



# Uniform Civil Code – A Necessity Or A Distant Reality

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## **Abstract:**

This article looks at the concept of Uniform Civil Code in India. The article seeks to know the pros and cons of the uniform civil code. The article also puts light on some of the landmark judgments on the concept of uniform civil code in India. The article also goes through the developments during pre independence and post independence era. The article also goes through the Goan example of Uniform civil code which was implemented by the erstwhile Portuguese regime. Lastly the article proposes some suggestions in order to enable smooth implementation of the uniform civil code in India.

**Keywords:** *Uniform Civil Code, Constitution of India, Portuguese Civil Code 1867, Directive Principles of State Policy, Family law*

## **Introduction:**

The concept of Uniform Civil Code primarily aims at the subject of Family law. The underlying principle is that there should be one rule pertaining to matters concerning marriage, divorce, heirship, adoption, maintenance which does not have any relation to the religious belief or religious identity of the person concerned. There will be one rule that will govern all the subjects and the religion factor will have zero importance in the determination process.

## **Meaning:**

The Uniform Civil Code is mentioned and has its modern day source from Article 44 of the Constitution of India which lays down that State should endeavour to secure a Uniform Civil Code in India. It comes under Directive Principles of State Policy which cannot be enforced by Courts in view of Article 37 of the Constitution of India. It is a matter of state policy and Courts cannot direct the State to frame Uniform Civil

Code. The objective of Uniform Civil Code is to harmonize diverse cultures in India and stop the discrimination against vulnerable section of society. Article 44 embodied in the Directive Principles was initially under Article 35 of the draft constitution.

### **Development through Stages:**

#### Pre Independence Era:

the first law commission in pre-independence era was established in 1834 with Lord Macaulay as its chairman. The Lex Loci report in 1840 pointed out one uniform law for law relating to crimes, evidence, contract. However, it suggested that the law relating to family matters not to be touched upon for its codification or unification.

In further development on the subject, the proclamation in 1859 by the Queen specifically laid down that there would be no interference by the State in matters of family law.

As a result of which the law relating to family matters did not achieve codification during the pre independence period.

However, during the eventual period of British rule, the B.N. Rau Committee was formed in the year 1941 with a purpose of codification of Hindu Law. The committee though came up with a suggestion for a civil code of marriage and succession for Hindus. The aim of the committee was also to give equal rights to women in matters of family law.

#### Post Independence Era:

during the post independence period, the Constituent Assembly preferred to keep the matter pertaining to uniform civil code in Directive Principles considering that the correct time had not come to implement the same and that sufficient time should pass by in order to make the society accept such reform pertaining to religion since religion is considered to be closely linked to life and living in India.

However, the law relating to codification of Hindu law saw greater emphasis after India attained independence. The Rau Committee Report was tabled before Select Committee with Dr. B.R. Ambedkar as its Chairman. However, the Hindu Code Bill lapsed and subsequently an Act titled Hindu Succession Act 1956 was enacted which focused on codifying law relating to intestate succession pertaining to Hindus, Sikhs, Jain, Buddhists. Subsequently, the Hindu Code was enacted with four separate enactments, viz, the Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Minority and Guardianship Act 1956, and Hindu Adoptions and Maintenance Act 1956. The Special Marriage Act 1954 was also enacted.

The amendment act of 2005 substantially modified the Hindu succession act 1956 by giving more rights to daughters in matters of succession and heirship.

**Judicial Interventions:**

Mohammad Ahmed Khan v. Shah Bano Begum<sup>1</sup>

This is one of the leading landmark case relating to maintenance under section 125 of CrPC. In the present case, Shah Bano Begum filed for claiming maintenance under section 125 of CrPC. The court held that aim of Section 125 is to give a quick and summary remedy to persons who cannot maintain themselves. Section 125 applies to persons irrespective of religion of the person.

Smt. Sarla Mudgal vs Union Of India & Ors<sup>2</sup>

This case pertains to bigamy wherein the court held that a person cannot convert to Islam for marrying second time when the first marriage subsists. This judgment also emphasized the need for a uniform civil code.

S.R. Bommai v. Union of India<sup>3</sup>

The Court in this case laid down that Secularism comprises one of the basic features of the Constitution of India. It aims at equal treatment among all religions. All are equal to the State and religion finds no place in the functions of the State.

Ms. Jordan Diengdeh vs S.S. Chopra<sup>4</sup>

The Court has held in the present case that there is no uniformity in the different laws that govern marriage, divorce that govern different communities. This calls for a uniform set of rules in order to achieve equality among all communities.

Shayara Bano v/s Union of India<sup>5</sup>

This case pertains to landmark prohibition laid by the Hon'ble Supreme Court on the Triple Talaq. Triple Talaq was abolished in the present case as invalid.

*Talaq-e- bidat* is a practice whereby man can divorce his wife by uttering 'talaq' three times in one sitting without his wife's consent. The Apex Court after forming a 5 judge constitutional bench on 30<sup>th</sup> March 2017 to decide the petition of Shayara Bano, On 22nd August 2017, pronounced its decision in the Triple Talaq Case, declaring that the practice was unconstitutional by a 3:2 majority.

Satprakash Meena vs Alka Meena on 7 July, 2021<sup>6</sup>

<sup>1</sup> AIR 1985 SCR (3) 844

<sup>2</sup> 1995 AIR 1531, 1995 SCC (3) 635

<sup>3</sup> 1994 AIR 1918, 1994 SCC (3) 1

<sup>4</sup> 1985 AIR 935, 1985 SCR Supl. (1) 704

<sup>5</sup> (2017) 9 SCC 1

The need for a Uniform Civil Code was once again repeated by the Delhi High Court in the present case. A common code which will be uniform to all sections of the society as regards family matters like marriage, divorce, heirship, succession. The citizens should not be made to suffer due to conflicts and contradictions in various personal laws.

Agnes Alias Kunjumol vs Regeena Thomas on 18 May, 2010<sup>7</sup>

The essential feature of Article 44 is that there is no connection between religion and personal law in a civilized society. Article 25 clearly guarantees religious freedom to citizens and on the other hand, Article 44 aims to differentiate religion from matters pertaining to family law as regards marriage, divorce, succession etc. which should not be viewed on religious background. For instance In the United States it is judicially pointed out that polygamy is injurious to public morals.

### **Arguments in favour of the Uniform Civil Code:**

The primary argument in favour of Uniform Civil Code is that it will unite and integrate India. India is a country with many cultures, religions. Uniform Civil Code will bind India into one without distinction between religions.

Another argument in favour of Uniform Civil Code is that it will reduce distinction lines drawn based on religion in the society.

The loopholes caused by following different laws according to different religions will be overcome by using a common civil code.

There will be uniformity in application of rules and no bias in terms of family laws.

It is sign of modern progressive society where there will be uniformity without distinction based on religion, caste.

This will help the nation to prosper on economic front as well apart from social growth which will help India become developed nation.

Uniform civil code will also help women to achieve equality in matters of family law.

Above all Uniform civil code will promote secularism which is also mentioned in the Preamble of our Constitution.

Codification will also reduce confusion and enable easy implementation of provisions relating to family laws in the society.

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<sup>6</sup> C.R.P.1/2021 and CM APPL. 332/2021 in the High Court of Delhi

<sup>7</sup> RSA.No. 703 of 2009, IN THE HIGH COURT OF KERALA AT ERNAKULAM

## Arguments against Uniform Civil Code:

One of the primary arguments against uniform civil code is that it comes in the matter of persons religious beliefs.

There is misinformation among the society that Uniform Civil Code will leave the public deprived from practicing their religious practices

It is considered to be tedious task since in India there are numerous religions and castes and bringing all into one umbrella would be a herculean task.

Uniform civil code is seen as imposing majority view on minority community.

It is also argued that the codification done till date has not considerably enhanced the status of women in society.

### The Goan example:

In India, Goa is the only state to have a civil code which is same to its each and every subject and does not do any distinction on the basis of religion, caste of the individual. The Civil Code of 1867 enacted by the Portuguese regime was continued even after Goa attained liberation from Portuguese Rule in the year 1961. The Portuguese civil code continued to govern Goa by virtue of Goa Daman and Diu administration act 1962 passed by the Parliament of India. There have been several instances whereby the Civil Code in Goa has been appreciated by some of the renowned personalities. The Uniform civil code in Goa is seen as a progressive piece of legislation wherein there is no distinction made based on religion, gender etc. there is no scope for polygamy nor oral talaq. There is uniformity as regards heirship among children.

### Conclusion and Suggestions:

Uniform Civil Code is the need of the hour. It will ensure that there is no distinction done based on persons religions and all the persons will be considered on equal footing. This will ensure that there is no injustice done mere on the ground of one's religion. The women in the society will be able to have an equal right in terms of heirship.

However, achievement of uniform civil code is a step by step process. There should be progressive and broad minded approach towards the subject. Education awareness should be carried out. Sensitization programmes should be undertaken to overcome any misinformation. The code implemented should be in the interest of all religions and should not hurt any community. The religious groups and organizations should be taken into confidence before going through the idea of devising common civil code.

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