

# LOK SABHA (HOUSE OF PEOPLE) GUIDE

AGENDA:  
THE UNIFORM CIVIL CODE

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## BACKGROUND GUIDE

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### THE UNIFORM CIVIL CODE.

#### Secretariat Address

Uniform civil code of India is a term referring to the concept of an overarching civil law code in India; uniform civil code administers the same set of secular civil laws to govern all people irrespective of their religion caste tribe. This superseded the right of citizens to be governed under different personal laws based on their religion or caste or tribe, such codes are in place in most Morden nations .The common areas covered by a civil code include laws related to acquisition and administration of property marriage divorce and adoption

The constitution of India attempts to set a uniform civil code for its citizens as a directive principle. Or a goal to be achieved .

The demand for a uniform civil code essentially means unifying all the personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to Through the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.

The Background guide will give you an insight into the aspect of Uniform Civil Code .I would recommend further research to excel in the committee and deliberations of the 'Uniform civil code'

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## Constitutional Aspect

Article 44 of the Constitution of India requires the State to strive to secure for its citizens a Common Civil Code throughout India.

The secular activities, such as inheritance covered by personal laws should be separated from religion. A uniform law thus prepared and made applicable to all would on the contrary promote national unity. It was pointed out at that time that, firstly, as Common Civil Code would infringe the fundamental right of freedom of religion as mentioned in Article 25 and secondly, it would amount to a tyranny to the minority. The first objection is misconceived because secular activity associated with religious practice is exempted from this guarantee and since personal laws (as argued from this point of view) pertain to secular activities they fall within the regulatory power of the state. Regarding the second point, nowhere in advanced Muslim countries has the personal law of each minority been recognized as so sacrosanct as to prevent the enactment of a civil code. In Turkey and Egypt no minority is permitted to have such rights.

The term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance. As things stand, there are different laws governing these aspects for different communities in India. Thus, the laws governing inheritance or divorce among Hindus would be different from those pertaining to Muslims or Christians and so on.

### **(1950-1985):**

The framers of the constitution were convinced that a certain amount of modernization was required before a uniform civil code was imposed on citizens belonging to different religions. It was also feared that any attempt to ignore personal laws of various religions might lead to civil war, rioting and social unrest.

India's leaders at the time wanted a secular constitution on the model of a western democracy. However, what resulted was not secularism in the western sense of the word, but rather a 'secular' state with religious laws for its religious groups. Thus, the forefathers of the constitution who imposed several reforms upon the Hindu law were cowed down by the threats of Islamists and kept the sharia strictly unaltered. Hence, the Muslims and the Christians had to be governed by their own set of laws.

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The Hindu marriage act of 1955 extended to whole of India except the state of Jammu and Kashmir. The effect of the Hindu marriage act was to prohibit polygamy amongst Hindus and to increase the right of divorced wife to maintenance or alimony. The act applied to everyone in India except Muslim, Christians, Parsees and Jews. **Since Jews and Parsees are a small minority remained de facto the only large community with a distinct religious law that had not been reformed to reflect modern concepts.**

the legal practice of excluding Muslims continued with the passage of the dowry prohibition act of 1961 which specifically excluded, “dowry” or “mehr” in the case of persons to whom the Muslim personal law(shariat) applies”. In 1973 on a debate over the revision of the criminal procedure code, it was pointed out in regard to the maintenance of divorced wives that in cases involving Muslims, the court should take note as to whether the woman had received maintenance under the personal law. For Muslims, this period of idda or 3 months after the divorce.

While the period of 1950-1985 can be summed up as one where Muslim personal laws were exempted from legislation and they remained un-reformed , it can also be seen as a period where there were secular avenues opened to Muslims, the biggest of which was the passage of the **special marriage act, 1954**. The idea behind this act was to give everyone in India the ability to marry outside the personal law, in what we would call a civil marriage. As usual the law applied to all of India, except Jammu And Kashmir .In many aspects, the act was almost identical to the Hindu marriage act of 1955, which gives some idea as to how secularized the law regarding Hindus had become. The special marriage act allowed Muslims to marry under it and thereby retain their protections , generally beneficial to Muslim women that could not be found in the personal law . Under the act polygamy was illegal and inheritance and succession would be governed by the Indian succession and rather than the respective Muslim personal law

Divorce also would be governed by the secular law and maintenance of a divorced wife would be along the lines set down in the civil law

## **Personal laws under assault (1985-2005):**

The Shah Bano case led the Supreme Court on 23 April 1985 to judge that the divorcee Shah Bano was entitled to maintenance under section 125 of criminal procedure code (CrPC). The government of Rajeev Gandhi acted quickly passing the Muslim women act, 1986, a law that essentially provided for maintenance for Muslim women outside the criminal code, thus ensuring that Muslim women were not protected under the constitutional right to equality, and that they could no longer have recourse to section 125 of the CrPC. The act was an improvement on the former divorce rights under the shariat act, or Muslim personal laws that shah bano had found wanting.

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Those wishing to reform the Muslim personal laws have often cited Muslim countries as examples that such reform is possible. Terence farais, in his chapter, the development of Islamic law, points out that the 1961 Muslim family law ordinance of Pakistan “makes it obligatory for a man who desires to take a second wife to obtain a written permission from a government appointed arbitration council”. The interesting point regarding Pakistan is that until 1947 India and Pakistan had governed Muslims under shariat act of 1937. **However by 1961 Pakistan, a Muslim country had actually reformed its Muslim law more than India had and this remains true today.**

The demand for a uniform civil code essentially means unifying all these "personal laws" to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.

If you will look to the countries in Europe which have a civil code, everyone who goes there from any part of the world and every minority has to the Civil Code. It is not felt to be tyrannical to the minority. Our first problem and the most important problem are to produce national unity in this country. We think we have got national unity, but there are many factors- and important factors- which still offer serious dangers to our national consolidation.

Communalism breeds discrimination at two levels: one, between people of different religions and two, between the two sexes. This dangerous and ruinous effect should be done away with, possibly by introducing a Uniform Civil Code. For women who constitute almost half the population of India, the Uniform Civil Code provide with equality and justice in courts of law- irrespective of their religion in matters pertaining to marriage , divorce, maintenance, custody of children, inheritance rights, adoption etc.

The only step taken forward in this direction was the codification f the Hindu law in spite of great protest; but the codification of Muslim law or enacting a Common Civil Code is a sensitive issue owing to its politicization. Enlightened Muslim opinion however, is in favour of codification.

## Merits of Uniform Civil Code

If a Common Civil Code is enacted and enforced It would help and accelerate national integration Overlapping provisions of law could be avoided Litigation due to personal law world decrease Sense of oneness and the

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national spirit would be roused, and The country would emerge with new force and power to face any odds finally defeating the communal and the divisionist forces.

Israel, Japan, France and Russia are strong today because of their sense of oneness which we have yet to develop and propagate.

India has set before itself the ideal of a secular society and in that context achievement of a uniform civil code becomes all the more desirable such a code will do away with diversity in matrimonial laws, simplify the Indian legal system and make Indian society more homogeneous. It will de-link law from religion which is a very desirable objective to achieve in a secular and socialist pattern of society. It will create a national identity and will help in containing fissiparous tendencies in the country .The uniform civil code will contain uniform provisions applicable to everyone and based on social justice and gender equality in family matters.

According to the Committee on the Status of Women in India: "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens "equality of status, and is against the spirit of natural integration". The Committee recommended expeditious implementation of the constitutional directive in Article 44 by adopting a Uniform Civil Code.

## Criticisms of the Uniform Civil Code :

**No urgent requirement** : The code is neither a matter of priority nor a sine qua non for national integration the code is considered to be distant social objective some intellectuals feel that implementation of the code should logically pass through three stages:

The first stage is the codification of the personal laws of various communications so that over a period of time there is adequate basis in terms of comparative jurisprudence to serve as the foundation for the principles of the uniform civil code

There also needs to be a transitional phase of optionality

If the code comes into conflict with the personal laws of any community then the particular community must be granted exemption

## 2) **Operational Problems:**

Ram Jethmalaini talks about a serious practical difficulty in adopting a uniform code of marriage since most people do not take the recourse to Special Marriage Act, 1954 and prefer religiously formalized marriages it is

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difficult to think of a common code borrowing from all religious and customs . He thinks that the proponents of the code haven't given serious thought to what it would look like and how different religious customs associated with the solemnization of marriages would be accommodated

### 3) **Wouldn't significantly improve on the democratic ideal of India :**

In Nepal , the establishment of a uniform civil code did not improve upon national integration , Hence to consider the UCC as a go to solution for all problems would be incorrect A democracy it can be argued can survive even by respecting separate personal laws of different communities , It depends on the specific historical experience of the nation and the texture of society ,indeed many democratic nations of the world thrive today without the existence of a UCC

### 4) **Threat to minorities:**

The code is viewed by some as the threat to their religious identity since code will seek to merge all personal laws into one .Historical abuse of power by majority communities makes the minorities naturally wary of the further reforms thus convincing all to be comfortable and accepting of a Uniforms civil code will turn out to be a long and arduous price, one perhaps that will end in failure

### 5) **Civil Riots :**

Given the unfavourable response in the idea of the code it is very likely that protest would occur if the code is shoved down the throats of the Indian public .Given the strained ethnic and religious fabric of this country, It is better to leave things that may cause tensions be.

## **Approach of the Judiciary**

The Supreme Court for the first time, directed the Parliament to frame a UCC in the year 1985 in the case of ***Mohammad Ahmed Khan v. Shah Bano Begum*** , popularly known as the Shah Bano case, In this case, a penurious Muslim women claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq from him. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y. V. Chandrachud observed that,

"A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies" •

After this decision, nationwide discussions, meetings, and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way



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of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the UCC; not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

***In Mary Roy v. State of Kerala***, the question argued before the Supreme Court was that certain provisions of the Travancore Christian Succession Act, 1916, were unconstitutional under Art. 14. Under these provisions, on the death of an intestate, his widow was entitled to have only a life interest terminable at her death or remarriage and his daughter. It was also argued that the Travancore Act had been superseded by the Indian Succession Act, 1925. The Supreme Court avoided examining the question whether gender inequality in matters of succession and inheritance violated Art. 14, but, nevertheless, ruled that the Travancore Act had been superseded by the Indian Succession Act. Mary Roy has been characterized as a "momentous" decision in the direction of ensuring gender equality in the matter of succession.

Finally, the Supreme Court has issued a directive to the Union of India in **Sarla Mudgal v. Union of India** to "endeavour" • framing a Uniform Civil Code and report to it by August, 1996 the steps taken. The Supreme Court opined that: "Those who preferred to remain in India after the partition fully knew that the Indian leaders did not believe in two- nation or three "nation theory and that in the Indian Republic there was to be only one nation- and no community could claim to remain a separate entity on the basis of religion" • .

It is, however, to be noted what the Supreme Court expressed in Lily Thomas case . The Court said that the directives as detailed in Part IV of the Constitution are not enforceable in courts as they do not create any justifiable rights in favour of any person. The Supreme Court has no power to give directions for enforcement of the Directive Principles. Therefore to allay all apprehensions, it is reiterated that the Supreme Court had not issued any directions for the codification of a Common Civil Code.

The Supreme Court's latest reminder to the government of its Constitutional obligations to enact a UCC came in July 2003, when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The priest from Kerala, John Vallamatton filed a writ petition in the year 1997 stating the Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief justice of India V.N.Khare, Justice S.B. Sinha and Justice A.R. Lakshmanan struck down the Section declaring it to be unconstitutional. Chief justice Khare stated that,

"We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India it is a matter of great regrets that Article 44 of the Constitution has been given effect to.



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Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies"

Very recently, while hearing a case pertaining to whether a Christian has the right to bequeath property to a charity, the court regretted the fact that the state had not yet implemented a uniform civil code. This is not the first time that the apex court has expressed itself in favor of a uniform civil code or taken a dim view of the government's and legislature's inability to bring it into being. There have been other occasions — like during the **Shah Bano case** and later in the **Sarla Mudgal case** — where too the apex court has come out strongly in favor of the enactment of a uniform civil code. However, none of these comments are binding on the executive or the legislature and do not amount to orders. At best, they exert some moral pressure on the Indian state to move towards formulating a uniform civil code.

- Thus, as seen above, the apex court has on several instances directed the government of realize the Directive Principle enshrined in our Constitution and the urgency to do so can be inferred from the same.

## What Prevented the Uniform Civil Code

Since it involves a change in laws, an obvious prerequisite is sufficient support for the move within Parliament. The reason this has been difficult to achieve has been because most parties have held the view that the reform of laws pertaining to the personal domain is better done by pressure for such change from within communities rather than as an imposition from above. Further, for historical reasons, the demand for a uniform civil code has acquired communal overtones which have overshadowed the innate merits of the proposal.

To put the delay in perspective, however, it should be added that Article 44 of the Constitution is by no means the only directive principle to have not been implemented more than half a century after it was laid down. Most directive principles continue to remain pious doctrines rather than the law of the land.

"A uniform civil code is required for strengthening the Indian republic.....A consensus on the population policy is not possible due to lack of a uniform civil code resulting in imbalance in population.....Even the Supreme Court has favored such a code,"

Mehboob Ali Beg, Mohammad Islam, Naseeruddin Ahmed and others had, on November 23, 1949, contended in the Constituent Assembly quoting the Muslim Law that there could not be a uniform civil law.

"Ambedkar had then responded by saying that till 1937, the Muslims were governed by the Hindu Law and the Muslim Law is not beyond changes.

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"Ambedkar was in favor of exchange of population at the time of partition," he claimed. Katiyar quoted Sardar Patel's speech at Lucknow on January 18, 1948 asking Muslims to oppose whatever Pakistan was doing in Kashmir. "Patel, in that meeting attended by 56,000 Muslims, told them that they will be making his job difficult by not clearly stating their views," he said.

He quoted Patel as having said that "the Muslims should not complain that their integrity was considered doubtful unless they oppose the misdeeds of Pakistan."

Setting at rest concerns of a key Muslim body, the Law Commission of India has said there is no proposal before it for enacting a uniform code for the minority community. It said there was also no proposal before it for recommending to the Centre any measure which will pave the way for **"uniform civil code in the country."**

The All India Muslim Personal Law Board (AIMPLB) had said in a statement that any such proposal was "ill-motivated" to pave the way for "enactment of a uniform civil code of the Shariat laws". "The Commission was not considering any suggestion for the enactment of a uniform code of Muslim law," Law Commission member Tahir Mehmood said in a release. "There is sheer misinformation diametrically opposed to what I have actually suggested in some of my draft reports prepared for the Commissions," Mehmood said

**"There is no power with us to give such a direction,"** said a bench comprising Chief Justice KG Balakrishnan and Justice P Sathasivam. "It is the prerogative of Parliament to enact legislation. Direction cannot be given to it," said Justice Balakrishnan speaking for the bench. The CJI further observed, "This court has earlier also said that such a direction cannot be given to Parliament." The PIL had said that there was a need for a uniform civil code in the country. Petitioner Satya Pal appearing before the bench submitted that he was approaching the apex court as Parliament has not taken any steps in this direction for the past 55 years.

However, the bench said it will not give any direction to Parliament to make legislation as such powers were non-existent. When the petitioner said that the prime minister can be asked to take steps, the bench said this was also not possible. The petitioner later withdrew the plea just when the bench said it would dismiss it.

The provision for a uniform civil code has been provided in the Fourth Part of the Constitution which deals with the directive principles of state policy. According to Article 44 of the Constitution, "the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."

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## Secularism V/S Uniform Civil Code:

The spine of controversy revolving around UCC has been secularism and the freedom of religion enumerated in the Constitution of India. The Preamble of the Constitution states that India is a "**secular democratic republic**". This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A State is only concerned with the relation between man and man. It is not concerned with the relation of man with God. It does not mean allowing all religions to be practiced. It means that religion should not interfere with the mundane life of an individual.

There is a compelling need to study the personal religious laws from a human rights perspective. India has time and again pledged its commitment to upholding the normative regime of human rights. However, personal laws have often been kept beyond the reach of fundamental rights by shifting the burden of sanitizing the discrimination in personal laws to parliament.

In **S.R. Bommai v. Union of India**, as per Justice Jeevan Reddy, it was held that "religion is the matter of individual faith and cannot be mixed with secular activities, Secular activities can be regulated by the State by enacting a law"<sup>2</sup>.

In India, there exist a concept of "positive secularism" • as distinguished from doctrine of secularism accepted by America and some European states i.e. there is a wall of separation between religion and State. In India, positive secularism separates spiritualism with individual faith.

Article 25 and 26 guarantee right to freedom of religion, Article 25 guarantees to every person the freedom of conscience and the right to profess, practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part iii the Constitution, Article 25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms. The protection of Articles 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the integral parts of religion.

UCC is not opposed to secularism or will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion. The UCC will not and shall not result in interference of one's religious beliefs relating, mainly to

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maintenance, succession and inheritance. This means that under the UCC a Hindu will not be compelled to perform a nikah or a Muslim be forced to carry out saptapadi. But in matters of inheritance, right to property, maintenance and succession, there will be a common law. The whole debate can be summed up by the judgment given by Justice R.M. Sahai. He said:

"Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedom are not autonomy but oppression. Therefore, a unified code is imperative, both for protection of the oppressed and for promotion of national unity and solidarity." •

## Common Civil Code: Need or No Need?

The four cases of, Shah Bano Begum , Mary Roy , National Anthem and Sarla Mudgal , expose the domination of religion over a community be it Muslim, Syrian Christian . It is a tyranny of the minority over majority. The unity of India would be at stake if religion is allowed to tighten its grip over Indian society. We have been a Sovereign Socialist Secular Democratic Republic and the State has no religion; it favours none and is a foe to none. Humanism is our creed and a Common Law for all Indian is our ideal. We believe and subscribe to rule of law and it is only a Common Civil Code that would help establish the rule of law. It is the panacea for all our ills.

Dr.Ambedkar, the principal architect of the Indian Constitution was of the view that the provision relating to a uniform civil code should be included in the fundamental rights chapter and thus should be made justifiable. However, on the point whether the same should be the committee was divided. Rajkumari Amrit Kaur, M.R. Masani and Hansa Mehta wrote in a dissenting note "We are not satisfied with the acceptance of a Uniform Civil Code as an ultimate social objective. One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keeps the nation divided into water-right compartments in many aspects of life.... a uniform civil code should be guaranteed to the Indian people of five to ten years" • .

A Bill on voluntary Uniform Civil Code is almost ready for introduction in the session of Parliament. A voluntary uniform civil code is a contradiction in terms. The moment it is made optional it ceased to be uniform. Any attempt to make the code voluntary or optional must be opposed. Instead of framing such optional civil code, the government would do well to take immediate steps to codify each set of personal laws incorporating therein the requisite reforms making them uniformly applicable to all the members of the concerned community.

The Bill covers personal law relating to marriage, divorce, minority, maintenance, guardianship and succession. The bill would be applicable to those who opt for it. If the bill is passed it would repeal the Special Marriage Act, 1954. The law

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commission has also proposed consolidation of the Indian Divorce Act and the Indian Christian Marriage Act into one statute on the analogy of the Hindu Marriage Act and has also suggested certain reforms in law.

## Stand of political parties:

The Uniform civil code is opposed by parties like Indian national congress and the communist party of India Marxist. It is supported by the Bhartiya janata party, Rashtriya Swayamsevak Sangh and the Vishwa Hindu Parishad

## Conclusion:

The real social opposition each time has come from the Muslim community that sees any attempt to bring a UCC as an attack on its religion rights. The debate in India seems to have gone the way of the secularists in this respect and the recent rulings by the Supreme Court calling for a Uniform code has not witnessed the protests and alarms that took place following the Shah Bano case in 1985. It is quite possible that the Muslim community sees a uniform code as a “fait accompli” after 60 years of Indian Independence. The matter is far more political than legal. Every time the issue has come up there have been heated words from both sides of the debate

Not much progress has been made towards achieving the ideal of a uniform civil code which still remains a distant dream. The only tangible step taken in this direction has been the codification and secularization of Hindu law. The codification of Muslim law still remains a sensitive matter .The unique feature of Islam is that the historical foundations of Islamic religious law i.e. sharia, include a universal system of law and ethics and purport to regulate every aspect of public and private life. The power of sharia to regulate the behaviour of Muslim derives from its moral and religious authority as well as the formal enforcement of its legal norms.

## MUST READ LINKS:

***Muslim Codes:***

<http://www.csss-islam.com/Draft%20Code.pdf>

<http://www.vakilno1.com/bareacts/muslimperact/muslimpersonalact.html>

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## ***Hindu Codes:***

<https://www.repository.cam.ac.uk/handle.1810/225258>

[http://shodhganga.inflibnet.ac.in/bitstream/10603/7870/11/11\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/7870/11/11_chapter%204.pdf)

[http://bokakhat.gov.in/pdf/The\\_hindu\\_marriage\\_act.pdf](http://bokakhat.gov.in/pdf/The_hindu_marriage_act.pdf)

<http://www.gujhealth.gov.in/images/pdf/legis/hindu-succession-act-1956.pdf>

<http://www.childlineindia.org.in/CP-CR-Downloads/HAMA%201956.pdf>

## ***General:***

[http://en.wikipedia.org/wiki/Uniform\\_civil\\_code\\_of\\_India](http://en.wikipedia.org/wiki/Uniform_civil_code_of_India)

<http://articles.economictimes.indiatimes.com/keyword/uniform-civil-code>

<http://www.thehindu.com/news/national/ram-temple-uniform-civil-code-nonnegotiable-bjp/article5248859.ece>

<http://www.indiakanoon.org/doc/833730/>