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## Uniform Civil Code: Need of Nation

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### ABSTRACT

*We Indian have believed in the concept of VasudhaivaKutumbkam which states that the world is one single family. It is but natural that we evolve certain minimum common standards of life if we are on the right path of civilization. This call for a common civil code, an issue that is the bread and butter of many political parties of India. It is more or less certain that once an issue gets politicized, a solution to the problem will hardly see the light of the day. Article 44 of the constitution of India which is a part of the Directive Principles of state policy asks the state to endeavor to provide a uniform civil code for its citizens. The fact that the makers of the constitution added such a provision in the Directive Principles and not in the Fundamental Rights itself is a testimony to the complexity of the issue.*

**Keywords:** *Article 44, Shah Bano's case, Common civil code, Directive Principles*

### INTRODUCTION

Uniform civil code is the constitutional mandate to replace the personal laws based on the scriptures and customs of each major religious community in India with a common set governing every citizen. Article 44 of the Directive Principles sets its implementation as duty of the State. Apart from being an important issue regarding secularism in India, it became one of the most controversial topics in contemporary politics during the Shah Bano case in 1985. The debate then focused on the Muslim Personal Law, which is partially based on the Sharia law and remains unreformed since 1937, permitting unilateral divorce, polygamy in the country and putting it among the nations legally applying the Sharia law. The Bano case made it a politicized public issue focused on identity politics—by means of attacking specific religious minorities versus protecting its cultural identity. In contemporary politics, the Bharatiya Janta Party and the Left support it while the Congress Party and All India Muslim Personal Law Board oppose it.

### BACKGROUND

Personal laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance. Goa has a common family law, thus being the only Indian state to have a uniform civil code. The Special Marriage Act, 1954 permits any citizen to have a civil marriage outside the realm of any specific religious personal law.

Personal laws were first framed during the British Raj, mainly for Hindu and Muslim citizens. The British feared opposition from community leaders and refrained from further interfering within this domestic sphere. The demand for a uniform civil code was first put forward by women activists in the beginning of the twentieth century, with the objective of women's rights,

equality and secularism. Till Independence in 1947, a few law reforms were passed to improve the condition of women, especially Hindu widows. In 1956, the Indian Parliament passed Hindu Code Bill amidst significant opposition. Though a demand for a uniform civil code was made by Prime Minister Jawaharlal Nehru, his supporters and women activists, they had to finally accept the compromise of it being added to the Directive Principles because of heavy opposition.

## **MEANING AND NEED OF UNIFORM CIVIL CODE**

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. 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.[1] The spine of controversy revolving around Uniform Civil Code 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. Rebecca J. Cook rightly points out that although the Indian Constitution contains articles mandating equality and nondiscrimination on the grounds of sex, strangely however, several laws exist that apparently violate these principles and continue to be there especially in personal laws of certain communities with provisions that are highly discriminatory against women. The situation is further criticized when it pointed out that, "The Indian State has, however, made no effort to change these laws or introduce new legislation in conformity with Constitutional principles. In fact Indian Government seems to have chosen to ignore these principles

Completely and acts as if they did not exist." [2] The Indian Constitution expressly stands for gender equality. For example, Article 44 of the Constitution envisages a Uniform Civil Code for all citizens and lays down that, "The State shall endeavor to secure for the citizen a Uniform Civil Code throughout the territory of India." [3] However, even after half a century from the framing of the Constitution, the ideal of Uniform Civil Code is yet to be achieved. Women, who make up nearly a half of India, continue to demand for a gender just code to enjoy equality and justice irrespective of the community to which they belong. The Uniform Civil Code is required not only to ensure (a) uniformity of laws between communities, but also (b) uniformity of laws within communities ensuring equalities between the rights of men and women. [4]

## **UNIFORM CIVIL CODE AND INDIAN CONSTITUTION**

No one in our country, our political leaders or individuals, have ever concentrated their efforts towards defining the Uniform Civil Code. All we know is that some common law covering issues relating to marriage, succession and property is called Uniform Civil Code but what these

laws would be is anyone's guess. Now, what does our constitution say about Uniform Civil Code? In article 44, our constitution clearly specifies the Uniform Civil Code: "The state shall endeavor to secure the citizen a Uniform Civil Code throughout entire India". The constitution is thus, very clear that unless a uniform civil code is followed, integration cannot be imbibed. However, the fact is that it is only a "directive principles" laid down in the constitution and as article 37 of the constitution itself makes clear, the directive principles "shall not be enforceable by any court". Nevertheless, they are "fundamental in the governance of the country". This shows that although our constitution itself believes that a Uniform Civil Code should be implemented in some manner, it does not make this implementation mandatory. Hence, the debate on having uniform civil code for India still continues. The demand of a uniform civil code essentially means having one set of laws that will apply to all citizens of India irrespective of their religion. Though the exact counters 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.

### **PROBLEMS AGAINST UNIFORM CIVIL CODE**

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.[5] The major problems for implementing it are the country's diversity and religious laws, which not only differ sect-wise, but also by community, caste and region. Women's rights groups have said that this issue is only based on their rights and security, irrespective of its politicisation.[5] The arguments for it are: its mention in Article 44 of the Constitution, need for strengthening the unity and integrity of the country, rejection of different laws for different communities, importance for gender equality and reforming the archaic personal laws of Muslims—which allow unilateral divorce and polygamy. India is, thus, among the nations that legally apply the Sharia law. According to QutubKidwai, the Muslim Personal laws are "Anglo-Mohammad an" rather than solely Islamic.[5] The Hindu nationalists view this issue in concept of their law, which they say, is secular and equal to both sexes.[5] In the country, demanding a uniform civil code can be seen negatively by religious authorities and secular sections of society because of identity politics.[5] The Sangh Parivar and the Bharatiya Janata Party (BJP)—one of the two major political parties in India, had taken up this issue to gain Hindu support.[5] The BJP was the first party in the country to promise it if elected into power.[5]

Goa is the only state in India which has a uniform civil code. The Goa Family Law, is the set of civil laws, originally the Portuguese Civil Code, continued to be implemented after its annexation in 1961.[6] Sikhs and Buddhists objected to the wording of Article 25 which terms them as Hindus with personal laws being applied to them.[7] However, the same article also guarantees the right of members of the Sikh faith to bear a Kirpan.[8]

In October 2015, Supreme Court of India asserted the need of a Uniform Civil Code and said that, "This cannot be accepted, otherwise every religion will say it has a right to decide various issues as a matter of its personal law. We don't agree with this at all. It has to be done through a decree of a court".[9] On 30 November 2016, British Indian intellectual Tufail Ahmad unveiled a 12-point document draft of it, saying citing no effort by the government since 1950.[10][11]

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## CONCLUSION

If the Uniform Civil Code would have been implemented for whole of the country then such kind of controversial issues would have been resolved by the statutory enactments only. India is a country of Unity in Diversity having Multi religions and cultures. So, civil matters of the citizens should be taken in the same clutches of law only then the prime constitutional goal of fraternity can be materialized in the real sense otherwise these divisive forces would continue to violate the constitutional spirit. So, in this sense uniform civil code is the need of the hour. A strong political will is required for the same along with the feeling of religions tolerance and mutual respect on part of each and every citizen of India.

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