

Uniform Civil Code in India

Uniform civil code in India is the proposal to replace the [personal laws](#) based on the scriptures and customs of each major religious with a common set governing every citizen. These laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and [maintenance](#). Article 44 of the [Directive Principles in India](#) 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](#) and [polygamy in the country](#).

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 Hindu right-wing [Bharatiya Janta Party](#) and the Left support it while the [Congress Party](#) and [All India Muslim Personal Law Board](#) oppose it. [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.

The debate for a uniform civil code dates back to the [colonial period in India](#). The Lex Loci Report of October 1840 emphasised the importance and necessity of uniformity in [codification](#) of Indian law, relating to crimes, evidences and contract but it recommended that [personal laws](#) of Hindus and Muslims should be kept outside such codification.^[1] According to their understanding of religious divisions in India, the British separated this sphere which would be governed by religious scriptures and customs of the various communities (Hindus, Muslims, Christians and later [Parsis](#)).^[2] These laws were applied by the local courts or [panchayats](#) when dealing with regular cases involving civil disputes between people of the same religion; the State would

only intervene in exceptional cases. Thus, the British let the Indian public have the benefit of self-government in their own domestic matters with the Queen's 1859 Proclamation promising absolute non-interference in religious matters.^[3]

^[4] The personal laws involved inheritance, succession, marriage and religious ceremonies. The public sphere was governed by the British and Anglo-Indian law in terms of crime, land relations, laws of contract and evidence—all this applied equally to every citizen irrespective of religion.^[4]

Throughout the country, there was a variation in preference for scriptural or customary laws because in many Hindu and Muslim communities, these were sometimes at conflict;^[2] such instances were present in communities like the [Jats](#) and the [Dravidians](#). The [Shudras](#), for instance, allowed widow remarriage—completely contrary to the scriptural [Hindu law](#).^[5] The Hindu laws got preference because of their relative ease in implementation, preference for such a [Brahminical](#) system by both British and Indian judges and their fear of opposition from the high caste Hindus.^[5] The difficulty in investigating each specific practice of any community, case-by-case, made customary laws harder to implement. Towards the end of the nineteenth century, favouring local opinion, the recognition of individual customs and traditions increased.^[4]

The Muslim Personal law or [Sharia law](#), was not strictly enforced as compared to the Hindu law. It had no uniformity in its application at lower courts and was severely restricted because of bureaucratic procedures. This led to the customary law, which was often more discriminatory against women, to be applied over it. Women, mainly in northern and western India, often were restrained from property inheritance and [dowry](#) settlements, both of which the Sharia provides.^[6] Due to pressure from the Muslim elite, the Shariat law of 1937 was passed which stipulated that all Indian Muslims would be governed by Islamic laws on marriage, divorce, maintenance, adoption, succession and inheritance.^[6]

Legislative Reforms

The Hindu law discriminated against women by depriving them of inheritance, remarriage and divorce. Their condition, especially that of [Hindu widows](#) and daughters, was poor due to this and other prevalent customs.^[7]

^[8] The British and social reformers like [Ishwar Chandra Vidyasagar](#) were instrumental in outlawing such customs by getting reforms passed through [legislative processes](#).^[9] Since the British feared opposition from orthodox community leaders, only the Indian Succession Act 1865, which was also one of the first laws to ensure women's economic security, attempted to shift the personal laws to the realm of [civil](#). The Indian Marriage Act 1864 had procedures and reforms solely for Christian marriages.^[10] There were law reforms passed which were beneficial to women like the [Hindu Widow](#)

[Remarriage Act of 1856](#), [Married Women's Property Act of 1923](#) and the [Hindu Inheritance \(Removal of Disabilities\) Act, 1928](#), which in a significant move, permitted a Hindu woman's right to property.^[2]

The call for [equal rights for women](#) was only at its initial stages in India at that time and the reluctance of the British government further deterred the passing of such reforms. The [All India Women's Conference](#) (AIWC) expressed its disappointment with the male-dominated legislature and Lakshmi Menon said in an AIWC conference in 1933,^[3] "If we are to seek divorce in court, we are to state that we are not Hindus, and are not guided by Hindu law. The members in the Legislative assembly who are men will not help us in bringing any drastic changes which will be of benefit to us." The women's organisations demanded a uniform civil code to replace the existing personal laws, basing it on the Karachi Congress resolution which guaranteed gender-equality.^[4]

The passing of the Hindu Women's right to Property Act of 1937, also known as the Deshmukh bill, led to the formation of the [B. N. Rau](#) committee, which was set up to determine the necessity of common Hindu laws. The committee concluded that it was time of a uniform civil code, which would give equal rights to women keeping with the modern trends of society but their focus was primarily on reforming the Hindu law in accordance with the scriptures. The committee reviewed the 1937 Act and recommended a [civil code](#) of marriage and succession; it was set up again in 1944 and send its report to the [Indian Parliament](#) in 1947.^[5]

The Special Marriage Act, which gave the Indian citizens an option of a [civil marriage](#), was enacted first in 1872. It had a limited application because it required those involved to renounce their religion and was applicable only to Hindus. The later Special Marriage (Amendment) Act, 1923 permitted Hindus, Buddhists, Sikhs and Jains to marry either under their personal law or under the act without renouncing their religion as well as retaining their succession rights.^[6]

Post-colonial (1947–1985)

Hindu Code Bill and addition to the Directive Principles

Further information: [Hindu Code Bill](#)

[Jawaharlal Nehru](#) in 1930, though he supported a uniform civil code, he had to face opposition by much senior leaders like [Vallabhbhai Patel](#) and [Rajendra Prasad](#)

The Indian Parliament discussed the report of the Hindu law committee during the 1948–1951 and 1951–1954 sessions. The first Prime Minister of the [Indian republic](#), [Jawaharlal Nehru](#), his supporters and women members wanted a uniform civil code to be implemented.^[7] As Law Minister, [B. R. Ambedkar](#) was in charge of presenting the details of this bill. It was found that the orthodox Hindu laws were pertaining only to a specific school and

tradition because monogamy, divorce and the widow's right to inherit property were present in the _____.^[12] Ambedkar's frequent attack on the Hindu laws and dislike for the upper castes made him unpopular in the parliament. He had done his research on the religious texts and considered the Hindu society structure flawed. According to him, only law reforms could save it and the Code bill was this opportunity.^[13] He thus faced severe criticism from the opposition. Nehru later supported Ambedkar's reforms but did not share his negative view on Hindu society.^[13]

The Hindu bill itself received much criticism and the main provisions opposed were those concerning monogamy, divorce, abolition of [coparcenaries](#) (women inheriting a shared title) and inheritance to daughters. The first President of the country, [Rajendra Prasad](#), opposed these reforms; others included the [Congress party](#) president [Vallabhbhai Patel](#), a few senior members and the Hindu fundamentalist parties. The fundamentalists called it "anti-Hindu" and "anti-Indian"; as a delaying tactic, they demanded a uniform civil code.^[9] The women members of the parliament, who previously supported this, in a significant political move reversed their position and backed the Hindu law reform; they feared allying with the fundamentalists would cause a further setback to their rights.^[7]

Thus, a lesser version of this bill was passed by the parliament in 1956, in the form of four separate acts, the [Hindu Marriage Act](#), [Succession Act](#), [Minority and Guardianship Act](#) and [Adoptions and Maintenance Act](#). It was decided to add the implementation of a uniform civil code in Article 44 of the [Directive principles of the Constitution](#) specifying, "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India." This was opposed by women members like [Rajkumari Amrit Kaur](#) and [Hansa Mehta](#). According to academic Paula Banerjee, this move was to make sure it would never be addressed.^[14] Aparna Mahanta writes, "failure of the Indian state to provide a uniform civil code, consistent with its democratic secular and socialist declarations, further illustrates the modern state's accommodation of the traditional interests of a patriarchal society".^[14]

Later years and Special Marriage Act[\[edit\]](#)

The Hindu code bill failed to control the prevalent gender discrimination. The laws on divorce were framed giving both partners equal voice but majority of its implementation involved those initiated by men. Since the Act applied only to Hindus, women from the other communities remained subordinated. For instance, [Muslim women](#), under Sharia law, could not inherit agricultural land.^[14] Nehru accepted that the bill was not complete and perfect, but was cautious about implementing drastic changes which could stir up specific communities. He agreed that it lacked any substantial reforms but felt it was an "outstanding

achievement” of his time.^[13] He had a significant role in getting the Hindu Code bill passed and laid down women-equality as an ideal to be pursued in Indian politics, which was eventually accepted by the previous critics of the bill.

^[13] Uniform civil code, for him, was a necessity for the whole country but he did not want it to be forced upon any community, especially if they were not ready for such a reform. According to him, such a lack of uniformity was preferable since it would be ineffective if implemented. Thus, his vision of family law uniformity was not applied and was added to the Directive principles of the [Constitution](#).^[13]

The [Special Marriage Act, 1954](#), provides a form of civil marriage to any citizen irrespective of religion, thus permitting any Indian to have their marriage outside the realm of any specific religious personal law.^[14] The law applied to all of India, except Jammu and Kashmir. In many respects, the act was almost identical to the Hindu Marriage Act of 1955, which gives some idea as to how secularised the law regarding Hindus had become. The Special Marriage Act allowed Muslims to marry under it and thereby retain the protections, generally beneficial to Muslim women, that could not be found in the personal law. Under this act polygamy was illegal, and inheritance and succession would be governed by the Indian Succession Act, rather than the respective Muslim Personal Law. Divorce also would be governed by the secular law, and maintenance of a divorced wife would be along the lines set down in the civil law.^[15]

Shah Bano case (1985)

Main article: [Shah Bano case](#)

After the passing of the Hindu Code bill, the personal laws in India had two major areas of application: the common Indian citizens and the [Muslim community](#), whose laws were kept away from any reforms.^[15] The frequent conflict between secular and religious authorities over the issue of uniform civil code eventually decreased, until the 1985 Shah Bano case. Bano was a 73-year-old woman who sought maintenance from her husband, Muhammad Ahmad Khan. He had divorced her after 40 years of marriage by triple [talaq](#) (saying “I divorce thee” three times) and denied her regular maintenance; this sort of unilateral divorce was permitted under the Muslim Personal Law. She was initially granted maintenance by the verdict of a local court in 1980. Khan, a lawyer himself, challenged this decision, taking it to the [Supreme court](#), saying that he had fulfilled all his obligations under Islamic law. The Supreme court ruled in her favor in 1985 under the “maintenance of wives, children and parents” provision (Section 125) of the [All India Criminal Code](#), which applied to all citizens irrespective of religion. It further recommended that a uniform civil code be set up. Besides her case, two other

Muslim women had previously received maintenance under the Criminal code in 1979 and 1980.^[61]

The Shah Bano case soon became nationwide political issue and a widely-debated controversy.^[61] Many conditions, like the Supreme court's recommendation, made her case have such public and political interest. After the [1984 anti-Sikh riots](#), [minorities in India](#), with Muslims being the largest, felt threatened with the need to safeguard their culture.^[61] The [All India Muslim Board](#) defended the application of their laws and supported the Muslim conservatives who accused the government of promoting Hindu dominance over every Indian citizen at the expense of minorities. The Criminal Code was seen as a threat to the Muslim Personal Law, which they considered their cultural identity.^[61] According to them, the judiciary recommending a uniform civil code was evidence that Hindu values would be imposed over every Indian.^[61]

The orthodox Muslims felt that their communal identity was at stake if their personal laws were governed by the judiciary.^[61] [Rajiv Gandhi](#)'s Congress government, which previously had their support, lost the local elections in December 1985 because of its endorsement of the Supreme Court's decision.^[61] The members of the Muslim board, including Khan, started a campaign for complete autonomy in their personal laws. It soon reached a national level, by consulting legislators, ministers and journalists. The press played a considerable role in [sensationalising](#) this incident.^[61]

An independent Muslim parliament member proposed a bill to protect their personal law in the parliament. The Congress reversed its previous position and supported this bill while the [Hindu right](#), the Left, Muslim liberals and women's organisations strongly opposed it. The [Muslim Women's \(Protection of Rights on Divorce\)](#) was passed in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women. The debate now centred on the [divinity](#) of their personal law. A Muslim member of parliament made a claim emphasising the importance of the cultural community over national by saying that only a Muslim judge could intercede in such cases.^[61] Bano later in a statement said that she rejected the Supreme Court's verdict. It also led to the argument defining a woman's right according to her specific community with political leader Jaffar Sharief saying, "today, in the Shah Bano's case, I am finding that many people are more sympathetic towards Muslim women than their own women. This is very strange."^[61]

The politicisation led to argument having two major sides: the Congress and Muslim conservatives versus the Hindu right-wing and the Left. In 1987, the Minister of Social Welfare, [Rajendra Kumari Bajpai](#), reported that no women was given maintenance by the [Wakf](#) Board in 1986. Women activists highlighted their legal status and according to them, "main problem is that

there [are] many laws but women are dominated not by secular laws, not by uniform civil laws, but by religious laws.”^[16] The legal reversal of introducing the Muslim Women law significantly hampered the nationwide women’s movement in the 1980s.^[16]

Dispute post-1985

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.^[17] 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.^[17] 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](#). According to Qutub Kidwai, the Muslim Personal laws are “Anglo-Mohammadan” rather than solely Islamic.

^[17] The [Hindu nationalists](#) view this issue in concept of their law, which they say, is secular and equal to both sexes.^[17] In the country, demanding a uniform civil code is seen negatively by religious authorities and secular sections of society because of [identity politics](#).^[17] 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.^[17] The BJP was the first party in the country to promise it if elected into power.^[17]

[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](#).^[18]

In September 2003, in an interactive session in [PGI Chandigarh](#), then President [A. P. J. Abdul Kalam](#) supported the need of Uniform Civil Code, keeping in view the population of the country.^{[19][20][21][22]}

Sikhs and Buddhists objected to the wording of Article 25 which terms them as Hindus with personal laws being applied to them.^[23] However, the same article also guarantees the right of members of the Sikh faith to bear a [Kirpan](#).^[24]

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”.^[25]