

# LEGALFOXES LAW TIMES

## UNIFORM CIVIL CODE

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### ABSTRACT

Uniform civil code means a uniform law for all the citizens without any religion biasness. Article 44 of the constitution states that “state shall endeavor to secure for citizens a Uniform Civil Code throughout the territory of India.” As article 44 falls within DPSP it not enforceable by law. Concept of Uniform Civil Code came during the British Raj and was later proposed in 1940 by the National Planning Committee, but was not implemented as the members of the committee opposed the idea of Uniform Civil Code. From 1985 till today there have been many leading Judgements given by Supreme Court for Codifying the personal laws like- Shah Banoo, Sarala Mudgal, Lily Thomas and the latest of Triple Talaq. All these debates and judgments have resulted in formulation of many new Act and provisions like Hindu Marriage Act,1955, Muslim Women(Protection of rights on Divorce) Act,1986, Hindu Succession Act,1956 and restriction on husband on doing a second marriage after getting converted to Islam without dissolving his first marriage which was as per Hindu Code.To become a developed nation India needs to adopt Uniform Civil Code for providing its citizen with same rights and not discriminating them based on religion or caste as implementation of Uniform Civil Code doesn't mean putting restriction on performing religious practices or discouraging to follow a religion.

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### **WHAT IS UNIFORM CIVIL CODE?**

In India, laws based on religion, faith and culture are governed by personal laws of relevant religion group. In order to govern this under one common law, there has been a continuous debate on Uniform Civil Code. In simple words, as the words suggest, Uniform Civil Code is proposed to be one uniform law which would regulate all the personal laws (for each religious group).

The Directive Principles of State Policy come under Part IV of the Constitution of India, 1950 which are not enforceable by any court but they play a fundamental role in making policies and laws in the country. Among other Directive Principles is Article 44 of Indian Constitution, 1950, which requires the State to “endeavour to secure for citizens a Uniform Civil Code throughout the territory of India”.<sup>1</sup> In this regard, it is interesting to note that as of now, only one Indian State, i.e. Goa follows Uniform Civil Code.

### **CONCEPT OF UNIFORM CIVIL CODE**

Uniform Civil Code itself conveys uniformity in secular state. Applicability of such code should extend to all citizens irrespective of their religion, caste and tribe. After being applicable to all, such code is futile to our personal laws whether it is Hindu law, Muslim law or any other personal law in which issues are related to marriage, divorce, succession, inheritance, adoption and other family matters.<sup>2</sup>

There is multiple of family law in India and each have their own personal law like the Hindus have their Hindu Marriage Act, 1955 and the Indian Divorce Act, 1869, Muslims having their own Muslim law, Parsis have their own Parsi Marriage and Divorce Act and other laws, Christians have their own Christians Marriage Act, 1872, the Jews have their uncodified customary Marriage law. Each person carries his own law wherever he goes in India therefore it is very difficult to bring people together and unite them when they are governed by different religious and personal law.

### **EVOLUTION OF UNIFORM CIVIL CODE**

During the period of British Raj, personal laws were framed mainly for Hindu and Muslim citizens. In the beginning of the twentieth century, the demand for uniform civil code was first put forward by women

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<sup>1</sup>The Constitution of India as amended by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019).

<sup>2</sup>*Uniform Civil Code: One Nation One Code*, LEGAL SERVICE INDIA, (Apr. 10, 2020, 12:15 PM) <http://www.legalserviceindia.com/legal/article-685-uniform-civil-code-one-nation-one-code.html>.

activist and the objective behind this demand was the women rights, equality and secularism.<sup>3</sup> The idea of uniform civil code is born in 1940 by National Planning Committee (NPC) proposing to make uniform civil code as an optional code in beginning and with time replace all the different personal laws of communities. But later the idea was dropped as members of the committee thought it was not a feasible idea.<sup>4</sup> In 1947, Minoo Masani, Hansa Mehta, Amrit Kaur and B.R. Ambedkar proposed to make Uniform Civil Code as one of the fundamental rights given in the Indian Constitution, but they were not able to gain majority.<sup>5</sup> In 1948, uniform civil code was added in Part IV of constitution of India which deals with Directive Principle of State Policy under Article 44. In 1950, Reformist bill was passed which gave Hindu women the right to divorce and inherent property. Bigamy and child marriages were outlawed and such form was resisted by Dr. Rajendra Prasad.<sup>6</sup> In 1951, Ambedkar resigned from the cabinet when his draft of the Hindu Code Bill was stalled by the parliament.<sup>7</sup>

Supreme Court in 1985, in its leading Judgement of *Shah Banoo*<sup>8</sup> case decide to provide Muslim women with maintenance even after iddat period. As per Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days). Facts of the case were as follows: Shah Banoo was a 62 years old woman from Indore who was divorced by her husband in 1978. She was not in a condition to support herself and her five children. She filed a petition in court for grant of maintenance from her ex-husband.<sup>9</sup> This led to challenge the Muslim personal law (Sharia) and also led to debate over Muslim women's rights as Muslim personal laws are not codified in India, like they are in other Islamic countries- Tunisia, Morocco, Iran, etc.

As per the Muslim Laws, once a Muslim husband has divorced his wife and has paid for her dower (irrespective of its quantum even if it was minimum i.e. 10 *dirhams*) no maintenance order could be passed against him under section 125 of code of Criminal Procedure, 1973.<sup>10</sup> Section 125 of the Code of

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<sup>3</sup>Maneesh Chhibber, *Uniform Civil Code debate is not new, divided Constituent Assembly as well*, [THE INDIAN EXPRESS](https://indianexpress.com/article/explained/in-fact-uniform-civil-code-debate-is-not-new-divided-constituent-assembly-as-well-3086583/) (Apr. 10, 2020, 11:30 AM) <https://indianexpress.com/article/explained/in-fact-uniform-civil-code-debate-is-not-new-divided-constituent-assembly-as-well-3086583/>.

<sup>4</sup>Archana Parashar, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality*, [GOOGLE BOOKS](https://books.google.com/books) (Apr. 10, 2020, 1:00PM).

<sup>5</sup>Rajras, *Uniform Civil Code: Definition, debate, way-forward*, [RAJRAS](https://www.rajras.in/index.php/uniform-civil-code-definition-debate-way-forward/) (Apr. 10, 2020, 10:45AM) <https://www.rajras.in/index.php/uniform-civil-code-definition-debate-way-forward/>.

<sup>6</sup>*Supra* note 2.

<sup>7</sup>*Ibid.*

<sup>8</sup>Shah Banoo 985 AIR 945; 1985 SCC (2) 556.

<sup>9</sup>Rabia Mehta, *The Shah Bano Case: A Landmark Case In Indian Family Law*, [YOUTH KI AWAAZ](https://www.youthkiawaaz.com/2012/06/the-shah-bano-case-a-landmark-case-in-indian-family-law/) (Apr. 11, 2020, 3:00 PM) <https://www.youthkiawaaz.com/2012/06/the-shah-bano-case-a-landmark-case-in-indian-family-law/>.

<sup>10</sup>[DR. PARAS DIWAN, FAMILY LAW, 374-375](#) (10th Edition, 2013).

Criminal Procedure provides a uniform provision for maintenance to wives, children and parents regardless of their personal laws.

In ***Bai Tahira v. Ali Hussain***<sup>11</sup>, it was decided that no husband can claim under section 127(3)(b) absolution from his obligation under section 125 towards a divorced wife except on the proof of payment of a sum which customary or personal law has given provision to be more or less sufficient to do the duty for maintenance allowance. Thus, as per section 127(3), (b) the wife cannot be allowed double benefits- one customary or personal law-based and other through section 125 of code of Criminal Procedure,1973.

In Shah Banoo five-judge Bench unanimously held that clause (b) of section 127(3) does not include dower within its compass and overruled the following judgment of Bai Tahira “payment of mahr-money as a customary discharge is within the cognizance of section 127(3)(b)”.The judge said in the case that the wife can maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of iddat period,but if she is unable to maintain herself, she would be entitled to take recourse of section 125 of code of Criminal Procedure,1973.

Justice Chandrachud answered a very important question raised through this judgement -whether *mahr*-money was a sum payable to the wife under Muslim personal Law within the meaning of section 125(3)(b) code of Criminal Procedure,1973. It was declared that *Mahr* was not a consideration for marriage but an obligation imposed upon husband as a mark of respect for his wife and was therefore not a sum payable on divorce.

The Shah Banoo judgement also led to the agitation among Muslim fundamentalists which resulted in the passing of Muslim Women (Protection of Rights on Divorce) Act,1986.

In the year 1995, Supreme Court came across another leading case of ***Sarla Mudgal v. Union of India***<sup>12</sup> in which Supreme Court has directed the prime minister to take a fresh look at article 44 of the constitution which bids the state to secure uniform Civil Code, which would show protection of the oppressed and promotion of the national unity and integrity. The court directed the union government through the secretary to Ministry of law and Justice, to file an affidavit by August 1995 indicating steps taken and efforts made by the government towards securing a Uniform Civil Code for the citizens of India.

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<sup>11</sup>Bai Tahira v. Ali Hussain AIR 1980 SC 1730.

<sup>12</sup>Sarla Mudgal v. Union of India (1995) 3 SCC 635.

The above directions were given when Court was dealing with the case (Sarla Mudgal) where the question for Constitution was whether a Hindu husband marriage under Hindu law after conversion to Islam without dissolving the first marriage could solemnize a second. The court held that such marriage would be illegal and the husband could be prosecuted for bigamy under section 494 of Indian penal code, 1860.

With this case various other petitions were also filed:

1. First was filed by registered society working for the welfare of women as PIL.
2. Second was filed by Meena Mathur saying she was married to Jitendra in 1978 and her husband solemnised second marriage with Sunita Narula *alias* Fatima and converted to Islam.
3. Sunita Narula *alias* Fatima contended that after marrying her Jitendra Mathur had again reverted back to Hinduism and she is still a Muslim without having any proper provisions for Maintenance and have no protection under either of the personal law.
4. Third petitioner Gita Rani contended that she was married to one Pradeep Kumar according to Hindu rites in 1988 and in 1991 she came to know that her husband ran away with Deepa and after conversion to Islam married her.
5. The fourth petitioner Sushmita Gosh contended she was married to G.C. Gosh as per Hindu rites 1984 but in 1992 her husband embraced Islam and got married to Vinita Gupta.

On the facts of the cases, the Supreme court held— A Hindu Marriage continues to exist even after one of the spouses has converted to Islam. There is no automatic dissolution of Hindu Marriage. It can only be dissolved by the decree of divorce on any of the grounds mention in section 13 of the Hindu Marriage Act, 1955. The second marriage of Hindu after his conversion to Islam is void in terms section 494 Indian Penal Code,1860 and the husband is liable to prosecuted for bigamy.

As regard to the uniform civil code justice Kuldip Singh and R.M. Sahani held that since 1950 many governments have tried but have failed in implementing the constitution mandate under Article 44 of the constitution. Causing loop holes in the justice system as many Hindus are changing their religion to

Islam only for the purpose of escaping the offence of bigamy as Muslim law permits for having more than one wife up to four at the same time<sup>13</sup>. The court directed the government to take immediate steps for implementing the mandate of Art.44 of the constitution as Article 44 is based on the concept that there is no connection between the religion and the personal laws in the civil society.

In 2000, Supreme Court in *Lily Thomas vs. Union of India & ors*<sup>14</sup> decided that the second marriage without prior divorce from the first marriage to be void wherein men were converting their religion to Islam to solemnize the second marriage but all of this was considered void unless and until first marriage was dissolved according to the Hindu Marriage Act, 1955 otherwise the husband would be liable for bigamy under section 494 and 495 of Indian Penal Code, 1860. As converting to Islam would not automatically dissolve the first marriage and the Husband is liable to all the obligations as he would be prior converting to Islam. Bigamy is the offence of marrying another while the first marriage still persists and such bigamous relations are illegal and the second marriage is void ab initio.<sup>15</sup>

In 2015, Supreme court refused to direct the government to take a decision on having a Uniform Civil Code.<sup>16</sup> In 2016, *Triple Talaq case* came into debate. Triple Talaq is a form of Islamic divorce used by Muslims in India also known as talaq-e-biddat. In Triple talaq marriage gets dissolved after uttering the word talaq 'thrice' by any Muslim man to his wife. It is banned in 22 countries of the world and challenged in Supreme court as well. Muslim Law Board has consistently said that triple talaq is a 'personal law' and this, cannot be modified by the Central Government and this issue has given a rise to a heated debate on the need for a Uniform Civil Code in India<sup>17</sup>. In 2017, Supreme Court gave hearing to the case and held that the marriage was not dissolved and the liability of the husband to pay maintenance continues<sup>18</sup>. It declared that the practice of triple talaq as unconstitutional and stated that it was violating Article 14 and 21 of the Indian constitution.

### NEED FOR UNIFORM CIVIL CODE?

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<sup>13</sup> DR. J.N. PANDEY, *CONSTITUTION LAW OF INDIA*, 453 (53<sup>rd</sup> Edition, 2016).

<sup>14</sup> Lily Thomas vs. Union of India & ors AIR 2000 SC 1650.

<sup>15</sup> Asmita Sahay, *Lily Thomas vs. Union of India and Ors*. *ITJ* (Apr. 12, 2020, 4:00 PM) <http://lawtimesjournal.in/lily-thomas-vs-union-of-india-ors/>.

<sup>16</sup> Qwerty9729, *Uniform Civil Code: One Nation One Code*, *LEGAL SERVICE INDIA*, (Apr. 12, 2020, 12:30 PM) <http://www.legalserviceindia.com/legal/article-685-uniform-civil-code-one-nation-one-code.html>.

<sup>17</sup> Times of India, *Triple Talaq*, *TIMES OF INDIA* (Apr. 12, 2020, 5:00 PM) <https://timesofindia.indiatimes.com/topic/Triple-Talaq?from=mdr>.

<sup>18</sup> Shayara Bano vs Union of India And Ors. Writ Petition (C) No. 118 of 2016.

Though India is a diverse country with many religions and different personal laws yet there are some conditions where these personal laws violate basic human rights of people. Few of the examples could be seen above like in Shah Banoo Case in the year 1985 where the right to maintenance was not given wife even when she is not able to maintain herself or even her children which later resulted in the passing of Muslim Women (Protection of rights on Divorce) Act,1986 . Similarly, in 1995 Sarla Mudgal case many Hindus were changing their religion and were converting to Islam without dissolving the first marriage only for the purpose avoiding the punishment of bigamy as Muslim law permits having more than one wife. Five bench judges decided that the first marriage doesn't get dissolved automatically and thus the second marriage even though the person has changed their religion stands void. Before 2005, inheritance rights were only given to the male child of the family and denying the right of inheritance to female child which violates the Article 14 (Right to equality) of the constitution after the Hindu Succession (Amendment) Act, 2005, daughters were given inheritance rights. All these situations show that there are many loop holes in the personal laws and there is a need for uniform civil code which would be same for every citizen without differentiating them based on their religion or caste.

#### **ARGUMENTS IN FAVOUR OF UNIFORM CIVIL CODE**

1. It will Integrate India as one- All the citizens of the country can have a feeling of togetherness and united as on one would be treated differently.
2. It will help in reducing vote bank politics- Implementation of Uniform Civil Code will reduce the cast-based voting system and also reduce the biased voting among the people causing less dissatisfaction among the voters.
3. Sign of a modern progressive nation- Having a Uniform Civil Code will reduce the burden on courts and also help India to move towards its goal of becoming developed nation.
4. More rights to women- Since many personal laws provide restrictions on the women that would be reduced, like giving equal rights in inheritance, divorce and many other provisions.

5. Promote real secularism- Uniform civil code doesn't discourage or stop citizens from following religion or performing religious activities, it just ensures similar treatment for all the citizens of the country.

### **CHALLENGES FOR UNIFORM CIVIL CODE**

1. There are people having a false perception of Uniform Civil Code, especially among the minorities, which makes it difficult to implement it. Many people still do not understand the meaning of Uniform Civil Code.
2. In India there is a vast variety of personal law and the people devoted to their personal law makes it quite difficult to achieve uniformity. It is very difficult to find a common ground between different communities.
3. Implementation of Uniform Civil Code is quite difficult as it violates fundamental right of freedom of conscience of free profession, practice and propagation of religion (Article 26) and the freedom to manage religious affair (Article 25).
4. Many minor communities have a fear that Uniform Civil Code will neglect their traditions and impose rules, which were mainly influenced by majority religious communities.
5. Implementing of Uniform Civil Code is a sensitive task as this task will be demanding time and use of human resources wisely. It also requires a broad interpretation on marriages, divorce, maintenance, adoption and succession and also need to focus on gender equality.
6. One of the major problems faced while implementing Uniform Civil Code is opposition from religious groups, which is one of the most trivial and obvious hurdles. The Fundamentalism that is deeply rooted in many of the religion in India doesn't seem to vanish even in 21<sup>st</sup> century.
7. The government will face major challenges for abolishing the personal law of major religions and to implement Uniform Civil Code. They need to convince the people regarding justice and reform in society to grow better as a nation

**CONCLUSION**

Uniform Civil Code treats everyone equal in every aspect. In a country like India, where there are various religions, cultures and traditions, implementing Uniform Civil Code will help in creating a balance between religions, fundamental rights and not hurting any sentiments of religion. Uniform Civil Code will remove the discrimination on the basis of religion, caste and sex. This code also includes secularism. Uniform civil code will bring a sense of uniformity and establish personal laws which are equal for every community. Hence, in India there is a need to abolish personal laws and implement Uniform Civil Code.