

# UNIFORM CIVIL CODE IN INDIA

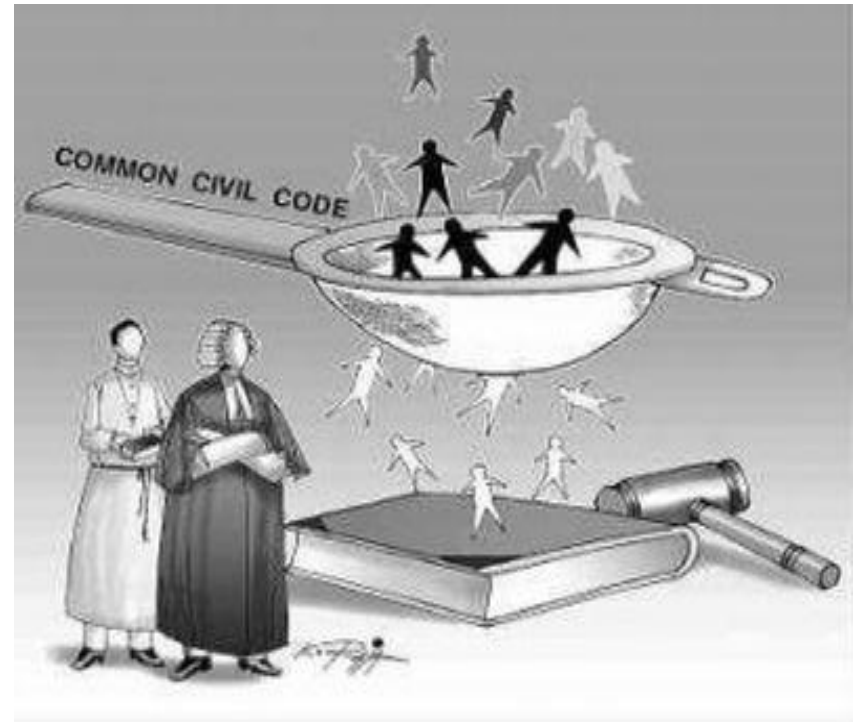


# WHAT IS UNIFORM CIVIL CODE?

- It connotes same set of secular laws and civil rules for the citizens irrespective of their religion, caste, etc.
- It supersedes right to be governed by personal laws.
- It is same for all religion, caste and tribe.
- It covers adoption, marriage, divorce, property acquisition and property administration.
- Article 44 of the Indian Constitution talks about Uniform Civil Code. It says that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.
- Uniform Civil Code is a mandate upon the state under article 44 of the Constitution as directive principle of state policy.

# NEED FOR UNIFORM CIVIL CODE

- To avoid discrimination in matters of marriage, divorce, inheritance etc.
- To fill the void spaces in the personal laws.
- Avoid gender justice.
- Avoid violence against women.
- To settle the ambiguity which has arisen due to different interpretations of various personal laws.
- Modernizing the personal laws as the society is not static.
- To bridge the gap between the personal laws.



# UNIFORM CIVIL CODE IN INDIA

- India is world's largest democracy and second most populous country.
- It has emerged as a major power and has a strong military. It has a major cultural influence and a fast growing and powerful economy.
- India has a federal political system, whereby power is shared between the central government and the state governments.
- With its many languages, cultures and religions, India is highly diverse and, as mentioned in the preamble of its constitution, is a secular country.
- Religions not only have been serving as a foundation of the culture of India, but have had enormous effect on Indian politics and society.
- In India, religion is a way of life. It is an integral part of the entire Indian tradition. A vast majority of Indians associate themselves with a religion.
- Apart from the major religions that are followed in India, there are also numerous minor tribal traditions.
- It is very difficult to enforce an uniform civil code in India because of the above mentioned political and social problems.

# UNIFORM CIVIL CODES ENFORCED IN INDIA

## Special Marriage Act, 1954

- In principle, the act recognises the independent identity of an individual and liberates him/her from the traditional coercive collectivises in the matter of marriage.
- This act was enacted with an objective of providing safety and recognizing the inter caste and inter religion marriages.
- In India, inter caste and inter religion marriages created a confusion as to under which personal law should prevail. To remove this confusion, this act was enacted.
- The act also provides certain requirements given in Section 4 of the Act which are similar to that of the requirements given under section 5 of Hindu Marriage Act. Any marriage which fails to comply with these requirements will become void.

# UNIFORM CIVIL CODES ENFORCED IN INDIA

## Section 125 of Cr.P.C

- Section 125 of CrPC provides maintenance to wife.
- This provision is not specific for a woman of any particular religion or caste.
- This provision is provided for every woman of India irrespective of caste and religion.
- The main objective behind this provision was to provide assistance to woman who are in need of such help after the divorce.
- Though many personal laws have provisions for maintenance, many other like the Muslim Laws do not have any such provision. So in order to provide such relieve, this enactment was made.
- Many cases are filed questioning the validity of this provision (discussed in subsequent slides) . But in all the cases the judiciary has held that this provision is valid and has a very important role to play in our society.

# ANALYSIS OF UNIFORM CIVIL CODE

## SARLA MUDGAL VS. UNION OF INDIA AND OTHERS.

- The husband has performed the second marriage while converted into Islam but without dissolving the first marriage.
- It was questioned that whether such marriage is valid under Hindu Marriage Act or not.
- The Hon'ble Supreme Court has resolved the issue by saying that if there is a controversy between two personal laws then such law should prevail which is serving the purpose best. So, it was held that a conversion to Islam does not amount to automatic dissolution of the marriage performed under Hindu law.
- The Hon'ble Supreme Court also directed to take a fresh look at Article 44.

# ANALYSIS OF UNIFORM CIVIL CODE

## Mohammed Ahmed Khan v. Shah Bano Begam.

- Shah Bano, wife of Ahmed Khan, filed an petition under Section 125 of Cr.P.C for maintenance.
- While deciding this issue, the Hon'ble Supreme Court held that muslim women are entitled to claim to maintenance under section in 125 Cr.P.C as this is a secular provision and the benefit is available to every citizen irrespective of their caste or religion etc.
- It was further held that although the Muslim law limits the husband's liability to provide for maintenance of divorced wife to the period of Iddat, it does not contemplate or countenance the situation envisaged by section 125 of the code of criminal procedure. The court held that it would be incorrect and unjust to extend the above principle of Muslim law to case in which the divorced wife is unable to maintain herself.



# ANALYSIS OF UNIFORM CIVIL CODE

## Daniel Latifi & other Vs. Union Of India.

- In this case, the constitutional validity of Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged.
- It was held by the Hon'ble Supreme Court that clause (1-a) of section 3 does not limit the duty of the husband to pay maintenance only for the period of iddat rather the duty is to make the necessary arrangements within the iddat period but the arrangements has to be made for the entire life of the wife until she gets remarried.
- It was also observed that clause (I-a) requires the husband to make necessary provisions for the wife which means provisions like her shelter and the similar means where as it also requires the payment of maintenance which implies payment of Money.
- In this Case it was also emphasized that the Act of 1986 is only available to the divorced woman and therefore a woman who is still having a subsisting marriage cannot file an application under the Act. She has to file it either under the personal law or the Cr.P.C.

# CONSTITUENT ASSEMBLY DEBATES



- Two objections were put forward in the Constituent Assembly against the making of a uniform civil code applying throughout India: firstly, it would infringe the fundamental right of right to freedom and secondly it would be a tyranny to the minority.
- However, Sri K.M. Munshi in his speech in the Constituent Assembly did not agree that uniform civil code will be a tyranny to the minority.
- Mr. Mohamad Ismail Sahib, in his speech in the Constituent Assembly, said that this amendment(i.e Draft Article 35) does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people.
- Finally the Assembly came to a conclusion that the personal laws should draft their respective laws in accordance to the Constitution of India and the areas which are not covered under such personal laws will come under the umbrella of Draft Article 35.

# CONCLUSION



- Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society.
- The object behind this Article is to effect an integration of India by bringing all communities on the common platform on matters which are at present governed by diverse personal law.
- The Supreme Court in Shah Bano's case has regretted that Article 44 has so long remained a dead letter and recommends early legislation to implement it.
- In the same case, the Supreme Court also requested the Government of India through the Prime Minister to have a fresh look at Article 44 and Endeavour to secure for the citizens a uniform civil code throughout the territory of India.

THANK  
YOU