**UNIFORM CIVIL CODE**

**BY**

**ANUMEHA JAIN**

**3RD YEAR**

**NEW LAW COLLEGE, BHARATI VIDHYAPEETH**

**anumehajain8@gmail.com**



**METHOD OF RESEARCH**

I have adopted secondary source of research for this research paper. Secondary research or desk research involves using data which is already in existence. Secondary data includes data which is published in research paper, documents etc.

I have collected data from newspaper, various research papers, statutes, etc. I as an author have clearly scrutinized the data without any prejudice and have put forth reliable data to beautify our paper with knowledge and facts.

The reason behind choosing Secondary form of research is that the topic Uniform Civil Code and related topics are something which needs extensive study due to vast domain and a lot of research is required, which cannot be done by taking survey or asking questions from people around us, thus Secondary data has helped me to look into every nook and corner of this topic with the help of newspaper, legal articles and research papers.

**ABSTRACT**

"We have just enough religion to make us hate, but not enough to make us love one another." - Jonathan Swift. India, being a nation with a huge number of religions, has made personal laws for each religion but this has caused a lot of biasness and has even resulted in discrimination. India now needs a Uniform Civil Code which should be followed throughout the territory of India so that every person will follow the same set of rules and laws and there will no differences on the basis of marriage, adoption, divorce, etc. this will solve a lot of problems and will even eradicate the difference which are caused by the different personal laws.

**KEYWORDS:** Uniform Civil Code, Article 44, Constitution of India,Gender, Religion

**INTRODUCTION**

Civil Code means is the laws and procedure which governs the country in different matters related to marriage, divorce, adoption, etc. All the religious communities follow their different personal Civil Procedure. A need for uniform civil Code was felt in 1950 when the Constitution of India came into force and therefore Article 44 which was adopted from Irish Constitution was added.

The Article 44 of The Indian Constitution talks about Uniform Civil Code, which states that “The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India.” In simple words it means that same set of laws and rule should be made for the citizens of India, irrespective of their religion, race, caste, sex, etc. which means that the personal law won’t govern marriage, adoption, partition, divorce, etc. Article 44 of the Indian Constitution comes under Directive Principle of State Policy which means Uniform Civil Code is revered in the Indian Constitution as an objective towards which the country ought to endeavor, however it is not a fundamental right which is guaranteed by the Constitution of Indian and therefore one cannot approach the court for it.[[1]](#footnote-2)

India is a country with various customs, practices and religions; therefore, the word ‘Secularism’ was introduced in the Constitution of India by the 42ndAmendment. Article 25 to Article 28 are the fundamental rights of a citizen, which are Right to Freedom of Religion and it gives people of India the right to follow any religion.[[2]](#footnote-3) In the landmark case of M. Ismail Faruqui v. Union Of India[[3]](#footnote-4), the judgement was given by Justice Verma and it stated that, “The constitution guarantees equality in the matter of religion to all individuals and groups irrespective of their faith emphasizing that there is no religion of the state itself. The preamble read with the articles 25-28 emphasize this aspect and indicate the manner the concept of secularism embodied in the constitution has to be understood, any step inconsistent with constitutional policy is in plain words, unconstitutional.”[[4]](#footnote-5)

The main reason from implementation of Uniform Civil Procedure is to get rid of the problem of discrimination on the basis of religion, class, caste, sex, etc. In this way the privileges which are given to one gender and restrictions which are imposed on other gender will be eradicated. The three main reasons for implementation of Uniform Civil Code are:-

1. Marriage, Divorce and Adoption
2. Personal Status
3. Rights related to acquisition and administration of property[[5]](#footnote-6)

**ARTICLE 44**

Part IV of the Indian Constitution is Directive Principle of State Policy, that is, from Article 36 to Article 51. The main purpose of Directive Principle of State Policy (DPSP) is not just to establish political democracy but also socio-economic justice among the people for the welfare of the state[[6]](#footnote-7). These articles are the guidelines and it should be duty of the state to apply principles in making laws, they are not enforceable by any court of law. The Directive Principle of State Policy are adopted from the Irish Constitution.[[7]](#footnote-8)Article 44 of The Indian Constitution states that, “The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India.[[8]](#footnote-9)”Though Article 44 comes under Directive Principle of State Policy and is not enforceable by any court of law but policy. It imposes a positive obligation on the state to establish a uniform civil code for all the Indians throughout the territory of India.

The Uniform Civil Code in India was originated when the British Government came into India; it was the British Government which presented a report in 1835 focusing on the need of Uniformity of the Civil Code. The main aim of Uniform Civil Code is to provide protection to the weak areas, including women and religious minorities, while also promoting nationalistic fervor through unity.[[9]](#footnote-10) The minority community opposed the Uniform Civil Code in the constituent assembly and therefore, Uniform Civil Code is added into the Constitution of India, Article 44, as Directive Principle of State Policy.[[10]](#footnote-11)

India do have a Uniform Civil Code in certain civil laws like – Law of Contract, Sales of Goods Act, Civil Procedure Code, Transfer of Property Act, Indian Evidence Act, etc. but there are still certain acts which do not follow the Uniform Civil Code, like – Motor Vehicle Act, Hindu Marriage Act, and all the other personal laws.[[11]](#footnote-12)

Many of the debates have taken plave regarding the Article 44 of the Indian Constitution and therefore it still not applicable in India.[[12]](#footnote-13)The Government of India has so far not applied its mind to fulfill this positive obligation laid down upon it by the Constitution of India because of the fact that article 44 is not a mandate to it. This fact itself is a hindrance in its being implemented. Another hindrance is that all the religiousgroups have accepted their personal laws and are following them; it will be very difficult for these religious groups to adopt a common law.[[13]](#footnote-14)Uniform Civil Code is a debatable topic and there has been a lot of argument to remove the different Personal Laws and bring a Uniform Civil Code for the people living in the territory of India. The supports are of the view that it will end discrimination of the basis of religion, while those who are against it states that it will violate the right to practice religion which is provided by the Constitution of India under Article 25.[[14]](#footnote-15)

Till now, in India, Goa is the only state which has a Uniform Civil Code, which is also known as the Goa Civil Code or Goa Family Law. It is a set of civil laws which has to be followed by all the people who have domicile of Goa, irrespective of their ethnicity or religion to which they belong or follow.[[15]](#footnote-16) Goa is a bright example which shows that Uniform Civil Code is a good idea and can be followed throughout the territory of India.

It can be said that the main reason Uniform Civil Code is not applicable in India is because the people of India follow several religions and so they have different perspective of right and wrong. Uniform Civil Code is not asking any person to leave their religion, custom or faith, but it is only make a law which will be applicable for every citizen of India irrespective of the religion. The main reason of Uniform Civil Code is to move the society of India away from discrimination on the basis of religion, race, caste, sex, etc. which are mentioned in the Article 14 of the Indian Constitution.[[16]](#footnote-17)

**UNIFORM CIVIL CODE – DIFFERENCES ON THE BASIS OF GENDER AND RELIGION**

Article 15 of the Constitution of India is about Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(1) states that, The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.[[17]](#footnote-18)Though the constitution of Indian clearly states that discrimination should not be done on the following above mentioned grounds but still it can be seen in our society. As per the Christian law, husband can get divorce on adultery ground, whereas a wife has to prove adultery and cruelty. In Hindus, before the 2005 amendment, only sons can inherit the property and not the daughters and also a wife has fewer rights than her in-laws over her husband's property, but on the other hand, a husband has more rights than his in-laws over his wife's property. And even among thePunjabis, it is a common practice that all brothers marry one woman so that their property is not divided, and it is till now permissible by the Indian constitution. In all these scenarios both gender and religion are the grounds for discrimination; therefore a Uniform Civil Code is the need of the hour, in this way discrimination will also be eradicated from our society.[[18]](#footnote-19)

Uniform Civil Code and Rights given to the women are the two topics which are interlinked with each other. Areas like social status, gender biasness, health, security and empowerment need improvement and upliftment.[[19]](#footnote-20) Before the amendment made in the year 2005, in the Hindu Succession Act, women were not given equal rights in the family property. Earlier, in a joint Hindu family, a woman in family consisting of both man and woman just had the right of sustenance, but the control and ownership was not given to her. A male child born in a Hindu family has the right in the ancestral property, but the same right was not given to the female child born in the same family.[[20]](#footnote-21)

As per the Muslim personal law, if a man divorces his wife and wishes to re-marry her then he cannot simply get married to her. That woman will first marry a different man and after that the marriage must be consummated. If the second husband divorces that woman, then only the first husband can re-marry her. In the case of a Muslim male, he can keep 4 wives but a women cannot have more than one husband at a time. [[21]](#footnote-22)

The discrimination on the basis of gender in not just done in Hindu or Muslim personal law, but it is also done in the Christian personal law. According to the Christian personal law, a woman can file for divorce only after two years of marriage, but no such time is given for the Christian male to file for divorce.[[22]](#footnote-23)

The above points prove that gender and religion both are the grounds on which discrimination is taking place and that Uniform Civil Code is the solution to this problem. The main objective of Uniform Civil Code is to promote unity and national integration in the Indian society. It is assumed that in a diverse society, religion and personal laws are two diverse topics and there is no connection between the two.[[23]](#footnote-24)But in country like India, both the things are mixed up, which, leads to complication between religion and personal laws and therefore it becomes difficult to follow a Uniform Civil Code in India.

In the case of Smt. Sarla Mudgal and Ors. v. Union of India and Ors., a Hindu man converted his religion into Islamic just for the purpose of a contracting a bigamous circumvents Section 494 of Indian Penal Code. This was the case in which the personal law of Hindu as well as that of Muslim contradicted each other and so such a marriage have been declared as bigamous and void by the court. The Supreme Court division bench of Kuldip Singh and R.M. Sahai, JJ strongly suggested the establishment of a Uniform Civil Code. The bench also directed the government of India to look into the matter of Article 44 of the Indian Constitution and also to work upon it.**[[24]](#footnote-25)**

**LANDMARK JUDGMENTS**

1. *Mohd. Ahmed Khan v. Shah Bano Begum and Ors.*

In this case, a landmark judgement was given by the Supreme Court. Shah Bano was a 62 year old woman who was given divorce by her husband after 40 years of marriage by triple talaq. She had 5 children and no maintenance was given to her. She was asked to live in a different home by her husband and he did second marriage after giving her divorce. Shah Bano moved to the court and filed a claim for maintenance under the section 125 of Code of Criminal Procedure, 1973 which is for the maintenance of wife and children. Supreme Court in this case gave the verdict in favor of Shah Bano and said that apart from Personal law, section 125 of Code of Criminal Procedure will also be applied for seeking maintenance.[[25]](#footnote-26)

1. *Laxmi Kant Pandey v. Union of India*

This was a case related to adoption of Indian children by foreigners. The issue of mal-practice whichwas followed by some of the organizations and child-adopting agencies was focused in this case. The children adopted by the foreigners parents, after a certain age involved into the activities like, prostitution, begging, etc. therefore, in this case, the

Supreme Court laid down comprehensive guidelines to regulate future adoption of any child belonging to any religious community in India. The court prescribed uniform norms and procedures to be followed in the case of an adoption of an Indian child by the foreigner parents.[[26]](#footnote-27)

**CONCLUSION**

India is a welfare state and so the constitution of India clearly includes the words like liberty, equality, fraternity and justice. The constitution of India is strictly against the practice of discrimination on the basis of religion, race, caste, etc.[[27]](#footnote-28).The term ‘social justice’ means justice given to every gender. Gender justice prohibits discrimination done on the basis of gender, be it social, economical or political.[[28]](#footnote-29)

Uniform Civil Code is the need of the hour. For national unity, a Uniform Civil Code is required so that there is no discrimination in the society.Article 44 of the Indian Constitution states that a uniform code of civil procedure should be followed in the territory of India, but still several different personal laws are followed in Indian according to the religion of people which gives rise to discrimination on the ground of religion and Article 15 of the Indian Constitution is violated. In some of the landmark judgement, the Supreme Court has given the judgement which is not just from a personal law but also from other statutes; therefore we can see that a Uniform Civil Code is the need of the hour.

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