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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“UNIFORM CIVIL CODE IN INDIA: PRESENT SCENARIO AND FUTURE PROSPECTS”**

AUTHORED BY: SHOBHIT SACHAN

Uniform Civil Code (Abbreviated as UCC) means creation of a single Code applicable to all religions whether it is Hindu, Muslim or Christians. Presently the situation is a bit different. There is a personal law for every particular religion. For example, there is Hindu Law applicable to Hindus, Shariat Law applicable to Muslims and so on. Recently Uttarakhand<sup>1</sup> has become the first state to come out with a legislation on the UCC and implement it. Other States like Himachal Pradesh and Karnataka have time and again stressed on the need to implement the Uniform Civil Code.

Article 44 of the Constitution of India deals with creation of a Uniform Civil Code for the Citizens. It states that the state shall provide for the creation of a Uniform Civil Code. The law relating to the Uniform Civil Code can be enacted by the Central as well as the State Governments. It is just a directive upon the governments and not mandatory. This provision comes within the purview of the directive principles of state policy which are non-enforceable.

The personal laws focus on the concepts of marriage, divorce, succession and adoption. Under the Hindu Laws, there are Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Adoptions and Maintenance Act, 1956; Hindu Minority and Guardianship Act, 1956. Under the Muslim Laws, there are Muslim Women (Protection of Women on divorce) Act, 1986; Dissolution of Muslim Marriages Act, 1939; The Shariat Act, 1937; The Muslim Women (Protection of Rights on Marriage) Act, 2019.

Apart from the above legislations, there is a common legislation for all the religions. That one is the Special Marriage Act. Two persons belonging to different religions can solemnize their marriage

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<sup>1</sup> Shyma Rauf, & Shyma Rauf. (2024, February 8). Uniform Civil Code: States that spoke about its implementation. Deccan Herald. <https://www.deccanherald.com/india/uniform-civil-code-states-that-spoke-about-its-implementation-2885852>



under the Special Marriage Act and get it registered through the Court. In common parlance, it is known as the Court Marriage.

Marriage among the Sikhs is solemnized through a ceremony called the Anand Karaj.<sup>2</sup> Such marriage is known as the Anand Marriage. The Hindu Laws are applicable to Sikhs. The Sikh Community come within the definition of the word 'Hindus' under the Hindu Laws.

The Supreme Court of India, the apex Court of the Country has through its landmark judgments stressed on the need of the implementation of the Uniform Civil Code in India. Of those, Mohd. Ahmad Khan v. Shah Bano Begum<sup>3</sup> needs special mention. In this landmark case, the Supreme Court held that Section 125 of the Code of Criminal Procedure, 1973 is applicable to all irrespective of their religions. In other words, the Court held that Section 125 is secular in its practical application. Section 125 of the Code of Criminal Procedure, 1973 provides for the order for maintenance for wives, children and parents. It is a kind of interim relief for the applicants. Any person fulfilling the essential requirements of Section 125 may file an application before the Judicial Magistrate of the First Class or the Metropolitan Magistrate for the grant of interim maintenance and the Magistrate is duty bound to pass an order within a period of 60 days from the day of application.

Another case is the Sarla Mudgal v. Union of India<sup>4</sup>. In this case, the Supreme Court held that the first marriage would have to be dissolved under the Hindu Marriage Act, 1955. The man's first marriage would therefore, still be valid and under Hindu Law, his second marriage, solemnized after his conversion, would be illegal and punishable under Section 494 of the Indian Penal Code, 1860. So the case laid down the principles against the practice of solemnizing second marriage by conversion to Islam, with first marriage not being dissolved.

There is no uniformity of practices that are being following among various religions. While the Hindu religion prohibits polygamy and permits monogamy, the Muslim Law allows a Muslim man to practice polygamy and have 4 wives. Further, there are practices of Halala and Triple Talaq. The Triple Talaq was declared unconstitutional by the Supreme Court in the landmark case of Shayara

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<sup>2</sup> Singh, B. D. (2019, August 20). An Anand Karaj – a Malaysian Story. SikhNet. <https://www.sikhnet.com/news/anand-karaj-malaysian-story>

<sup>3</sup> AIR 1985 SC 945

<sup>4</sup> AIR 1995 SC 1531



Bano v. Union of India. The Parliament has enacted a legislation making triple talaq an offence under the Muslim Women (Protection of Rights on Marriage) Act, 2019. This was done to prevent injustice being done to the Muslim women who were left helpless by its misuse.

Similarly, there is a practice of Halala that is followed among the Muslims. It is a practice in which a woman, after being divorced by triple talaq, marries another man, consummates the marriage, and gets divorced again in order to be able to remarry her former husband. Nikah being marriage and halala means to make something halal, or permissible.

This form of marriage is haram (forbidden) according to the hadith of Islamic Prophet Muhammad. Nikah Halala is practiced by a small minority of Muslims, mainly in countries that recognize the triple talaq.

The Uniform Civil Code (UCC) calls for the formulation of one law for India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption. The code comes under Article 44 of the Constitution, which lays down that the State shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

The issue has been at the centre of political narrative and debate for over a century and a priority agenda for the Bhartiya Janata Party (BJP) which has been pushing for the legislation in Parliament. The saffron party was the first to promise the implementation of UCC if it comes to power and the issue was part of its 2019 Lok Sabha election manifesto.

The objective of Article 44 of the Directive Principles in the Indian Constitution was to address the discrimination against vulnerable groups and harmonise diverse cultural groups across the country. Dr. B. R. Ambedkar, while formulating the Constitution had said that a UCC is desirable but for the moment it should remain voluntary, and thus the Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.

Ambedkar in his speech in the Constituent Assembly had said, “No one need be apprehensive that if

the State has the power, the State will immediately proceed to execute that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so.”

The origin of the UCC dates back to colonial India when the British government submitted its report in 1835 stressing the need for uniformity in the codification of Indian law relating to crimes, evidence, and contracts, specifically recommending that personal laws of Hindus and Muslims be kept outside such codification.

Increase in legislations dealing with personal issues in the far end of the British rule forced the government to form the B N Rau Committee to codify Hindu law in 1941. The task of the Hindu Law Committee was to examine the question of the necessity of common Hindu laws. The committee, in accordance with scriptures, recommended a codified Hindu law, which would give equal rights to women. The 1937 Act was reviewed and the committee recommended a civil code of marriage and succession for Hindus.

The draft of the Rau Committee report was submitted to a select committee chaired by B R Ambedkar that came up for discussion in 1951 after the adoption of the Constitution. While discussions continued, the Hindu Code Bill lapsed and was resubmitted in 1952. The bill was then adopted in 1956 as the Hindu Succession Act to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act reformed the Hindu personal law and gave women greater property rights, and ownership. It gave women property rights in their estate.

The general rules of succession under the Act of 1956 for a male who dies intestate is that heirs in Class I succeed in preference to heirs in other classes. An amendment to the Act in the year 2005<sup>5</sup> added more descendants elevating females to Class I heirs. The daughter is allotted the same share as is allotted to a son.

While the criminal laws in India are uniform and applicable equally on all, no matter what their religious beliefs are, the civil laws are influenced by faith. Swayed by religious texts, the personal laws which come into effect in civil cases have always been implemented according to constitutional

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<sup>5</sup> FAOLEX. (n.d.). <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC211577/>

norms.

Laws that apply to a certain group of people based on their religion, caste, faith, and belief made after due consideration of customs and religious texts. The personal laws of Hindus and Muslims find their source and authority in their religious ancient texts.

In Hinduism, personal laws are applicable to legal issues related to inheritance, succession, marriage, adoption, co-parenting, obligations of sons to pay their father's debts (now abolished), the partition of family property, maintenance, guardianship, and charitable donations. In Islam, personal laws apply to matters relating to inheritance, wills, succession, legacies, marriage, wakfs, dower, guardianship, divorce, gifts, and pre-emption taking roots from Quran.

The UCC aims to provide protection to vulnerable sections as envisaged by Ambedkar including women and religious minorities, while also promoting nationalistic fervor through unity. When enacted the code will work to simplify laws that are segregated at present on the basis of religious beliefs like the Hindu code bill, Shariat law, and others. The code will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all. The same civil law will then be applicable to all citizens irrespective of their faith.

The Uttarakhand UCC Act is laid out in four parts. The first refers to law relating to marriage and divorce. The second relates to succession, divided into intestate and testamentary succession. Part 3 deals with live-in relationships, and Part 4 deals with repeals. But adoption, maintenance and guardianship have not been specifically dealt with. Of course, there are references to maintenance during matrimonial proceedings, but as a standalone right, the Act does not have any special provisions. The exclusion is perhaps because there is already a secular law applicable through the Code of Criminal Procedure that allows for maintenance to wives, children and parents, who are unable to maintain themselves. Similarly, there are no provisions regarding adoption, although it is a matter of personal law. This could be because Section 41 of the Juvenile Justice (Care and Protection of Children) Act makes provision for adoption of children and being a secular law, it was invoked by the Madras High Court in R.R. George Christopher, In Re. through an innovative interpretation by Justice K. Chandru, who ruled that even the Canon Law made possible the adoption of children for Christians and Section 41, the Judge said, was intended to promote the welfare of children who were



abandoned or who had been left uncared for and therefore this provision could be treated as available for all sections of people, including Christians. Taking cue from this judgment, though not expressly so stated, the Supreme Court in *Shabnam Hashmi v. Union of India* said that even Muslims could take a child in adoption. As regards guardianship, again, there are no specific provisions, except under matrimonial jurisdiction in marriage and divorce proceedings, but Guardian and Wards Act makes possible the appointment of a guardian for a child less than 18 years of age.

In a meaningless exercise, the new law makes compulsory the registration of not just marriage but also divorce. Divorces, thus are to be legalized not only through a Court decree but also to be simultaneously registered. The Act sets out a timeframe to be applied by parties where a decree of divorce already exists and recommends penal provisions for failure to do so. Registration of any document in India is never easy. The department is predominantly corrupt and the process cumbersome. Registration of marriage makes sense, but registration of divorce does not, because a court decree is a public document and accessible to all.

In the area of marriage and divorce, there is one notable omission. The progressive changes that have taken place globally to provide for matrimonial settlements by dividing equally the resources of the spouses held either jointly after marriage or purchased and held separately after marriage are not addressed by this law. Many courts that pass divorce decrees on contest do not make specific provisions for permanent alimony. These must be brought independently by separate suits or they remain contended, with whatever parsimonious disbursements that come about through court interventions during the divorce proceedings.

On custody issues, too, the new Act carries the same provisions as the Hindu Marriage Act. The novel interpretation brought through *Githa Hariharan v. Reserve Bank of India* of Section 6 of the Minority and Guardianship Act that a mother shall not be understood as falling in inferior status as a natural guardian after the death of the father for the child but must be understood as entitled to the guardianship 'in the absence' of the father have found a legislative induction through this law.

As regards succession, the provisions relating to intestate succession are in some ways novel in the sense that they make no distinction between succession to males and females. This anyway does not exist in the Shariat, which is already progressive, being the first system of law in the world to

recognize the absolute interest to property for women since the 8<sup>th</sup> century. The Koranic heirs or the primary heirs to a deceased Muslim included both father and mother to 1/6<sup>th</sup> share each. The Act recognizes both parents as primary heirs along with children and spouse. The Hindu Succession Act excludes the father as heir and makes the mother a class I heir only to a male Hindu and not to a female. The HSA is unfair to a woman in the sense that her mother and even father are excluded from heirship and, in the absence of husband and children, makes the parents-in-law as the husband's heirs. The Indian Succession Act, applicable to Christians and Parsis, does not make provision for parents as heirs in the presence of lineal descendants. The novelty in the Uttarakhand UCC is that if either parent dies, the surviving spouse will inherit the undivided half and not the others.

The Uttarakhand UCC Act applies to all Uttarakhand inhabitants except Scheduled Tribes, and establishes a common law for situations like marriage, divorce, inheritance, and live-in relationships. The Uttarakhand UCC Act has seven schedules and 392 parts. Live-in relationships must be registered according to strict regulations.

#### **Pros and Cons of the Uniform Civil Code<sup>6</sup>**

<b>PROS</b>	<b>CONS</b>
To grant all citizens equal status.	Practical difficulties due to diversity in India.
In order to advance gender parity.	Belief that UCC infringes on one's right to freedom of religion.
In order to fulfill the hopes of the younger generation.	State intervention in private affairs.
In order to facilitate national integration.	Delicate and difficult assignment.
To avoid the controversial topic of changing the current personal laws.	This change is not yet appropriate at this time.

The debate for a Uniform Civil Code, with its diverse implications and concerning secularism in the country, is one of the most controversial issues in twenty-first century Indian politics.<sup>6</sup> The major problems for implementing it are the country's diversity and religious laws, which not only differ

<sup>6</sup> Will a Uniform Civil Code be divisive? (2024, February 6). India Today. <https://www.indiatoday.in/india-today-insight/story/will-a-uniform-civil-code-be-divisive-2498416-2024-02-06>

sect-wise, but also by community, caste and religion. Women's rights groups have said that this issue is only based on their rights and security, irrespective of its politicization.

The passing of the new Uttarakhand UCC Act is widely regarded as the BJP fulfilling a major promise it made to constituents in its 2022 election manifesto as part of a longstanding campaign that dates back to the 1980s. The implementation of a Uniform Civil Code has featured heavily in the BJP's election manifestos over the years, whose conservative Hindu-nationalist ideals stand in stark contrast to the secularist ideals propelled by the Indian National Congress during India's independence. The BJP saw it as an attempt to appease India's Muslims, who form India's largest minority group with nearly 200 million people.

Critics accuse the Uttarakhand government of using the new law to target Muslims who follow customary rules on polygamy and divorce under Sharia law, which is now completely banned. The new law has also raised eyebrows for imposing on personal relationships conducted in the private sphere. Notably, it instructs unwed couples living together to register their relationship with the government and submit "a statement of live-in relationship" within one month from the "date of entering into the relationship." If the couple fails to do so, they could face up to three months in jail.

Recently, the Supreme Court in a case concerning the question of whether succession and inheritance of a Goan domicile is governed by the Portuguese Civil Code, 1867<sup>7</sup> or the Indian Succession Act of 1925, held that:

- The Constitution in Article 44 required the State to strive to secure for its citizens a Uniform Civil code (UCC) throughout India, but till date, no action has been taken in this regard.
- The Hindu personal laws were codified in the year 1956. However, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country.
- Despite exhortations of this Court in the case of Shah Bano in 1985, the government has done nothing to bring the Uniform Civil Code.

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<sup>7</sup> Noronha, E. (2023, August 4). Portuguese Civil Code: The silent law that unites Goa, Daman and Diu. Frontline. <https://frontline.thehindu.com/the-nation/portuguese-civil-code-the-silent-law-that-unites-go-a-daman-and-diu/article67093492.ece>



- The Supreme Court hailed the State of Goa as a “shining example” where “uniform civil code” is applicable to all, regardless of religion except while protecting certain limited rights.
- Goa has a common civil code called Portuguese Civil Code 1867, whereby:
- A Muslim man whose marriage is registered in the State cannot practice polygamy.
- A married couple share property equally, pre-nuptial agreements are the order of the day and assets are divided equally between the man and woman on divorce.

The social transformation from diverse civil code to uniformity shall be gradual and cannot happen in a day. Therefore, the government must adopt a “Piecemeal” approach, Government could bring separate aspects such as marriage, adoption, succession and maintenance into uniform civil code in stages. Government must emulate Goan practice of a common civil code, which has been the law since 1867, when the state was under the Portuguese colonial rule. Moreover, when constitution espouses the cause of Uniform Civil Code in its Article 44, it should not be misconstrued to be a “common law”. The word Uniform here means that all communities must be governed by uniform principles of gender justice and human justice. It will mean modernization and humanization of each personal law. It would mean not a common law but different personal law based on principles of equality, liberty and justice. Government has to take steps towards increasing the awareness among the public, especially minorities, about the importance of having a UCC.

The UCC must carve a balance between the protection of fundamental rights<sup>8</sup> and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias regards to religious and political considerations.

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<sup>8</sup> Centre, J. (2023, May 26). Fundamental Rights vs Uniform Civil Code. Juris Centre. <https://juriscentre.com/2023/05/26/fundamental-rights-vs-uniform-civil-code/>