

## UNIFORM CIVIL CODE: ITS TRANSPARENCY IN A MULTI-RELIGIOUS COUNTRY LIKE INDIA

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### ABSTRACT

*The Indian constitution recognises and promotes the country's multi-religious nature. Personal laws and religious beliefs are closely intertwined with one another under the international legal system, and the highest court in the land upholds the rights of all persons, regardless of their religious affiliation.*

*The Directive principles of the state policy, under the heading Part IV: The Article 44 of the Indian Constitution, addresses the issue of the Uniform Civil Code. The article was inserted by Dr. B R Ambedkar with the intention to address the issue of discrimination against vulnerable individuals as well as to foster harmony among varied cultural groups. It was considered by the framers of the Law of Land at the time of its introduction 75 years ago that it was inserted in the Constitution as a feature that would be accomplished when the nation was ready to embrace it and societal acceptance to the UCC could be made.*

*Civil laws in India are affected by faith, although criminal laws are universally applicable regardless of one's religious views. Despite the influence of religious scriptures, personal laws enacted in civil disputes are always carried out in accordance with constitutional requirements. When crafting rules for a certain group of people, customs and religious texts are factored into the equation based on their religion, caste, faith, and belief. Hindus and Muslims get their personal norms from their sacred scriptures, which are regarded authoritative by both faiths. Laws relating to inheritance, succession, marriage, adoption, and co-parenting are all covered by Hindu personal laws. A father's obligations are passed on to his sons, who are also held accountable for paying them, and property is distributed according to Hindu concepts of maintenance, guardianship and charitable giving. Pre-nuptial agreements and wills, as well as guardianship, divorce, and pre-emption, are all covered under*

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*Islamic personal law as provided in the Quran. The present articles deal with the concept of transparency in Uniform Civil Code mechanisation by considering issues that rose till the date like divorce mechanisation, ban on Beef, Right to Hijab and succession laws under this concept in a broader prospect. It is believed by the researcher that UCC is a dire necessity for protection of the women's rights, foster equality and to bring harmony among the people of the country.*

### **1. INTRODUCTION**

India is a vast country with multitude of languages, variety of traditions and sects and subjects, number of ethnic groups and many great religions. The constitution of India protects the fundamental rights of every citizen to speak, write, and practise their native language and culture, as well as the right to preserve them<sup>2</sup> and it also have a primary obligation to promote harmonious relationship and a spirit of togetherness among all the citizens of India, embodying religious, linguistic, regional, and sectional differences<sup>3</sup>. The Constitution also protects the right to conscientious objection<sup>4</sup>. The following requirements must be met for this privilege to apply: (i) public order, health, moral standards, and other requirements of provisions of the Constitution; and (ii) any law legislating or limiting any financial, economic, political, or other secular acts that may be affiliated with religious practise, as well as any law providing for welfare programs and reform.<sup>5</sup>

In today's world, if anyone speaks about the need uniform civil code for a diversified country like India, they are being branded as communalist. This type of impression is always framed by the minor community, that the major community are imposing their laws on them. Theoretically speaking, such allegations doesn't hold any water. What exactly the civil code does is that it maintains unity in diversity. The main aim of UCC is to create a set of rules where it could hold up the whole nation under one law irrespective of caste, creed, religion and race. There is never a time where Hindu law governing all the Indians including Muslim's, Christian's, Parsees etc. On the other hand, when the Hindu code was made into law in 1956, old Shastric law was not even taken into account at all. There were many changes made to the new act, in the old Hindu law marriage was a holy thing, but under the new code, it is

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<sup>2</sup> INDIA CONST. art. 29.

<sup>3</sup> INDIA CONST. art. 51-A (e).

<sup>4</sup> INDIA CONST. art. 25.

<sup>5</sup> Fraizan Mustafa, *Why Legal Pluralism Matters*, The Indian Express, November 16, 2015.

considered as a contract.<sup>6</sup> The framers inculcated the concept of equality and liberty as well in the concept of marriage in order to create a uniformness among all the religions

## PERSONAL LAWS AND UNIFORM CIVIL CODE

Criminal Law in India is same for everyone, but for marriage, divorce and inheritance personal laws comes into picture. These personal laws differ from religion to religion. If we take a glimpse on personal laws during the colonial period, from 1775-78 Hindu and Muslim laws are compiled together for the ease of judgements to the European judgements. In the year of 1835, the British government brought the concept of codification of Laws, in general terms codification of laws means arrangement of laws systematically. The British government had symmetrically arranged the criminal laws and evidential systems but have excluded Hindu and Muslim personal laws as it may lead to outrage the personal beliefs of the religions.<sup>7</sup>

In the year 1941, B.N. Rau committee<sup>8</sup> was set up to codify the personal laws, where Hindu laws are mostly codified. This process went on even after the independence till 1950 but Hindu laws were codified, and Muslim laws were left without codification. Having different laws for different religions the concept of UCC had remained emancipatory for several years. community specific laws are mostly seen as regressive as laws.

The situation is not same now, the Supreme court has from time to time provided that personal laws can be modernized. In order to live in this 21<sup>st</sup> century it is necessary that laws and regulations are not regressive in nature. If regressive social or political landscape is created, it will have an impact on the development of the economy. It's not easy to bring a social change in a country like India, which aspires to become on the superpower among the world nations. If the nation aspires for development, then 50% of the population i.e., women cannot live under suppression and patriarchy, socially acceptable policies need to be in line of equality and gender justice

India constitution is very clear at this point that, holding the principles of Humanity, democracy and secularism the Constitution doesn't favour any religion or caste. On some occasions there was a contradiction between constitutional provisions and emerged social

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<sup>6</sup> Gauri Kalkurni, *Uniform civil code*, Legal Services India (April. 12, 2022, 22:22 PM), <http://www.legalserviceindia.com/articles/ucc.html>.

<sup>7</sup> Gouri Kulkarni, Development of personal laws, Legal Services India (April. 12, 2022, 22:22 PM), <https://www.legalserviceindia.com/legal/article-5412-development-of-personal-laws-in-colonial-india.html>.

<sup>8</sup> Dube, D., Rape laws in India (LexisNexis Butterworths India 2008).

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practices, where in the judiciary had to step in interpret the laws. One such case was Mohd.Ahmned Khan v. Shah Bano begum<sup>9</sup>. The case is further explained below

### **SHAH BANO BEGUM CASE**

The Supreme Court created a precedent for Muslim women's rights in 1985, while the Congress Party was in power. Many Muslim women look up to Shah Bano, who was born in Indore, Madhya Pradesh. The case started in April 1978, where in Shah Bano Begum, had the petition was lodged with a local court under Sec.125 of Cr.p.c<sup>10</sup> seeking maintenance from her husband Mohd. Ahmed Khan. Ahmed Khan (the appealing party) a well-known lawyer in Indore, Madhya Pradesh and Shah Bano were legally wedded in the year 1932. The couple had three daughters and two sons during their wedlock. Ahmed Khan married Halema Begum, his first cousin, in 1946, and the two women lived together for many years. But in 1975, Khan disowned her and evicted her and their children from their marital house.

Section 125 of the Cr.p.c.<sup>11</sup> casts an obligation upon the husband to give alimony to his estranged wife if she is unable to sustain herself.

An appeal was filed by her in the presence of the Judicial Magistrate of Indore in 1978, claiming that he had failed to supply her with the monthly support of Rs. 200, which he had agreed to. In order to cover her living expenses, she asked for Rs. 500 every month. He then used this as an excuse to stop paying maintenance on the basis of an irreversible triple talaq on November 6th, 1978.

Muslim personal laws mandates husbands to give alimony to estranged wife during the Iddat period only. Iddat period refers to a period of three months post Talaq, but in case of pregnancy it extends till the childbirth.

The All-India Muslim Personal Law Board (AIMPLB) agreed with Ahmed khan that judicial intervention would be a violation of Muslim law. Muslim law dictates that shariyat courts rule on situations of divorce, support, and family difficulties for Muslims, according to shariyat requirements.

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<sup>9</sup> Mohd. Ahmed Khan v. Shah Bano Begum and Ors., AIR 1945 SC 1985.

<sup>10</sup> Criminal Procedure Code, 1973 (India).

<sup>11</sup> Criminal Procedure Code, 1973, §125, Acts of Parliament, 1973 (India).

But at the other hand, was successful in her lawsuit in 1979, when a local judge mandated her spouse to pay Rs.25 each month in restitution. In a further appeal to the Madhya Pradesh High Court, the alimony amount was increased to Rs. 179.80.

The case was eventually appealed to the Supreme Court, following a protracted legal struggle that lasted from 1980 to 1985. Throughout the dispute, the Supreme Court recognised the need of addressing the inconsistencies in all personal laws. On April 23, 1985, the Supreme Court confirmed the MP High Court's verdict and raised the alimony amount substantially.

No one is immune from the Code of Criminal Procedure's requirements, and the Supreme Court has declared that Section 125(3) applies equally to all people, regardless of their faith. Additionally, the court held that where Section 125 and personal law are in conflict, Section 125 takes priority over the personal law. Section 125 of the Islamic Personal Law which explains that "*a woman is entitled to maintenance only till the end of the Iddat period*" are in accord with a Muslim husband's duty to assist a divorced wife who is unable to provide for herself.

#### **Aftermath of the decision:**

As a result of the ruling, Article 44 of the Constitution's Directive Principles states that a Uniform Civil Code for the whole population of India is necessary. In his judgement, C.J. Chandrachud emphasised the importance of implementing the Act. In order to improve national unity, he said, a single civil code will remove the unequal devotion to laws with competing views.

Many Muslims believed that Islamic law had been breached by the Shah Bano ruling. In any case, the impartial verdict of the Supreme Court restored popular confidence in the legal system. As a result, in 1986, the Indian Parliament passed the Muslim Women (Protection of Rights on Divorce) Act, allowing Muslim women to receive a huge lump sum payment from their husbands instead of a monthly payment of Rs. 500(a restriction that has subsequently been eliminated).<sup>12</sup>

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<sup>12</sup> Section 2 of the Shariat Act, XXVI of 1937, provides the rule of decision in matters relating, inter alia, to maintenance "shall be the Muslim Personal Law".

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### **TRIPLE TALAQ CASE:**

#### **Shayara Bano v. Union of India**

In the context of halal marriage, the term "Talaq-ul-biddat" refers to an immediate talaq that is also known as Triple Talaq. Muslims can divorce their wives by using the word "Talaq" three times in any form, according to Muslim Law, and this was regarded lawful under Muslim Law.

With the use of the triple talaq technique, Shayara Bano and her ex-husband divorced after 15 years of marriage in 2016. As a consequence, she took her case to the Supreme Court, arguing that this form of the talaq is unconstitutional. "It violates various fundamental rights granted by the Indian constitution, including articles 14, 15, 21, and 25, as well as negatively impacting the rights of Muslim women in other ways, she said.

#### **Issues involved in the case:**

The main issues which are involved in the present case are:

1. Does triple talaq fall under the purview of Islam's constitution?
2. whether there is a requirement for Muslims to follow this religious observance?

#### **Judgement of the case:**

Triple talaq is unlawful and a violation of Muslim women's fundamental rights, according to a 3:2 court decision.

#### **J. Abdul Nazeer and Chief Justice Jagdish Khehar's Opinion**

- The practise of triple talaq is a component of Muslim personal law, and as such, it is protected by Article 25 of the Indian constitution, which protects religious freedom for all citizens. Supreme court should not interfere into personal laws of any religion

**Whether the practice is lawful or not, it cannot be decided by judiciary. It can be done by parliament and only parliament by power to make law on this particular point**

All legislation whether passed before the start of constitution or after the constitution must be compatible with the basic rights granted in the constitution of India. Article 13 does not interfere with the personal laws of any religion and no personal law may be challenged under this article, although the practise of triple talaq has been challenged under India's constitution's articles 14, 15, 21, and 25.

As a result, the highest court has jurisdiction over the case. Talaq is an arbitrary practise that undermines women's fundamental rights. As a result, pursuant to article 14, this court has the authority to rule this conduct unlawful based on its arbitrariness. The practise of triple talaq is prohibited by Islam. The practise was eventually included into the Muslim religion. Initially, the Muslim faith recognised talaq-ul-sunnat. Instant talaq emerged in Islam as a result of advancements in Muslim faith. As a result, it is not an integral part of Islam's religious practise. Under Muslim law, all other forms of divorce give time for reconciliation and in this time period, parties may solve their disputes, clarify all their doubts and can again re-unite. But this practice does not give time for reconciliation. According to the majority of the judges, this practise is illegal since it violates the basic human rights of Muslim women and does not constitute an intrinsic religious practise of Islam, and so violates the law.

## BAN ON HIJAB

As soon as Nehru became India's first prime minister, there was renewed hope that the country's economy and social reforms could be modernised and implemented, which were previously impossible under the British Raj. Colonialism and forced servitude shackled a civilization that had been subjected to centuries of humiliation by the Mughal invasion and British rule. It was a complete shock to everyone that the Indian National Congress (INC) government prioritised codifying Hindu practises in an effort to civilise the Hindu population.<sup>13</sup>

It would be unfair to heap unrelenting scorn on the Nehru administration simply because we were living in the past. Why? As a possible reason, perhaps because India was still healing from its painful Partition. The pluralistic vision of our freedom fighters for the newly born republic made secularism a necessity. That resistance came from an unexpected source: a public debate by Rajendra Prasad against Nehru's attempt to codify Hindu practises in the press. A central tenet of Nehru's philosophy was the idea that progress must be made without jeopardising the values and traditions of a society.

These beliefs must be held accountable, even if it has taken us so long. According to Nehru, the greatest way to protect the interests and well-being of minorities was to create codified

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<sup>13</sup> Gauri Kalkurni, Uniform civil code, Legal Services India (April. 12, 2022, 22:22 PM), <http://www.legalserviceindia.com/articles/ucc.htm>.

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Hindu laws that protect Muslims and Christians against long-term majoritarianism<sup>14</sup>. Section IV of the Constitution, Article 44, relates to the state's duty to adopt the Uniform Civil Code (UCC).

Despite the fact that the Portuguese Civil Code of 1867 was accepted in Goa when it became a state of India, the law continues to bind all Goans to the same set of civil standards. The state of Goa, which has a higher minority population than the national average, has been able to function efficiently because to the implementation of a unified civil code. It has its flaws, but it has set an example for the rest of the country. The unsurprising and rapid growth across the country shows that it was a political (secularist) ploy to entice and enrage Hindus. In all of these disgusting Hindu-baiting capers, which have a history dating back at least half a century, there are always thousands of willing recruits. This is extremely unsettling.

This is the crux of the debate regarding the Udupi hijab's controversy: This is a case of “venal politics rather than a discussion, with secularists and fundamentalists alike utilising Muslim female students as human shields. Because of this, the topic of the Uniform Civil Code is brought up in the aftermath of every incident like this, which is a good thing. As if that wasn't bad enough, the Supreme Court has been petitioned to recognise the headscarf as a fundamental right for Muslim women”

A fitting conclusion to what began in Udupi and has now spread across India as a collective symphony. Somehow proving the petition's authenticity was the orchestration to which large portions of enslaved academics, intellectuals, and media gleefully danced. This is similar to stating that misbehaviour is itself proof of a not-guilty finding. We don't need to delve into all the other important issues that arise from the Supreme Court's decision to accept a petition of this sort.

Over 150 human rights advocates from the Indian Muslims for Secular Democracy (IMSD) have claimed that the veil is not necessary in Islam, while discussing the hijab topic. Numerous contemporary Islamic academics, both men and women, assert unequivocally that hijab has no link to the Quran or the Prophet's teachings. To put it another way, the organisation stated that Islam does not require women to wear veils. According to IMSD, college campuses are progressively becoming communal-polarized. The petitioners in this case, who have

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<sup>14</sup>Sanya Dhingra, Hijab bans in India: Where communalism and patriarchy intersect, Aljazeera, (April. 12, 2022, 22:22 PM) <https://www.aljazeera.com/opinions/2022/3/24/on-the-hindutva-urge-to-save-muslim-women-from-muslim-men>.

impressionable minds, might be protected by UCC from organisations looking to exploit their beliefs. The SDPI's student branch, the Campus Front of India (CFI), has been connected to the events of the hijab debate, but petitioners deny any involvement. In support of the petitioners, the Popular Front of India (PFI), a radical hate organisation classified by the National Investigation Agency and outlawed by numerous states, conducted a unity march on February 17 in Kota (Rajasthan). Extremism is a well-known facet of the organisation.<sup>15</sup>

In recent days, Islamic experts have also suggested that adhering to and advocating for the hijab is the consequence of years of conditioning in the Muslim community. An exiled Bangladeshi novelist claims that “Hijabs, Niqabs and Burqas all attempt to commodify women as sex objects”, Taslima Nasreen. Even if we put away worries about national security, remarks made by our leaders almost show the oppressive motivation. Hijab is an Arabic word that refers to a head covering, or parda. It is used to hide the attractiveness of young females when they reach puberty. Today, the rape rate in our country is at an all-time high. Do you know why this happened? According to Karnataka Congress MLA Zameer Ahmed, the reason is because many women do not wear the hijab.

### **SATPRAKASH MEENA VS. ALKA MEENA**

A recent ruling by the Delhi High Court said that contemporary Indian society is becoming more homogenous, and that young people from various tribal groups, religious backgrounds, and castes should not be forced to cope with issues that come as a consequence of conflicts between personal laws.

#### **Satprakash Meena vs. Alka Meena**<sup>16</sup>

As a result of a family court judgement that found the Hindu Marriage Act (HMA) did not apply to members of the Meena tribe, these observations were made. He contended that the HMA was important since the ceremony was done in line with Hindu traditions and customs. A court ruling that Meena is not under the authority of the HMA would put the lives of women in danger, as bigamy is recognised and might lead to the desertion of women.

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<sup>15</sup> Yogesh Baweja, Communal Harmony (April. 12, 2022, 22:22 PM) <http://pib.nic.in>.

<sup>16</sup> Satprakash meena v. Alka Meena, 2021 SCC Online Del 3645.

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It was argued that a number of court rulings plainly established that even if Hindu rituals are observed, the HMA does not automatically apply to members of a notified scheduled Tribe, as stated by the respondent wife's submission.

The Delhi High Court, after considering the facts and precedents, decided that the provisions of the Hindu Marriage Act (HMA) should be used in divorce cases when valid tribal traditions have not been proved or the parties acknowledge to following Hindu customs and rituals. As a result, the appeal was permitted, and the trial court was instructed to continue the divorce procedures.

The Supreme Court cited a 1985 ruling in *Mohd. Ahmned Khan v. Shah Bano begum* when discussing the conflict between personal law and national integration, which stated that a common civil code will help the situation of national integration by removing widely divergent loyalties to laws which have conflicting ideologies. Surely the time has now come for a comprehensive reform of the law of marriage and develop a unified civil code applied to all the people regardless of religion or caste.

When the Supreme Court handed down its decision in *Ms. Jordan Diengdeh*, it directed the Ministry of Law to initiate the process of drafting a Uniform Civil Code. The High Court said that despite three decades, no substantial steps in this regard had been taken. As a result, the court directed the Ministry of Justice to take appropriate action in light of the recent judgement. Goa is the only state in India with a UCC, which implies that all inhabitants, regardless of faith, are subject to the same personal laws.

## **CONTEMPRORY DEVELOPMENTS**

Law commission number 21 is not required nor desired. The existence of diversity does not indicate prejudice but is a sign of a strong democracy in most nations today, and this trend is expected to continue.

- “Rise of the Right” - BJP's slogan

The problem is seen by Hindu nationalists in the perspective of the Hindu code, which they claim is secular and equal to both sexes. It was the BJP, not any other political party, that originally promised to put UCC into effect if voted to power.

- “women's rights: gender equality”

In a country like India, where women's rights are constantly debated and frequently rejected, UCC's role in promoting gender equality cannot be overstated. It was determined on July 6, 2015, that a Christian unwed mother could not be granted guardianship of her kid without her husband's permission in *ABC Vs The State* (NCT DELHI).

- “It is necessary to emphasise that while our directive principles envision the existence of an uniform civil code, this remains an unresolved constitutional expectation,” the court observed in ruling in the lady's favour. Recently, the Supreme Court said in civil appeal 7378 of 2010 (*Jose Paul Coutinho against Maria LuziaS*), which was given on September 13, 2019:
- “While the constitution's founders planned and expected the state attempting to acquire a uniform civil code for the people throughout India's territories in article 44 of Part IV dealing with the Directive Principles of State Policy, no action has been taken in this regard to date.”

## **CONCLUSION**

As a first step, leaders of progressive, patriotic, and forward-looking minority must join together to forge a strong national consensus on the United Nations Convention on the Rights of the Child. How can India's laws from the 1930s be enforced in a world where Islamic countries such as Pakistan and Bangladesh have modernised their own personal law systems? This must be made very apparent.

The present Indian administration must explain to the country's inhabitants why the United Nations Convention on the Rights of the Child is so important in guaranteeing women's rights and fostering equality before the law. Individuals' fundamental rights must be protected while at the same time their particular religious' convictions must be respected, and the UCC must find a way to strike a balance between the two.

A fair and acceptable code of behaviour should be able to be followed by the ordinary individual, no matter what their religious or political convictions may be. ‘With the 'Hijab' debate poisoning the brains of young people, the Uniform Civil Code is a need. Ambedkar's Counsel - a route of compromise? The future parliament may include a clause requiring the

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Code to apply only to those who express their willingness to be bound by it, allowing the Code's application to be entirely voluntary in the first stage. This is entirely possible.

It has a better chance of passing now, given to the repeated exhortations of the judiciary, the strength of the women's movement, and the presence of a majority administration. The All-India Muslim Personal Law Board (AIMPLB), which has stated that it will oppose UCC adoption, has stated that it will oppose UCC adoption. However, despite the continued protests of clerics, the latest Triple Talaq Act was backed by a large majority of the population, including Muslim women. There can be no doubt that when citizens' rights are of paramount significance and the recognised position is to move toward a society that respects the rights regardless of caste, religious affiliation, geographic location, or gender, the need to legislate on a UCC cannot be contested