedure.

In *Danial Latifi v. Union of India*¹³, the constitutional validity of the *Muslim Women (Protection of Rights on Divorce) Act, 1986* was challenged and the Supreme Court held that a divorced Muslim woman is entitled to maintenance from her husband till the time she remarries and if she does not remarry, till her lifetime.

In *Sarla Mudgal v. Union of India*¹⁴, the question arose that whether a Hindu husband on having a valid Hindu marriage solemnise a second Muslim marriage by converting to Islam in the presence of the first marriage. It was held by the Supreme Court that the second marriage would be void as per Hindu law and he would be liable for an offence

committed under *Section 494 of the Indian Penal Code*.

In *Lily Thomas v. Union of India*¹⁵, the decision given in the Sarla Mudgal case was reviewed and the need to set up a uniform civil code was significantly stressed upon to prevent people from duly misusing the sacred institution of marriage among the Hindus and also to secure national unity and harmony among the people.

ARGUMENTS FOR AND AGAINST THE UNIFORM CIVIL CODE:

IN FAVOUR OF THE UNIFORM CIVIL CODE:

India being a diverse country with its varied traditions and customs will be more unified and integrated with the enactment of a uniform civil code. The presence of a uniform civil code also denotes the mark of a progressive nation where there are no religious or social disparity. One of the most favoured reasons for the implementation¹⁶ of a uniform civil code is that women shall be given equal rights and there will be improvement in the social conditions of women. It will also ensure equal treatment given to all Indians irrespective of their religion or social standing. Uniform civil code is not against the concept of secularism and does not stop people from practising their own religion, but only ensures a set of unified laws which shall govern all the citizens. They are not in violation of Article 25 and Article 26 of the Constitution which guarantee to the citizens the right to practice, profess and propagate their own religion. The presence of

¹² AIR 1985 SC 945, 954: (1985) 2 SCC 556

¹³ AIR 2001 SC 3958: (2001) 7 SCC 740

¹⁴ AIR 1995 SC 1531, 1538: (1995) 3 SCC 635

¹⁵ AIR 2000 SC 1650: (2000) 6 SCC 224

¹⁶ Arguments in favour of the Uniform Civil Code, Uniform Civil Code - Challenges, Suggestions & Debate On UCC, (Jan.27, 2020, 9:44 PM), <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>



a uniform civil code will only make the task of the judiciary easier to effectively administer the laws.

AGAINST THE UNIFORM CIVIL CODE:

The uniform civil code has a lot of reasoning to support its implementation, but also, there are a few cons of such a code. For a country like India with such a massive diversity, coming up with such a code is a difficult task which needs to cover all sections of the society. Further, it would be a direct intervention by the State in the religious rights of the people and would hinder their right to exercise their own traditions and rules. The enactment of such a code must necessarily take into account all the existing personal laws of the various communities and come up with a comprehensive code which caters to the needs of all the communities, otherwise it would be a massive ground for communal riots and violence.¹⁷

CONCLUSION:

Like all controversial issues have their own pros and cons, so does the uniform civil code. The Law Commission of India has said that the uniform civil code is "neither necessary nor desirable at this stage." We may presume that it is true as it can create a lot of ruckus in the country and would make the Indians believe that the judiciary is intruding in their religious and personal matters. The Indians are extremely sentimental about their religion and they are not easily adaptive to changes. To avoid such a situation, people stay away from establishing the uniform civil code. If implemented, the uniform civil code can

integrate a nation in terms of governance by one law for all. It can arouse the sense of equality among the citizens of the country. The mental barrier of discriminating people through religion will stop to an extent and thus, India would continue to be secular in its truest sense. With the abolition of the instant triple talaq on 22nd August, 2017 by the Supreme Court, the Indian judiciary intruded into the matters of Islam as it felt that rights of women were getting violated by the men, thus, the Indian government had the opportunity to implement the code but instead, decided to stay aloof and silent on the matter of its establishment.

¹⁷Manjiri Mulye, What are the Cons of Uniform Civil Code? Uniform Civil Code (UCC): Pros and Cons in a

nutshell, (Jan.27, 2020, 8:24 PM), <https://www.clearias.com/uniform-civil-code-ucc/>