

## UNIFORM CIVIL CODE AND MUSLIM LAW

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### Introduction:

Uniform common code is the continuous purpose of verbal confrontation inside Indian command to supplant individual laws in view of the sacred writings and traditions of each significant religious network in India with a typical arrangement of principles administering each subject. Article 44 of the Directive Principles anticipates that the state will apply these while detailing strategies for the nation. Aside from being a critical issue with respect to secularism in India and Fundamental rights to hone religion contained in Article 25, it wound up a standout amongst the most dubious themes in contemporary governmental issues amid the Shah Bano case in 1985. The civil argument at that point concentrated on Muslim Personal Laws which Partially in light of the Shariat law and stays unreformed since 1937, allowing one-sided separate, polygamy in nation and putting it among the countries lawfully applying the Sharia Law. The Bano case made it a politicized open issue concentrated on character legislative issues by methods for assaulting particular religious minorities as opposed to ensuring its social personality.

Individual laws are recognized from open laws cover marriage, separate, legacy, appropriation, and support. Goa has a typical family law, in this way being the main and the littlest Indian state to have uniform common code. The Special Marriage Act, 1954 allows any resident to have a common marriage outside the domain of a particular religious individual law.

Individual laws were first surrounded amid the British Raj, primarily for Hindu and Muslim resident. The British dreaded resistance from network pioneers and shunned advance impedance inside this local circle.

The interest for a uniform common code was first put forward by ladies dissident before all else on the twentieth century, with the goal of ladies' rights, equity and secularism. Till freedom in 1947, a couple of law changes were passed to enhance the state of ladies, particularly Hindu dowagers. In 1956, the Indian Parliament passed Hindu Code Bill in the midst of huge resistance. Despite the fact that an interest for a uniform common code was made by Prime Minister Jawaharlal Nehru, his supporters and ladies activists, they needed to

at long last acknowledge the trade off of it being added to the Directive Principles in view of substantial resistance.

### **AIM OF STUDY**

The basic aim of this research work is to thoroughly study about implementation Uniform Civil code in India and how it will affect the personal laws of the various religions existing in the country with a special emphasis on Muslim personal laws. There is a burning debate going on in the country regarding this issue where many are against it and the rest are in favor.

### **OBJECT OF STUDY**

This research work is conducted to Learn and know about Uniform Civil code and create an analysis on the how its implementation would affect the religious values of various religion, specifically Muslim Law.

The major objectives of research are enumerated herein under:

1. To recognize the importance of implementation of Uniform Civil Code.
2. To show the problems that may arise because of its implementation.
3. To approach the material of the topic critically, analysing and synthesizing information to improve the personal laws that violate gender equality laws and how they can be amended without hurting any religious sentiments and violating any of their personal law.
4. To address the Case laws relating to Uniform Civil Code and Muslim Law.

### **RESEARCH QUESTION**

Uniform Civil Code is a topic of burning debate across the nation. The major complication with its implementation is the invasion of personal laws of the religions of secular India. The major question to be asked in context of Uniform civil code is that is it's implementation a direct attack on the Muslim personal laws? Will any other religion be affected by it's implementation or is it a whole strategy to change the laws of Quran?

### Uniform Civil Code at the time of British Rule:

The level headed discussion for a uniform common code goes back to the pioneer time frame in India. Before the British Raj, under the East India Company, they endeavors to change local social and religious traditions. Ruler William Bentinck, the representative General of India, endeavors to stifle Sati pratha, the recommended demise of a dowager on her significant other's memorial service fire. The passed the Bengal Sati Regulation, 1829. This was later reached out outside Bengal to every single English region.

The Lex Loci Report of October 1840 stressed the significance and need of the consistency in codification of Indian law, identifying with wrongdoings, confirmations and contract yet it prescribed that individual laws of Hindus and Muslims ought to be kept outside such codification. As per their comprehension of religious sacred texts and traditions of the different networks (Hindus, Muslims, Christians and later Parsis).

These laws were connected by the neighborhood courts or panchayats when managing the regular cases including common question between individuals of a similar religion; the State would just mediate in excellent cases. Along these lines the British let the Indian open have the advantage of self-government in their own particular household matters with the Queen's 1859 decree promising completely non-obstruction in religious issues. The individual laws were represented by the British and Anglo-Indian law in wording of wrongdoings, arrive relations, laws of agreement and confirmation, this connected similarly to each native regardless of the religion.

Through the nation, there was a variety in inclination for scriptural or standard laws in light of the fact that in numerous Hindu and Muslim people group, these were now and again at strife like the Jats and Dravidians. The Shudras, for example, permitted dowager remarriage totally repudiating the scriptural Hindu Laws. The Hindu Laws got inclination due to their relative straightforwardness in execution, inclination for such a Brahminical framework by both British and Indian judges and their dread of restriction from the high station Hindus. The trouble in examinations every particular routine with regards to any network, case-by-case, made standard laws harder to actualize. Towards the finish of the nineteenth century, favoring nearby feeling, the acknowledgment of individual traditions and conventions expanded.

The Muslim individual law (in light of Sharia law), was not entirely upheld when contrasted with the Hindu Law. It has no consistency in its application at bring down courts and was extremely limited in view of bureaucratic methodology. This prompted the standard law, which was frequently more prejudicial against ladies, to be connected over it. Ladies, principally on northern and western India, frequently were controlled from property legacy and endowment settlements, both of which the Sharia gives. Because of weight from the Muslim world class, the Sharia law of 1937 was passed which stipulated that every single Indian Muslim would be administered by Islamic laws on marriage, separate, support, appropriation and legacy.

### **Reasons why India need Uniform civil code:**

The reasons why UCC has not been implemented yet has been a complicated and a different topic on its own but it all boils down to political will. Politicians have always found it beneficial to play vote bank politics and try to appease different castes and groups instead of attempting to integrate our nation. Here are the few positive aspects of UCC and why it would be a wise decision to implement it in the country.

#### **1. It Promotes Real Secularism:**

What we have right now in India is particular secularism which implies that in a few regions we are mainstream and in other we aren't. A Uniform Civil Code implies that all nationals of India need to take after similar laws whether they are Hindu or Muslim or Christian. This sounds reasonable and secular. UCC does not mean it will restrain the flexibility of individuals to take after their religion, it just implies that each individual will be dealt with the same. That is genuine secularism.

#### **2. All Indians should be treated the same:**

At the present time the individual laws in view of specific religions, which implies that while Muslim can wed numerous times, circumstances in India, a Hindu or a Christian will be arraigned for doing likewise. This does not appear like equality. Every one of the laws identified with marriage, inheritance, family, land, etc. ought to be equivalent for every one of the Indians. This is only to ensure that all Indian are dealt with a similar manner.

#### **3. It will give more rights to women:**

UCC will likewise help in enhancing the state of women in India. Our general public

is extremely male centric and misanthropic and by enabling old religious guidelines to keep on governing the family life we are sentencing every single Indian woman to enslavement and abuse. UCC will help in changing these old age customs that have no place in the present society where we do comprehend that women ought to be dealt with fairly and equally.

**4. Every modern nation has it:**

UCC is a sign of modern progressive nation. It is a sign that the nation has moved away from the caste and religious politics. While our economic growth has been the highest in the world, our social growth has not happened at all. In fact it might be right to say that socially and culturally we have degraded to a point where we are neither modern nor traditional. UCC will help the society move forward and take India towards its goal of becoming a developed nation.

**5. Personal laws are a loop hole:**

The different individual laws are fundamentally an escape clause to be misused by the individuals who have the power. Our panchayats keep on giving judgments that are against our constitution and we don't make a move. Human rights are abused all through our nation. By permitting individual laws we have constituted an other legal framework that still works on a many years old values. A Uniform common code would change that.

**6. It will help in reducing vote bank politics:**

A uniform common code will likely help in diminishing vote bank legislative issues that most political parties enjoy amid every election. In the event that all religions are secured under similar laws, the government officials will have less to offer to specific minorities in return of their vote. Not having a uniform common code is unfavorable to genuine majority rules system and that needs to change.

**7. It will integrate India:**

A uniform common code will help in incorporating India progressively that it has ever been since freedom. A considerable measure of the enmity is caused by special treatment by the law of certain religious networks and this can be maintained a strategic distance from by a uniform common code. It will help in bringing each Indian, in spite of his rank, religion or tribe, under one national common civil code of conduct.

### **Uniform civil code and Muslim Personal laws:**

In the present era, the implementation of Uniform Civil Code has become the most controversial topic which has been witnessed by the country. The Muslim community is opposing the implementation to a large extent. However, there are a lot of Muslim women groups who are supporting the implementation as well. With coming of UCC, the Muslim personal laws would undergo a drastic change.

### **Triple Talaq:**

Divorce under Muslim law has always been a primary concern. There has been a great uproar and protest among the various religious groups to abolish the practice of triple talaq which is being considered to be a customary practice under the Muslim personal law. Many Indians believe this practice to be unjust and against the principle of equality.

This practice gives the power to the man to divorce his wife just by uttering the word talaq three times. As a result of this practice, the number of divorce cases among the Muslim Community has increases, which has eventually caused this practice to be an issue of significant concern. This custom is considered to be against women and therefore it is being suggested by various activists and women groups that this practice is abolished. This custom is against legal principles and immoral in nature, anything against the constitutional principle would not and should not be considered a valid law or practice, be it a customary practice or a regular practice.

On contrary to this, if we argue on the behalf of the Muslim Community, the practice of triple talaq has not been adopted my many. This kind of talaq was introduced only later on during the second century of Muslim era by the Ommeyad kings who had found the restraints imposed by the prophet as interfering with their facility of Talaq. A majority of the Muslim Community disapproves of the practice and favors Talaq-e-ahsaan over it.

The All India Muslim Personal Law Board agreed to make amends in their personal laws when the Triple Talaq bill was first introduced by the government.

They were expected to release a 'model nikhanama' where the bridegroom was requires undertaking that he will not divorce his wife through triple talaq. And if so is done by him even after signing the nikhanama, the wife can challenge him in the court of law on the bases

of the undertaking present in Nikhanama.

The best example of marriage and divorce is defined in the bill of our neighboring country Pakistan. *The Muslim Family Law Ordinance 1961* talks about compulsory registration of marriage and a notice are sent before the pronouncement of divorce.

The country can really learn from the good of the world and apply in India for the better living of its citizens.

### **Polygamy:**

Polygamy is a very widespread practice under the Muslim Law. Many celebrities have converted to Islam in India to marry more than one women. One of the major changes which the Muslim Law would undergo with the coming of UCC is that it would lead to the abolition of the practice of Polygamy. Polygamy as a practice is generally considered to be a social evil in India.

But if we argue from the side of Muslim Community, Polygamy was introduced as practice for the protection of women. The women are said to be the responsibility of a man in Islam. The practice of Polygamy was introduced to protect the women from those who were seeking opportunities of taking their advantage. This law was specifically for the widows of the soldiers who died in war. Men married them to keep them safe and provide them with a healthy living standard. Islamic law is a majorly misinterpreted law that has ever existed. The laws that were made to protect women and do good to the man kind are interpreted by humans in a negative sense, portraying a need to abolish them.

The Hindu culture does not fall behind in the concept of marrying more than once either. The infamous Goa Civil code which sets an example of uniformity and secularism allows bigamy too.

There is a provision in the Goa Civil code where the man is allowed to marry the second time if he is below 25 years of age and has not a child with his first wife or if is doesn't have male child from the first wife till the age of 30 years.

Many argued that implementation of UCC would mean implementation of Hindu law itself. To this Atal Bihari Vajpayee clarified that coming up of UCC would not mean interference of Hindu law in any religion, on the contrary it would contain all the essentials of all the

principles of every religion.

Stereotyping and shaming only the Muslim Community on this topic doesn't seem to be justified. The implementation of UCC would definitely bring a uniformity in the nation and bring the evil practices in every religion rather than targeting one religion.

### **Maintenance:**

With the advent of ancient Muslim Laws, maintenance has been a matter of primary concern for the spouses. Under the Muslim law, Muslim women can claim maintenance under the Muslim Women Protection Act 1986. However, a question of major concern was that whether Muslim women can claim maintenance under the code of criminal procedure. The case of Shah Bano Begum has been considered a landmark judgment in consideration to this question. The court held that a Muslim woman who has been divorced by her Husband is entitled to maintenance by her husband under section 125 of the CrPC. However, in the case of Denial Latifi v. Union of India the court held that the provision regarding maintenance should be fair and reasonable and the constitutional validity of Muslim Women Protection Act 1986 was also upheld in this case.

The impact of UCC would lead to a positive influence on the Muslim personal law. It would allow Muslim women to claim maintenance for her lifetime. However, this issue is facing opposition and uproar by the Muslims on the ground that it would affect their personal law. But if we keep arguing with the same argument of invasion of personal law then there would never be better world that is free from the social evils. The Muslim law should make an amendment or to so that the women form their community as well as other can live a life they are entitled to live.

### **Adoption:**

Adoption is being considered to be one of the major issues existing in the country. The personal law of no other religion allows the couple to follow the practice of adoption except Hindu law. The procedure relating to adoption under the Hindu law is governed by the Hindu Adoption and Maintenance Act, 1956. As a statutory provision, the Muslim personal law does not allow the practice of adoption. The Muslim couples cannot legally claim to be the parents of the adoptive child. The implementation of UCC for governing the laws relating to



adoption would lead to considerable and drastic changes under Muslim personal laws.

One of the most significant changes which would occur if the UCC comes into force is that the Guardianship and Wards Act, 1890 would be abolished. This would lead to major changes in the law of adoption:

1. A Muslim woman would be allowed to take a child in adoption.
2. The couple can legally claim the status to be the adoptive parents of the child who is being adopted by them.
3. On adoption, the child is entitled to all the rights given to the natural personal.
4. After being taken into adoption by the adoptive parents, a child breaks all the ties from the family in which he was born, and he becomes entitled to inherit the property of his adoptive parents.

The argument which says that these provisions would interfere in the personal laws should understand that there is nothing wrong in a bit of modernization. More specifically if that change only does good for someone. Giving a good life is considered to be a good deed even in the eyes of Allah. Hence, this would be the best change that implementation of UCC would bring.

### **Succession and Inheritance:**

These are the matter of prime concern among the issues that exist under the law. The provisions regarding succession and inheritance differ from one another. Under the Muslim law in the case of interstate inheritance, the sons will receive a share as equal to the shares of two daughters. The mother of the children would be entitled to one-eighth share in the property of the deceased husband. Under the Muslim law, the mother has a right to claim maintenance from her child in the where case she is unable to maintain herself. Under the Muslim law, the illegitimate child has a legitimate share in the property of the father.

However, under the Sunni law, an illegitimate child is entitled to a share in the property from his mother's side, though Shia law does not permit a share in the property of any of the parent by the child. Under the Hindu Succession Act, the rules regarding the succession are being stated in a different manner. They are being stated in different manner. They are being grouped into various classes of heirs, and there are changes which affect the working of the

law to a great extent.

The drastic changes that UCC would bring in Muslim law are:

1. It would result in a codified law enforced in the context of rules and inheritance and succession.
2. A stable structure of share would be established to govern the sharing procedure.
3. Illegitimate children and adoptive children would also have a legal right to their father's property.

But in the matters of Succession and Inheritance, more than Muslim law, the Hindu law needs major changes. It violates the rights of woman more than the Muslim Law does.

1. The Concept of Karta doesn't allow a woman to be a legal head of the family.
2. There are no rights to property of father to his daughter.
3. The deceased property directly goes to their male inherent.

Implementation of UCC would not only bring changes in Muslim law but also in the Hindu law for the better of society as a whole.

### **The Uniform Civil Code Bill:**

A certain bill needs to be presented by the government of India that would be in favor of not only the Muslim Community but also the whole nation and its various religions. UCC would definitely bring a certain amount of change in the personal laws of each and every religion but there can be a way where we can make amends without hurting the feelings of any religion. A model of the bill that can be presented by the government is given below:

1. **Short title, extent, application and commencement:**
  - (a) This bill may be called the Uniform Civil Code Bill.
  - (b) Its extent is to the whole of India including the state of Jammu and Kashmir.
  - (c) This bill shall come in force as the government may appoint in this behalf.
2. **Definition :**
  - (a) This bill shall have a separate council that will deal with the matters related to marriage, divorce, adoption, maintenance and inheritance.

(b) The 'Council' means a body consisting a 'Chairman', 3 retired/ practicing judges of Supreme Court and representatives of members of parties.

3. **Marriage:**

(a) Every marriage solemnized under any religion shall be registered in accordance with the provisions of this bill.

(b) Any person who contravenes the clause of sub-section (a) shall be punished with a minimum fine of 3 thousand rupees.

(c) The registration of marriage shall charge a minimum fee to the marriage registrar.

(d) The marriage certificate are to be maintained by the marriage registrar and copies of the certificate are to be provided to the parties and fees is to be charged by the registrar there of.

(e) Any person may, on payment of the prescribed fees, inspect the office of registrar for the record preserved under the sub-section (d), or obtain a copy of any entry therein.

4. **Divorce:**

(a) Any man or woman who wishes to divorce their husband or wife need to give a notice to the 'Council' and supply a copy to their spouse.

(b) The divorce proceeding would be carried by the courts after the submission of the notice by the 'Council'.

(c) The Muslim Community or any person claiming to be a Muslim can practice their religious practice of divorce, provided a notice is submitted to the 'Council' before the pronouncement of Divorce.

(d) Any person who contravenes the provisions of sub-section (a) and (c) shall be punished with a simple imprisonment of 5 years or fine or both.

5. **Maintenance:**

(a) After the divorce, on the discretion of the wife, the husband shall give maintenance for their dependent children.

(b) The amount of maintenance shall be decided by the courts according to the annual income of the husband.

(c) In case of cruelty or any misconduct by either of the parties, which lead to their divorce, the victim would be entitled to a monthly allowance whose amount would be decided by the courts according to the annual income of the other spouse.

(d) Whosoever contravenes the provisions of sub-section (a) and (c) shall be punished with fine that may extend to any amount determined by the courts.

**6. Adoption:**

- (a) A child can be adopted by anyone who is financially stable to maintain the child and who is above 21 years of age.
- (b) In case of the person adopting a child is married, consent of the spouse shall be necessary.
- (c) An unmarried man cannot adopt a female child.
- (d) There should be at least 15 years of age gap between the child and the person adopting the child.

**7. Inheritance:**

- (a) A male and a female child would be equally entitled to inherit the deceased property.
  - (b) If no living child exists of the deceased, all the property shall go in the name of deceased spouse or mother.
  - (c) In case of no blood relatives alive, the property shall be passed on to the immediate relatives.
  - (d) A woman shall be entitled to  $\frac{1}{4}$  share in the husband's property.
  - (e) Any person who contravenes the provisions of sub-section (a), (b), (c) and (d), shall be punished with an imprisonment of 3 years or fine or both.
- A person is free to follow the religious practice which does not violate any section or sub-section of this bill or any existing law in the country.

**Conclusion:**

The Uniform Civil code has become need of the hour. It will invade privacy of the personal laws to a certain extent. It does not attack the privacy of Muslim Law alone. It changes many laws of other laws as well. But a change that causes thousands to live a better life should be implemented even if it hurts the sentiments of few. The uniform civil code should not completely abolish the various religious customs but only amend the things that can be amended without hurt much sentiment. There is a need of a middle way as defined in the preamble of the Indian Constitution, India is a secular country. It will be difficult task to implement it in a country with ever rising population but it's not an impossible task. It can be done slowly and eventually.