

# UNIFORM CIVIL CODE IN INDIA: PREVALENCE OF INTEGRITY OVER DIVERSITY

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**ABSTRACT:** The Uniform Civil Code (UCC) in India proposes to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. Indians carry their laws along and there is no uniform law of the land applicable to all irrespective to one's religion. The issue of the Uniform Civil Code is not new in India and is being a matter of discourse since the time our Constitution was been drafted. The uniform Civil Code emerged into India's political discussions recently when many Muslim women, affected adversely by the personal laws started knocking the doors of the Supreme Court to uphold their fundamental rights to equality and liberty in keeping with constitutional provisions and few of them succeeded, Shayara Bano being one of the fortunate women. The Union law ministry has recently asked the law commission to examine the matters in relation to the implementation of the uniform civil code. Harmony, unity, equal treatment of everyone before law, equal penalty or punishment for everybody (irrespective of religion, caste, creed or sex), secular law in a secular nation, gender equality, justice for all, etc are certainly noble objectives that could be pursued through a Uniform Civil Code. Integrity in all spheres should be an ideal goal for a developing nation of great diversities, pluralities and potentials, like India. Although the spirit and intent behind "one nation one law" is worth appreciating, the task has never been easy.

**INDEX TERMS:** Uniform Civil Code, Human Rights, Triple Talaq, Shayra Bano, Constitution.

The Indian constitution has been a profounder of equality, social justice and integrity reflecting through the preamble and various other provisions like a provision for Uniform Civil Code in Article 44<sup>1</sup>. A contemporary India is a totally new society with 55% of its population being young and liberal and open in their mindset. India has developed a social attitude and aspiration coping up with the standards of universal and global principles of equality, humanity, and modernity. Indians specifically the Indian youth is no more confined in religious sphericities or divisions. India is working on shedding identity on the basis of religion encompassing a zone wherein Indian potential can be diverted from religious peripheries towards nation building.

India has established the principal of equality in its justice system. All Indian citizens are already equal before the court of law as the criminal laws making laws (except personal laws) are same for all. Indian social structure is diverse giving space and accommodation to personal belief and religious reliance but nowhere in the Indian legal system any discrimination on such parameters is allowed. In today's context the division on the basis of the personal laws seems to be out of context and that is why jurists and social scientists are talking about the implementation of Uniform Civil Code (UCC) proposing that citizens must share the same set of personal laws in loudest of their voices than ever.

UCC leaves no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws, but before analysing the concept, dimensions and implications of UCC in India we must find out; "Is India ready to engulf this change which would be altering not only the legal provisions but the alignment of our society as well?"

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<sup>1</sup> Article 44 as a Directive Principle of State Policy which states that "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."

## Indian Social Diversity and Personal Laws

Religion in Indian context is more interpretative and less contextual. The Personal laws are mainly interpretation and expansion of the belief system, by the upper-class-patriarchal society manipulating and inculcating the religious beliefs in the society that predominating supports and favours them.

Upper caste wanted to rule and dominate the lower castes so they declared them untouchables, suited for subdued jobs and gave a religious explanation to this heinous discrimination. Women also fall prey of the patriarchy and dominance and were suppressed and controlled by the man-governed notions of the society which actually had a religious justification for this suppression to the extent that the discernment towards women was made legal by imbining such vague ideas in the personal laws.

Our constitution framers in the leadership of the great liberal, Dr. B.R. Ambedkar, in 1948 rightly brought the bill to the then PM Pandit Jawaharlal Nehru's knowledge. Nehru, although was in support of the bill, showed his reluctance to pass a uniform code for all religions in India. He apprehended that Muslims might consider it unnecessary interference in their religion. He justified his denial on the ground of minority protection policy of the government stating that after partition, Muslims were a minority and such interference could create turbulence in their minds so he very conveniently refused the UCC but agreed for the Hindu code bill.

For Hindus, Sikhs, Buddhists and Jains in India, a bill was passed in the parliament during 1955–56. On account of facing deter resistance; Hindu code bill was broken down into four acts<sup>2</sup>. These provisions had religion specific applicability and kept Muslims, Christians, Parsis and Jews in our country out of their purview. The worse was that, the outcome of such laws landed women out from the purview of our country's civil code violating the principle of 'equality before law', on ground of religion.

The rights of women in India are associated with the social alliances they live in, like; marriage and family which in turn are governed by the personal laws. So ultimately the legal contours of the status of women in these institutions and broadly in the society are determined by the personal laws.

India is a land of diversity unlike most of the western homogenous nations, India is a home to one of the most diverse and variable melange of a population making it more difficult to handle this heterogenous populace.

The demand of UCC is normally made by aggrieved women as a substitute for existing personal laws as patriarchal orthodox people still deem the reforms in personal laws will destroy their sanctity and oppose it profusely. The concern is; "As a seventy-one years old country with one of the most beautifully drafted constitution to govern us, are we mature enough to have a uniform set of civil law?"

## Uniform Civil Code: Constitutional Predicaments

India has multiple family laws based on religion<sup>3</sup>. Hindu law has by and large been secularized and modernized by statutory enactments. On the other hand, Muslim law is still primarily unmodified and traditional its content and approach. After more than 60 years of proclamation of secularism the Indian law is still communal wherein each religious group has its own law to regulate and govern domestic relationships. Each person carries his own law wherever he goes in India either in the form of statutory law or customary law. India has no lex-loci but only law of the religion matters of marriage, succession and family-relations, resulting into a very complex legal implication. K.M. Munshi said in the Constituent Assembly, "Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code". The preamble of the Constitution states that India is a "secular democratic republic"<sup>4</sup>. A secular State does not discriminate against anyone on the ground of religion, it is only concerned with the relation between man and man and not with the relation of man with God.

<sup>2</sup> Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, Hindu Adoptions and Maintenance Act.

<sup>3</sup> The Christians have their Christians Marriage Act 1872, the Indian Divorce Act, 1869 and the Indian Succession Act, 1925. The Jews have their uncodified customary marriage law and in succession matters they are governed by the Succession Act of 1925. The Parsis have their own Parsi Marriage and Divorce Act, 1936, and their own separate law of inheritance contained in the Succession Act which is somewhat different from the rest of the Succession Acts. Hindus and Muslims have their own separate personal laws.

<sup>4</sup> 42nd Constitutional Amendment Act inserted the word 'secularism' in preamble. In S.R.Bommai vs Union of India case, supreme court held secularism as a basic feature of the constitution.

India distinguishes between secularism with spirituality and individual belief. Secularism is a common doctrine wherein States create a wall of separation between religion and State and hence State can enact a law giving freedom for individual faiths keeping its own secular character alive. State shall not interfere with religion.

Uniformity of law, its secularization, equitability and non-discrimination can be derived from the Article 44 of the constitution providing for the Directive Principles of State Policy. The objective of a uniform civil code is national integration by elimination contradictions based on religious ideologies. If applied, the UCC can unite India by prevailing a common platform on civil matters like marriage and divorce, over the diverse personal laws. However, Article 37 of the Constitution itself makes the directive principles directory in nature by providing that, “shall not be enforceable by any court” nevertheless, they are “fundamental in the governance of the country”. This establishes our constitutional belief regarding a Uniform Civil Code but it’s only the implementation that dilutes the effect of directive principles sometimes. Other constitutional provisions relating to religious freedom, secularism includes; Art 15<sup>5</sup>, 25<sup>6</sup>, 26<sup>7</sup>, 27<sup>8</sup> and 28<sup>9</sup>.

### Uniform Civil Code: A Judicial Exegesis in Indian Context

The Supreme Court has time and again emphasized that the implementation of a uniform civil code is imperative not only for the protection of the oppressed but also to promote national integrity and unity.

In the Shah Bano case<sup>10</sup> the conflict between personal law and common law came to the limelight as under Muslim personal law, maintenance was to be paid only till period of iddat whereas Section 125 of Cr.P.C. (Criminal Procedure Code) that applied to all citizens, provided for maintenance of wife. A 73-year-old woman called Shah Bano was divorced by her husband by triple talaq and was denied maintenance. Her husband approached the supreme court after the District Court and high court ruled in Shah Bano’s favour saying that he had fulfilled all his obligations under Islamic law. The Supreme court ruled in her favour in 1985 under the “maintenance of wives, children and parents” provision of Section 125 of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, it recommended that a uniform civil code be set up.

<sup>5</sup> Art. 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

<sup>6</sup> Art. 25. Freedom of conscience and free profession, practice and propagation of religion.

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

<sup>7</sup> Art. 26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.

<sup>8</sup> Art. 27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

<sup>9</sup> Art. 28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

<sup>10</sup> AIR 1985 SC 945.

The repercussions of this judgment were not positive in the Muslim community as they felt their faith was under threat. The Muslim Personal Law Board opined that the Supreme Court was interpreted the holy Quran wrongly it was said that the court would not interpret religious scriptures or holy books. The parliament undid the effect of this judgement by passing the Muslim Women (Protection of Rights on Divorce) Act, 1986, which provided under section 3(1)(a) that a divorced woman is entitled to reasonable and fair provision and maintenance within the iddat period.

The Act when nullified the effect of Shah Bano judgement it was an exhibit of how political considerations and will can suppress not only the rights of a section of the people but also the growth of the entire legal system of a country. The Constitutional validity of the Act was challenged on the ground of being violative of Article 14, 15 and 21. The contentions were based on the question of the necessity of enacting an Act, completely based on distinction of a section of the population, while a competent, efficient and secular remedy was available under Section 125 of the Code of Criminal Procedure. The Supreme Court in the case of Daniel Latifi v. Union of India<sup>11</sup> chose a compromising approach. Supreme court held the law constitutional and harmonised it with section 125 of Cr.P.C. and said that amount received during iddat period should be sufficient to maintain her during iddat as well as provide for her future.

In Ms. Jordan Deigndeh v. S.S. Chopra<sup>12</sup>, the court referred to the observations of Chandrachud, C.J. in Shah Bano's case and observed, "The present case is yet another event which focuses on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of uniform civil code is exposed by the facts of the present case."

In the Sarla Mudgal case<sup>13</sup>, the question was whether a Hindu husband married under the Hindu law, by converting to Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under the Hindu law can be dissolved on the grounds specified under the Hindu Marriage Act, 1955 only, conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the Act and thus, a second marriage solemnized after converting to Islam would be an offence of bigamy under section 494 of the Indian penal code. Justice Kuldeep Singh emphasised on the need of uniform civil code and judgment is considered to be milestone in Indian journey towards UCC. The Supreme Court held that conversion of a Hindu male to Islam only for the purpose of contracting bigamous circumvents Section 494 of Indian Penal Code and these marriages are to be declared as bigamous and void by the court. The court referred to various pronouncements of the courts and opined that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim fetching injustice to the first legally wedded wife. Justice Kuldeep Singh, while delivering the judgment remarked "*When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of 'uniform civil code' for all citizens in the territory of India*".

In the case of John Vallamattom<sup>14</sup>, where a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus on India on the ground of the said Section being discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The court struck down the section as unconstitutional. The Bench, headed by the then Chief Justice Khare, observed, "It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a uniform civil code in the country."

But the matter of Maharishi Avadesh<sup>15</sup> was a major setback, when, while hearing a writ petition for calling for directions to mandate the government for the introduce a uniform civil code in the country, the court dismissed the petition on the ground that the matter was in the space of the legislature and not the judiciary. Supreme court

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<sup>11</sup> (2001) 7 SCC 740

<sup>12</sup> 1985 AIR 935, 1985 SCR Supl. (1) 704

<sup>13</sup> (1995) 3 SCC 635

<sup>14</sup> **John Vallamattom** v. Union of India, AIR 2003 SC 2902.

<sup>15</sup> Maharishi Avadesh v. Union of India, 1994 SCC Suppl (1) 713.

never doubted the desirability of UCC in India but at the same time the court was never persuasive enough as the stand taken by the Supreme Court was quite contrasting most of the times. On the one hand, the court recommended early legislation for ushering in a uniform civil code simultaneously rejecting all the attempts to do so through public interest litigation. This was evident in the matter of Pannalal Bansilal<sup>16</sup>, where it was held that a uniform civil code ought not to be enacted in one go, as that would be counter-productive to the unity and integrity of the nation.

In yet another case of Ahmadabad Women's Action Group (AWAG) v. Union of India<sup>17</sup>, a PIL challenging gender discriminatory provisions in Hindu, Muslim and Christian statutory and non-statutory law was filed but the Supreme Court held in a reserved manner that the matter of removal of gender discrimination in personal laws "involves issues of State policies with which the court will not ordinarily have any concern."

The Apex Court's opinion was more or less same in Lily Thomas etc. v. Union of India and others<sup>18</sup> when the court held, "The desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change."

Very recently in August 2017, in the matter of Shayara bano v. Union of India<sup>19</sup> a five-judge Constitution bench of Supreme Court discussed whether triple talaq is fundamental to Islam or not.

After being married for 15 years, Shayara's husband gave her triple talaq in October 2015. The woman from Uttarakhand then approached the Supreme Court in 2016, challenging the validity of arbitrary practices against women followed by Muslims. Her petition seeks the Supreme Court to declare talaq-e-bidat, polygamy and nikah halala illegal and unconstitutional on the grounds that they violate the rights guaranteed by the Constitution under Articles 14, 15, 21 and 25. Shayara's husband has opposed her plea on the ground they were governed by the Muslim Personal Law and all three discriminatory practices are sanctified provisions under the very same law. It was contended, that to refuse an invitation to examine broader issues such as whether 'personal laws' were part of 'laws in force' under Article 13, and therefore, subject to judicial review, or whether a uniform civil code should be enforced, would not be appropriate. It was submitted, if the immediate concern about triple talaq could be addressed, by endorsing a more acceptable alternate interpretation, based on a pluralistic reading of the sources of Islam, i.e., by taking a holistic view of the Quran and the 'hadith' as indicated by various schools of thought (not just the Hanafi school), it would be sufficient for the purpose of ensuring justice to the petitioners, and others similarly positioned as them.<sup>20</sup>

However, under the Constitution, religious freedom is subject to all other Fundamental Rights. Article 25 which guarantees Freedom of Practice and Propagation of Religion does not protect religious practices since they can negatively affect the welfare of citizens. Article 14, which guarantees the Right to Equality, overrides Article 25 because triple talaq denies a Muslim woman's equality before the law. Similarly, Article 25 is subject to Article 15 (1) which says that the State "shall not discriminate against any citizen on grounds only of religion, race, caste, sex..." Since triple talaq does not work in the favour of women, it violates Article 15 (1) of the Constitution. The Supreme Court's decision is a huge step forward in the direction of codification of a Uniform civil code. Declaring the Triple talaq violative of the Article 15(1) the court once again established prevalence of a uniform law over a discriminating and arbitrary personal law.

### **Uniform Civil Code: Social and Legal Reverberations**

Integration is what India as a country epitomises. India has with many religions, customs and practices. A uniform civil code will help in integrating India more than it has ever been since independence. It will help in bringing every Indian, despite his caste, religion or tribe, under one national civil code of conduct. A uniform civil code will also help in reducing vote bank politics that most political parties indulge in during every election. This may

<sup>16</sup> Pannalal Bansilal v. State of AP, AIR 1996 SC 1023.

<sup>17</sup> AIR 1997 SC 3614

<sup>18</sup> AIR 2000 SC 1650, at 668

<sup>19</sup> In the Supreme Court of India, Original Civil Jurisdiction Writ Petition (C) No. 118 of 2016

<sup>20</sup> [https://www.thehindubusinessline.com/multimedia/archive/03194/Supreme\\_Court\\_judg\\_3194881a.pdf](https://www.thehindubusinessline.com/multimedia/archive/03194/Supreme_Court_judg_3194881a.pdf)

eventually cause decrease in many trials of communal violence and political interest generated division amongst religious communities can be evaded.

“Personal Laws” is an immortalised codified arbitrariness governing in an indecorous manner by allowing them as an alternate judicial system that still operates on thousands of years old patriarchal values. A uniform civil code can be a contemporary answer to that. India is a modern young country and it must strive to move away from caste and religious politics. While our economic growth has been the significant in the world our social growth has lagged behind and uniform civil code can help our society move forward making India not only economically but a socially developed nation.

A social development is not possible without development of the half of the women population of the country. Our society is patriarchal and misogynistic in nature and old religious rules governing the family life are condemning all Indian women to subjugation and mistreatment. A uniform civil code can bring these women to mainstream. Equality in social spheres like; marriage, inheritance, family, land etc. should be there for all and Uniform civil code is the only way to ensure that.

India declared itself secular by 42<sup>nd</sup> Amendment and we as a nation has grown up to the extent where we all understand the difference between secularism and freedom to religion. A uniform civil code doesnot limit the freedom of people to follow their religion, it proposes a treatment which is same for all citizens of India irrespective of their religious beliefs.

UCC is not against personal belief it just not let the arbitrary of or provisions of personnel laws which are in violations of human rights hide behind the shroud of personal law. The codification and unification of the variegated personal laws will produce a more coherent system of laws. This will reduce the existing confusion and enable easier and more efficient administration of laws by the judiciary.

The concerns however cannot be ignored as to whether the accommodation of various ideas/beliefs and consensus building should be the key rather than legal enforcement of a uniform set of norms? The advocates of UCC understand that the society must be slowly reformed and no manner of coercion must be exercised. With the fears among the minority community of majority domination adequately allayed and all apprehensions addressed the UCC does not seem an impossible target to achieve. The requirements are to devising a set of rules that will govern all communities and religions in a very equitable and curious manner considering the vast range of interests and sentiments to be accounted for.

### **The Goa Model: A referral for UCC**

Goa is the only Indian state that has a uniform civil code in the form of common family law. The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn't replaced after its liberation. Few of the features that can be used as point of reference while discussing UCC are<sup>21</sup>:

The Uniform civil code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender). Every birth, marriage and death, has to be compulsorily registered. For divorce there are severe provisions. Muslims that have their marriages registered in Goa cannot practice polygamy or divorce by pronouncing “talak” thrice. During the course of marriage all the property and wealth owned or acquired by each spouse is commonly held by the couple. Each spouse in case of divorce is entitled to a half share of the property and in case of death the ownership over half of the property is retained by the other. The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children compulsorily. This inherited property must be shared equally among the children.

However, the code has certain drawbacks and is not strictly a uniform civil code. For example: The Hindu men have the right to bigamy under specific circumstances mentioned in Codes of Usages and Customs of Gentile Hindus of Goa (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the

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<sup>21</sup> The Need for a Uniform Civil Code in a Secular India available at; <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india>.

age of 30). For other communities, the law prohibits bigamy. Still the Goan Model can be used a specimen to draft a UCC.

### **India: Evolved to Transform in a Land of a Uniform Civil Code**

During the debates in the Constituent Assembly, B.R.Ambedkar had demonstrated his will to transform divided Indian society in one by the adoption of a Civil Code. He opposed all who wished to immortalize personal laws, especially Muslim representatives, who were very attached to the Shariat. Dr. Ambedkar Said, "I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations and other things, which conflict with our fundamental rights."

Nehru pointed out the apprehensions of muslims after partition and highlighted how a simple stroke on their personal laws could lead the Muslim community lose their faith in Indian Government. He was right when he said that India was a country of diversity and was not ripe enough to understand the true meaning of integrity which has religious encompasses to it.

Today after so many years of independence Indians are mature enough to understand the real integrity wherein one keeps the principles of natural justice, equity and equality above our personal connotations and live in a society which has various beliefs but still abides by one uniform law.

The welcoming response in Shayara Bano's case and the India Union law ministry recently asking the law commission to examine the matters in relation to the implementation of the uniform civil code, gives us a hope that the path may seem long and patchy but we have started walking well equipped and with a strong will.

### **Research Methodology:**

The research paper is based on the analysis of the philosophy behind the concept of uniform civil code and the Indian context is explained with the help of various judicial pronouncements supported by various legislative and constitutional provisions.

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