

## UNIFORM CIVIL CODE IN INDIA

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The aim of this paper is to understand the Uniform Civil Code in India and its impact on the Indian Society by discussing the pros and cons of the adoption of the code. A Uniform Civil Code in India is a debate to replace personal laws which are based on custom. These laws are different from the public laws and cover issues like marriage, divorce, inheritance, adoption and maintenance. India is a land of different religion and it governs the different set of family laws like the Christian have their Christian Marriage Act, 1872 the Parsis have their own Parsi marriage and Divorce Act, 1936, the Hindus and the Muslims have own separate laws. Article 44 of the Directive Principles of the Constitution specifies that *the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India*.<sup>1</sup> Goa is an exception to the rule and it is a state which governs the Uniform Civil Code in India. The question arises why there is a need of Uniform Civil Code in India? Uniform civil code will help to promote secularism and it will allow all the citizens of India to follow the same civil code, whether they are Hindus, Muslims Christians, or Sikh. Article 14 of the Indian Constitution says *equality before law*. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.<sup>2</sup> Women in the lower sections of our society are still struggling with their rights and duties and they should be treated equally as men. It will help women get their rights. When there is the same set of rules and regulation to punish a criminal then why not Uniform Civil Code? Muslims in many countries like Australia, the United States and the United Kingdom have agreed to follow the Uniform Civil Code then why they have a problem to follow the similar thing in India. The Uniform Civil code will bring uniformity in the country and every citizen of India and most women will get their rights and will be treated equally in the eyes of law.

India is a country which is much known for its culture and tradition. India is a diverse country where people of different religions stay together peacefully with their own culture and the personal laws which governs them. The question arises what are personal laws? India is a

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<sup>1</sup> Article 44 of the Indian Constitution

<sup>2</sup> Article 14 of the Indian Constitution

land of different religion and each religion has their own laws to govern them like the Hindu, Muslim, Christian and Parsi's are governed by their own personal laws as The Hindu law (Acts 1955-56), Muslim Law (1937) and Christian and Parsi law (Parsi marriage and divorce act 1936). Uniform Civil Code is a debate to replace these personal laws which still exist in our country which is based on custom and religion. It is the most debated topic till now. Politically, the nation is divided into many political parties including BJP who is strongly in favor of implementing the Uniform Civil Code in India whereas the other non BJP, including the Congress Party, Samajwadi Party are against the implementation of Uniform Civil Code.

Article 44 of the Indian Constitution itself says "*The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.*"<sup>3</sup> The Supreme Court of India first directed to implement UCC in the year 1985 in the case, **Mohammad Ahmed Khan v. Shah Bano Begum**<sup>4</sup>, Shah Bano, a 62 year old Muslim lady along with her five more children claimed for maintenance under section 125 of Criminal Procedure Code from her husband after she was given triple talaq from him. After seven years the court claimed her maintenance of ₹500, under section 125 of the Criminal Procedure Code which says order for maintenance of wives, children and parents and if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself.<sup>5</sup> The minority people were threatened and protested against this judgment. A Muslim man gave an open challenge to the Indian Parliament that implementing Uniform Civil code will not bring any changes to India and they will not accept any changes with the existing personal laws.

Why women are still suffering? In the pre- Islamic Arabic society the status of women was very bad. They were inferior as compared to men. In those days the customary laws were in all favour of men. The females were treated as properties and were used for the enjoyment of sex and procreation of children. The male members enjoyed limitless polygamy and can have as many wives they can accept the blood relations, such as the mother or the real sisters. When Islam came the females were given some social status in the society. Against the uncertain relationship of the husband the Islam introduced a marriage (Nikah) in which the husband and wife were given a dignified status of being married. The females in our society are still suffering because they bind with their personal laws. Uniform Civil Code will help to improve the situation of Muslim women. Monogamy should be made mandate for every

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<sup>3</sup> Article 44 of the Indian Constitution

<sup>4</sup> AIR 1985 SC 945

<sup>5</sup> Section 125 of CrPC

citizen in India and this will lead to gender justice and this can only happen through Uniform Civil Code in India. Article 14 of the Indian Constitution states equality before the law<sup>6</sup> which means every person who is a citizen of India will be treated equally in the eyes of law. Then why there are different laws of inheritance for different section of society? Why women of Muslim community cannot enjoy an equal share as compared to Hindu Women? A Uniform Civil Code will help to remove old traditions which have no existence in today's generation. When the Fundamental Rights Sub Committee decided to make the uniform civil code a directive principle, Amrit Kaur along with two other members wrote, "One of the factors that have kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life."<sup>7</sup> Personal laws based on religion shows inequality. When there is one criminal code which is applicable to every citizen of India then why not a Uniform Civil Code for the equal rights on marriage, divorce, maintenance, adoption, inheritance and succession. Uniform civil code means the imposition of Hindu Code? This is absolutely incorrect. It is a code to bring uniformity in India and it means equal laws for every citizen of India rather than providing justice discriminating on the basis of customs and religious belief. Uniform civil code will not take away the freedom of religion because it is granted to every citizen of India as their Fundamental rights to practice their own religion. Uniform Civil Code will be neutral and it has nothing to do with religion.

India should implement the Uniform Civil Code to be secular. It will help to promote unity throughout the nation and it will help in the progress of the nation. In India, Goa is an exception to this rule it is the only state in India, which follows a uniform code known as the Goa Civil Code also known as the Goa family law. The Goa Civil Code or Family law is based on the Portuguese Civil Code of 1867. Goa has had the Uniform Civil Code for the last 500 years, even though it was written by the Portuguese it had been translated to English. The Goa government realized to change and altered these laws based on old custom and traditions and is now successfully followed by the people of Goa. The Uniform civil code of Goa asks all the couples to register after marriage and if they are not registered they are not recognized by the court. The divorce laws aim to be fair for both the parties. Women enjoy equal share on property. If no contract has been signed, it is assumed to be community property. All

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<sup>6</sup> Article 14 of the Indian Constitution.

<sup>7</sup> Shiva Rao, *The Framing of India's Constitution: Select Documents II*, Available at: [www.indiafacts.co.in](http://www.indiafacts.co.in) [Accessed on: 2/8/2015 at 1:08 pm]

property acquired during marriage is equally divided in case of divorce. Goa uniform civil code is an example how every member of the society is being treated equally and the personal laws have no role. The caste system in India became unfair for the people. The Uniform Civil Code will help to reduce the vote bank politics. The political parties target the different sections of the society to grab votes. The Bahujan Samaj Party (BSP) is one such example who supports Dalit groups. The candidates divide their vote according to their caste and are forced to gather support. The judiciary is the most important organ of the government. It is the third organ of the Government and its main function is to apply laws to certain cases and settle disputes. Judiciary protects the constitution and the fundamental rights of the people and is more respectable than the other two organs. Judiciary has been always in favor of implementing the Uniform Civil Code in India as discussed earlier in the Shah Bano Case. In the case *Sarla Madgal v. Union of India*<sup>8</sup>, Kalyani (the main petitioner) an NGO working along with other women was fighting for justice. The Hindu husband who married a Hindu woman being a Hindu sooner had love for other women. To avoid legal complications the only purpose to implement second marriage was to convert himself to Islam, whose personal laws allow marrying 4 wives. The court held that the husband getting married second time by conversion of Islam without dissolving the first marriage was held to be an invalid marriage and he was held guilty under section 494 of Indian Penal Code, which states whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.<sup>9</sup> The personal laws in India are misused by the people. The main social issues have come from Muslim Society and it has forced the judiciary to implement the Uniform Civil Code in India. The Supreme Court has continually called for the Uniform Code for the women who are ill-treated in our society under the veil of these personal laws.

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<sup>8</sup> 1995 AIR 1531

<sup>9</sup> Section 494 of The Indian penal code, 1860