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**Publisher Details -**

**Bishikh Mohanty**

**E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,**

**Khorda, Odisha, Pin - 751021**

**Telephone: +91 8106743973**

**Email: editor@ijcons.com**

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## UNIFORM CIVIL CODE: IN THE LIGHT OF JUDICIAL STAND ON PERSONAL LAWS.

### THE AUTHOR

Khubi Agrawal, student, Government Law College, Mumbai

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### I. OVERVIEW

India, since time immemorial, has been famous for its diversity and culture, which it boasts globally. But, as it is said that with greater power comes greater responsibility, it is sadly true that, even after almost seven decades of an independent nation, we haven't yet come to terms with the fact that the nexus of our diversity depends upon a secular and uniform outlook towards citizens of all faith sans exceptions, preventing the stemming of any communal disharmony in our country, which is presently glaring naked in the eyes of our nation. Gender discrimination, religious disharmony and casteism have posed great hurdles in the way of the development of our nation's economy and standards. In the midst of all these arguments, the article would answer one of the most important burning debates in our country, whether the constitutional provision of *Uniform Civil Code*, is the need of the hour to unleash our country from such social hegemony, presenting in cross-section, the issue of Uniform Civil Code, stripping through the layers beneath and presenting an idea of why, a diversely secular nation like ours, is in a desperate need for its enactment?

### II. UNIFORM CIVIL CODE: A RETROSPECTIVE

Throughout its seventy years, the utopian concept of Uniform Civil Code (Uniform Civil Code, henceforth) has been rendered into distant reality, hence provoking great uprisings on occasions, but to only be suppressed or be manipulated into political voice, every time. Ever since the drafting of the constitution, various leaders were in support of an enhanced enforcement of Uniform Civil Code throughout the country, but, in the wake of communal disharmony was farther diluted to only be included in the Directive Principles of the state policy which leaves this question at the disposal of Government's time and leisure for its implementation<sup>1</sup>. While the concept was vociferously propagated by the outstanding leaders like Dr. B.R. Ambedkar, it was

<sup>1</sup> [http://shodhganga.inflibnet.ac.in/bitstream/10603/54472/11/11\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/54472/11/11_chapter%204.pdf)

later when the Hindu Bill Code came to the country in the form of four acts governing Hindu marriage, succession, adoption and inheritance after much fiasco<sup>2</sup>.

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### III. UNIFORM CIVIL CODE: AN INTERNATIONAL PERSPECTIVE

Under international law, a state that ratifies an international instrument becomes legally bound to implement its provisions. Accordingly India having ratified the international conventions like International convention on civil and political rights (ICCPR), 1966 and the International Convention on elimination of all forms of Discrimination against women (CEDAW),<sup>3</sup> 1979, is bound to force the relevant provisions and ensure gender equality under its national laws. Also, The Declaration made by the General Assembly on 04/02/1986 known as the 'Right to Development' discusses the inconsistency between the personal laws of the country and the fundamental rights guaranteed by the constitution and has stated that all existing laws should be in conformity with right to equality guaranteed in the Constitution<sup>4</sup>. Despite the fact that the aforementioned issues have been address through separate acts and laws governing all the citizens of India, it's important to highlight that its comprehensive inclusion under a uniform codified law under Uniform Civil Code would ensure stricter and compulsive enforceability. So as a step towards a gender and religious just code, it's imperative to take a vigilante view and reform both in accordance with Indian and international laws while at the same time stripping off any retro gradations an leaping towards a progress of thoughts in the country.

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### IV. UNIFORM CIVIL CODE AND INDIAN CONSTITUTION

The term Uniform Civil Code has been enshrined under article 44 of the continuation of Indian, which mentions, "The state shall endeavour to secure a **Uniform Civil Code** throughout the territory of India." The term civil code is used to cover the entire body of laws governing rights relating to property and also 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<sup>5</sup>. While the constitution of our country explicitly upholds fundamental rights and equality, it also mentions in the article 13 that, "if any law in force before the commencement of the Constitution is inconsistent with Part III of the Constitution, then they are void". By this logic, it is important to note that the lack of Uniform Civil Code in our country has led to gross travesty of human rights and related abuses in India, hence defeating its very foundation. . Therefore, if any law is against the provisions of Article 14, 15 and 21, then the law is said to be void. Article 14 being right to equality and equality before law. Article 15 being no law can discriminate on the basis of sex, caste, religion etc. and Article 21 being right to life and personal liberty. Several hall mark cases at various occasions have vociferously demanded the need for Uniform Civil Code pointing out the vague contraventions between he personal laws and that mentioned by the constitution, but time and again it has been assiduously brushed under the carpet, asking for better clarification and

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<sup>2</sup> <http://www.thehindu.com/todays-paper/tp-opinion/Why-not-a-Common-Civil-Code-for-all/article14492434.ece>

<sup>3</sup> <http://www.livelaw.in/declassifying-uniform-civil-code/>

<sup>4</sup> [www.un.org/documents/ga/res/41/a41r128.htm](http://www.un.org/documents/ga/res/41/a41r128.htm)

<sup>55</sup> <http://www.lawtopos.com/academike/need-uniform-civil-code-india/>

definition. The discontent with respect to Uniform Civil Code by the supreme court of India was first time dispersed in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum, popularly known as the Shah Bano case<sup>6</sup>. In this case, a penurious Muslim woman 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. It was the first time when the apex court of our country had ordered the parliament to enforce the Uniform Civil Code in our country. It had triggered wider spread disregard among the populace especially among the Muslims which was seen as an attack on their religious beliefs, which ultimately led to a positive outcome in the favour of Muslim women in India and also paving way for effective implementation of Uniform Civil Code in India. The second instance was prompted under the case of Sarla Mudgal v. Union of India<sup>7</sup>. In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnise second marriage. This uproar led to a strongly verbal yet forceful opinion by **Justice Kuldip Singh** who had opined that “Article 44 has to be retrieved from the cold storage where it is lying since 1949”, pointing out to inefficiencies on the part of the ruling governments to enforce a unified code of law. Likewise several instances of the ardent need of Uniform Civil Code was presented before the nation, while some raised the broader social issues, others highlighted the malpractices in the absence of a codified law. Recently, In October 2015, The Supreme Court had held a firm case of the government and demanded for a reason for the non-implementation of the Uniform Civil Code, leading to its suppression yet again, which was only to rise with greater vigour in our nation the following year.

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## V. UNIFORM CIVIL CODE: THE PRESENT UPROAR

The latest development in the wake of Uniform Civil Code was pointed out in the Shayra Bano v/s Union of India case<sup>8</sup> which was craftily manipulated into being the cause for Uniform Civil Code. The spine of the uprising rested in the actions and the aftermath of the Law Commission's initiation on appealing to the nation and sending a questionnaire to beseech people for their views towards implementation of a Uniform Civil Code in India. While this matter became a matter of national concern, many viewed it as a strategical move by the political leaders and parties with an aim to allure minorities into vote bank and restore their populist faith. The current political polemics over religion vs. constitution depict a diametrically different phenomenon. The Uniform Civil Code has become such a controversial and confusing issue that it now seems 'better to be put out of the discussion'. It is only being misused by the political pundits and the male-centred clergy as a ploy to maintain their hegemony, hence rendering the idea of a unified set of civil laws in the backyard<sup>9</sup>. While it became a problem not only because of the inherent proposition, but also because of the fact that it directly pointed at the Muslim majority and tagged them with the cause of the Uniform Civil Code. While the idea has been politically skewed, it is important that we debate on this very sensational constitutional issue of the

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<sup>6</sup> AIR 1985 SC 945

<sup>7</sup> AIR 1995 SC 153

<sup>8</sup> The Frontline: Volume 33, number 22. (November 11, 2016)

<sup>9</sup> <http://www.countercurrents.org/2016/10/14/uniform-civil-code-trust-deficit-and-marginality/>

implementation of the Uniform Civil Code with a confrontational approach without any attached biases and whims. It is also important that the broader end of this concept be conceived in a democratic manner i.e., it shouldn't be apprehended as imposition of the majority on the minority but that its outcome will lead to enhanced gender justice and equality across the length and breadth of the country, and across all the religions and cultures.

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## **VI. THE RESURRECTION OF THE DEAD LETTER-THE UNIFORM CIVIL CODE**

Having transgressed into one of the advanced nations in the world, the problems of Gender equality and Religious harmony still stands at the helm of the debates even today. India, in spite of having called itself a secular country, has through these years, sadly not managed to stabilize the wavelength of the on-going communal disharmony and intolerance in the country, especially with regards to civil law. The idea of Secularism, in its broadest sense doesn't necessarily means permitting faiths to justify their actions on the gab of religion, but to accommodate in itself the cultures of all the faith, with an equal dignity of human life, irrespective of gender and other criteria.

The unification of laws and embedding all the religion under the fabric of set of codified common civil laws will truly exemplify the meaning of true secularism in India. It is matter of contention that even after nearly 7 decades, women in our country have been subjected to discrimination especially on the grounds of religion. While we are debating on this, it is mostly important that having advanced in a stage of broader outlook, its mandatory that religions should not be given as much jurisdiction and power as the laws of the country to determine the actions of the citizens. It is important as a country to stand true to its ideals that engender the true spirit of the country like equality and liberty, which at times is miscarriage at the cost of the personal laws of the religions. While the criminal laws of the country are codified and applied to all the religions, it is important to take note of the fact that codification of civil laws would, in its true essence become a corner stone of true secularism in India and end all kinds of discrimination. While it is often argued that a unification of common civil law would target the religious sentiments of the minority religions, it is but a myth. Contrary to a sustained campaign of misinformation, the whole concept of a Common Civil Code is not aimed against any particular religion or its customs, but to prevent oppression in the name of religion<sup>10</sup>. It would naturally be based on internationally accepted principles of jurisprudence and would go a long way in providing a sense of security to people of various religious denominations. Enforcing Uniform Civil Code would not compel the religions to go against their set culture, but it would aim at reforming the antiquated and unjust principles, which, once again, is important because the principles of religion have to accommodate with times and progress along with it. The further point will exemplify and back up the argument presented.

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## **VII. A DIFFERENT PERSPECTIVE: GOA: THE ONLY STATE WITH UNIFORM CODE**

In contemporary politics, Bharatiya Janata Party and the Left support uniform code while the Congress Party and All India Muslim Personal Law Board opposes it. Goa has a common family

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<sup>10</sup> <http://www.oneindia.com/feature/why-india-urgently-needs-uniform-civil-code-2037892.html>

law, thus being the only Indian state to have a Uniform Civil Code. When Goa attained liberation from Portugal in 1961, all Indian laws were extended to the state, except family laws that fall under the Portuguese Civil Code. The philosophy behind the Portuguese Civil Code was to strengthen the family as the backbone of society, inculcating a spirit of tolerance between husband and wife and providing for inbuilt safeguard against injustice by one spouse against the other. It was in this case, when one of the former Chief Justice of India once remarked that “Uniform Civil Code would one day awake the rest of bigoted India.

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### VIII. UNIFORM CIVIL CODE: THE WAY AHEAD

After having discussed the need of Uniform Civil Code in India and the hue about it, another important factor is the steps that could be taken ahead for the optimal enforcement of the Uniform Civil Code and its effective implementation. All laws are formulated to be obeyed, but they are abused. This does not mean that law should not be implemented. Similarly, there is a great possibility of the Uniform Civil Code being abused, but this should not eschew the Parliament from enacting the Uniform Civil Code; the social welfare and benefits resulting from the implementation of Uniform Civil Code are far greater. While this is all aiming at the ideal state of being in future where the enforceability of Uniform Civil Code would be optimal, the present status quo in India has a different portrait to paint, which not only requires a lot of perceptual changes, but also changes with respect to the present state of Government and its operations in India. Presently, all the hue and cry about the implementation of Uniform Civil Code is circumvented around the barbaric practices of Islam like Triple Talaq and Polygamy which directly makes the sect vulnerable puts them in dock, proving to be counter-intuitive. People have conveniently forgotten about the inherent gender-justice part which should be prioritised. They think that the Hindu personal laws are egalitarian and should be adopted by other communities which are necessary for national integration. In their action-plan of building a *Hindu Rashtra*, the *many self-claimed guardians of Hinduism* have placed Muslims as invaders and spread the lie that polygamous relationship among Muslims will lead India to an Islamic state, but surveys reveal that polygamous relationship are more popular among Hindus. While one crore Hindu men have more than one wife, twelve lakh Muslim men are in a bigamous relationship. In reality, the law of monogamy in Hindus ends up in denying maintenance for Hindu women as more than one legal marriage is not allowed among Hindus and the Court observes them as ‘mistresses’ and ‘keeps’. The present analogy doesn’t focus on proving the validity of Bigamy among any community but instead focuses on the fact that the practises which we are endeavouring abolition on in any community does not, in its corollary, mean the implementation of UCC. For it to materialize, we need to understand that polarization of any religious beliefs would only create a rift and difficulty in creating a consensus. Any action of imposing uniformity will be the assertions of a dominant voice to the marginalisation and exclusion of a multiplicity of other interests and identities angle and accustomize it in the greater interest, while also keeping its salient principles intact. For the realization of the argument, it’s important to realize the difference in the provisions of the Article 25 of the constitution ensuring the Right to Religion as against the proposed idea of the Article 44 of the constitution which governs UCC: While Article 25 rightly mentions that an individual is rightly entitled to perform

religious practises and principles of his choice, it is also mentioned that right to religion doesn't allow an individual to commit anything illegal in the name of religion or which causes harm or inconvenience, or simply put, in direct contravention of somebody else's Fundamental rights. On the argument of UCC, it has been mentioned in the constitution that, it is in fact, fundamental in the governance of the country. While at the time of independence, the then Prime Minister, Mr Jawaharlal Nehru, mentioned about the unavailability of the ripe conditions for the implementation code governing the personal code. The time is ripe while the intentions rot. While vote banks substantively govern a huge chunk of votes for politicians, the dream for the code, has been etched into a thing of distant future, but, definitely not an impossible one to achieve. Thereby to sum up, while keeping the ideas of several religions in mind, it would be a hindrance to target particular religion to support the claim of Uniform Civil Code, while at the same time, victimizing it and taking a political turn, (which led to a fracas in the near past). There should also be a clear assertion that the enactment of Uniform Civil Code in any manner which would mean that leaving aside the practises of various religions, the law governing the act, like marriage, divorce etc. would be solely governed under one law for all. This would not mean that the Muslims would have to carry out Saptadi or the Hindus would have to perform a Nikaah, but, it would mean that there will be a common law which will be judging the matters of inheritance, right to property, divorce etc., while respecting the scriptures and texts of all the religions. While a Uniform Civil Code would also fabricate the beads of several faiths, a common set of civil laws for the LGBT community and other marginalized sects would lead to further tolerance and unity among all.

***“Indian society has been long fragmented in the name of religion, sect and gender. It's time to make our country, social, secular and democratic in its truest essence.”***

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