Ad Hoc Committee of the Indian Parliament
SBMUN 2017
Adoption and Implementation of a Uniform Civil Code
Chairperson: Firdaus Mohandas
Vice-Chairperson: Alaya Purewal
Rapporteur: Anmol Raina
Letter from the Executive Board

Dear Delegates,

It is an honour and a privilege to welcome all of you to the simulation of the Ad Hoc Committee of the Indian Parliament at the Intra-SBSMUN2017.

It is worth noting that while this background guide should provide you with a strong understanding of the subject of a Uniform Civil Code in India and its evolution through history, it is no way conclusive. You may need to do a considerable amount of research beyond it to completely understand the sociopolitical and legal aspects of the subject, but most importantly, the Guide is not meant in any way to provide you with research about your own personal contribution to committee. You will certainly need to look into the position of your portfolio on the matter at hand, and develop solutions yourself that you feel are consistent with his or her viewpoint.

We would suggest you do not worry too much about committee procedure, but focus mainly on understanding the themes you will be dealing with as well as the contribution of the person you will be representing. The more comprehensive your own knowledge and solutions are, the greater the
intensity of debate will be, and committee will naturally be more rewarding for everyone involved.

Finally, we’d like to wish you all the very best for the committee up ahead, and sincerely look forward to two days that will leave a lasting impact on us as well as you.

Good luck, and see you soon!

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**About the Committee:**

**What is the Ad Hoc Committee of the Indian Parliament?**

*Ad Hoc* is a Latin term, literally meaning “for this”. An ad hoc body typically deals with specific problems, its existence terminating when a solution has been arrived at/the problem dealt with. Given the raging debate in India over the potential development of a uniform civil code, and the parliament’s preoccupation with other issues—such as currency demonetization and general economic reform—they have assembled a panel of experts to offer recommendations to the parliament on the subject in the best interest of the nation.

It is important to note that unlike a Law Commission, it is not sufficient for the Ad Hoc Committee of the Indian Parliament to deal with the legal arguments about whether the state has the mandate and obligation to enact a code. Debate in committee must also be of a political and humanitarian nature, arriving at an answer taking into account what provides the best possible situation for the citizens of a nation.

**Procedure of Committee**

Delegates with a basic understanding of UNA-USA Rules of Procedure (in terms of General Speakers Lists, Motions, Points, and Yields) will be able to comfortably handle the procedure of the Ad Hoc Indian Parliament. In the interest of allowing faster-paced debate, however, the Executive Board will make certain changes. The salient features of these are as follows:

- Point of Orders may interrupt a speaker, but as a general principle will only be entertained if the factual inaccuracy is of a nature significant enough to alter the flow of committee (the responsibility to interpret this will stay with the executive board). Repeated misuse may lead to negative marking.
- Points of Information will be entertained in certain Moderated Caucus (due to small committee size), if the topic being discussed is one both Executive Board and Delegates feel is contentious or significant enough. A Motion may be introduced specifically to allow POIs.
- While chits may be accepted under certain circumstances, the small committee size means that the Executive Board would strongly recommend that delegates use their floor time to make any points they might have.

- Special Provision: Official Statements
  a) Given that the members of committee will be representing individuals, delegates will be permitted to make “Official Statements” if they believe their own personal character/character of an institution they represent needs defending under special circumstances, such as crises.
  b) Permission to make such a speech may be taken from the Executive Board when the committee is raising motions. However, if the rest of the committee unanimously votes against such a motion, a statement will not be permitted regardless of what the Executive Board feels.

Documentation

The Ad Hoc Indian Parliament is expected to develop a series of recommendations, with a format similar to a United Nations Resolution. An example of the same can be found at http://www.unausa.org/global-classrooms-model-un/how-to-participate/model-un-preparation/resolutions/sample-resolution. However, given the emphasis on swift action and effective decision making, there will be no need to add pre-ambulatory clauses and the structure will not need to be particularly rigid.
About the Agenda:

What is a Uniform Civil Code?

A Uniform Civil Code is a term generally used to refer to the proposal to replace the personal laws based on scriptures and practices of each major religious community in India with a common set governing every citizen. As of now, these personal laws still apply in a number of fields, including marriage, inheritance, divorce, adoption, and maintenance.

Personal Law through British Rule

The East India Company established the Hastings Plan in 1772 to create a system of civil and criminal courts charged with the duty to see that the “native norms”, as interpreted by maulavis and pandits, were applied as the law. The key motive for this was seen as not wanting to anger a population who it sought to control with minimum effort and expenditure. Therefore, the British refrained from intervention in the field of personal law as far as possible.

However, over time, there was a substantial shift in policy. With a view to achieving comprehensive consolidation and codification of Indian Laws, the Government of India Act of 1833 (otherwise known as the Charter Act or Saint Helena Act) was passed by parliament, establishing- among many other things- an All India Legislature. The First Law Commission submitted the “Lex Loci Report” in 1840 suggesting that the substantive law of England should be declared as lex loci (law of the land) applicable to all excluding Hindus and Muslims living in mofussil areas (outside the EIC capitals of Bombay, Calcutta, and Madras).

The Indian Penal Code was enacted in 1860, the Evidence and Contract Acts in 1872, each- along with many others- based on principles of English Common Law. There was, however, no attempt to address personal law uniformly. 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.

There were repeated cases of confusion in the acceptability of religious personal law due to the presence of multiple conflicting scriptures as well as a conflict between practice and scriptures that were applicable to a particular community. For example, Shudras allowed widow remarriage, in stark contrast to scriptural Hindu law. Gradually the recognition of customary law increased mostly due to popular demand.

Religious personal laws, unsurprisingly, discriminated against women—depriving them of inheritance, remarriage, and divorce. The British, along with a number of social reformers, began to create legislation to secularise Hindu practices. The Indian Majority Act 1875 fixed 18 as the age of majority the Act applied to Hindus in all matters except marriage, divorce and adoption. Many other Acts such as the Hindu Inheritance (Removal of Disabilities) Act 1928; the Hindu Law of Inheritance (Amendment) Act 1929; Child Marriage Act of 1929; Hindu Women's Right to Property 1937 etc. were enacted under British rule.

There was far less interference by the British in the realm of Muslim personal law, largely due to a fear of upsetting the fundamentalist section of the population. These included the Mussalman Waqf Validating Act, 1913; the Muslim Personal Law (Shariat) Application Act of 1937; and the Dissolution of Muslim Marriage Act 1939- the general trend being to restore the orthodox Muslim doctrines.

Therefore, on the whole, there was little interference in personal law over the course of British rule in India- Muslim and Hindu law in particular were largely immune to intervention. Changes in Hindu law were to reduce perceived injustice, while those in Muslim law were to provide clarity and reinforce the emphasis on Islamic scriptures over customary law. Even as the British grew more powerful and consolidated their position, they allowed the systems of religious personal law to exist as they always had, albeit with greater codification.
Constitutional Debate

When the Constituent Assembly first met, there was a strong debate about whether or not to create a Uniform Civil Code. It was proposed as Article 35 of the Draft Constitution - the strongest, most vocal opposition was from Muslim leaders. Mohammad Ismail, member of the Indian Union Muslim League, pushed for an addition that provided that “any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law”. Nazir Ahmed argued that the very concept of Uniform Civil Code clashed with the religious and cultural freedom guaranteed to every citizen.

A number of Hindu members of parliament expressed their opinions to the contrary. KM Munshi argued that “Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible into a strong and consolidated nation.” He also added that a Uniform Civil Code could be enacted by the state even in the absence of Article 35, as Article 25 of the Constitution (guaranteeing religious freedom) also gave the state the power to secularise practices.

The Assembly, however, finally passed Article 44 in the Directive Principles of the Constitution. The Directive Principles are not conventional laws in the sense that they are not enforceable by any court, but are seen as fundamental in the governance of the country, making it the duty of the state to apply these principles while making laws to ensure a just society. Article 44 reads “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

Muslim leaders were particularly worried about this, seeing it as dangerous to their freedoms in the future as a minority. B.R. Ambedkar, addressing their concerns, said that this created a “power” and not an “obligation”. He added that “Sovereignty is always limited, no matter even if you assert that it is unlimited,
because sovereignty in the exercise of power must reconcile itself to the sentiments of different communities.”

Prominent women leaders criticised the move, seeing it as insufficient. By making it a Directive Principle rather than a law in itself, it seemed to them that the state was leaving the state with an option not to enforce it at all. Academic Paula Banerjee declared that the drafters of the Constitution had made sure the issue would “never be addressed”, while Aparna Mehta wrote in retrospect that the “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”.

Constitutional and Legal Provisions

B.R. Ambedkar added to the Muslim community that they “need not read too much” into Article 44 and that it would only apply to those who “consented to be governed by it.” The Constitution does, though, have several clauses pertaining to religious freedoms. Articles 25 (1), 26, and 29 are frequently used as arguments against the state interfering in religious practices through a Uniform Civil Code.

Furthermore, Article 372 ensures the application of "all the law in force in the territory of India immediately before" its commencement. The Muslim Personal Law (Shariat) Application Act of 1937 is technically a law in force before the commencement of the Constitution of India, and this is used by Muslims as a base for certain practices relating to marriage, divorce, and maintenance. This is because the law states that in a case where both the parties are Muslims the rule for decision shall be Muslim Law.

On the contrary, however, Article 13 (1) states that “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void”. This “Part” refers to fundamental rights, so
therefore law legitimising practices such as- say, triple talaq or Hindu inheritance- would be in conflict with rights such as those prescribed in 15 (2).

Furthermore, a number of subjects included in personal law are mentioned in List III (the concurrent list) of Schedule VII of the Constitution- therefore both central and state governments have some power in those fields. Entry 5 of the List reads “Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law”. This is used to reinforce the notion that the state does have the right to intervene.

Therefore, on the whole, experts argue that the Constitution does give the state the right to enforce a Uniform Civil Code. It also puts the responsibility in the form of Directive Principles and fundamental rights that need to be protected, but whether rights on the freedom of worship and religion can be sacrificed in the prevention of discrimination and inequality is a still-raging question that lacks a clear answer.

**Notable Cases**

The Supreme Court for the first time, directed the Parliament to frame a Uniform Civil Code in the year 1985, in the case of Mohammad Ahmed Khan v. Shah Bano Begum , popularly known as the Shah Bano case, In this case, a penurious Muslim women 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. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y. V. Chandrachud observed that, "A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies".
After this decision, nationwide discussions, meetings, and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the UCC; not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

In Mary Roy v. State of Kerala, the question argued before the Supreme Court was that certain provisions of the Travancore Christian Succession Act, 1916, were unconstitutional under Article 14. Under these provisions, on the death of an intestate, his widow was entitled to have only a life interest terminable at her death or remarriage and his daughter. It was also argued that the Travancore Act had been superseded by the Indian Succession Act, 1925. The Supreme Court avoided examining the question whether gender inequality in matters of succession and inheritance violated Art.14, but, nevertheless, ruled that the Travancore Act had been superseded by the Indian Succession Act. Mary Roy has been characterised as a “momentous” decision in the direction of ensuring gender equality in the matter of succession.

Finally, the Supreme Court has issued a directive to the Union of India in Sarla Mudgal v. Union of India to “endeavour” framing a Uniform Civil Code and report to it by August, 1996 the steps taken. The Supreme Court opined that: "Those who preferred to remain in India after the partition fully knew that the Indian leaders did not believe in two-nation or three "nation theory and that in the Indian Republic there was to be only one nation- and no community could claim to remain a separate entity on the basis of religion"

The SC’s comments on the Lily Thompson case are worth noting. The Court said that the directives as detailed in Part IV of the Constitution are not enforceable in courts as they do not create any justifiable rights in favour of any person. The Supreme Court has no power to give directions for enforcement of the Directive
Principles. Therefore to allay all apprehensions, it is reiterated that the Supreme Court had not issued any directions for the codification of a Common Civil Code.

The Supreme Court's latest reminder to the government of its Constitutional obligations to enact a UCC came in July 2003, when a Christian priest went to the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The priest from Kerala, John Vallamatton filed a writ petition in the year 1997 stating the Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief justice of India V.N.Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief Justice Khare stated that, "We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India it is a matter of great regrets that Article 44 of the Constitution has been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies".

Very recently, while hearing a case pertaining to whether a Christian has the right to bequeath property to a charity, the court regretted the fact that the state had not yet implemented a uniform civil code. This is not the first time that the apex court has expressed itself in favour of a uniform civil code or taken a dim view of the government's and legislature's inability to bring it into being. There have been other occasions — like during the Shah Bano case and later in the Sarla Mudgal case — where too the apex court has come out strongly in favour of the enactment of a uniform civil code. However, none of these comments are binding on the executive or the legislature and do not amount to orders. At best, they exert some moral pressure on the Indian state to move towards formulating a uniform civil code.
Thus, as seen above, the apex court has on several instances directed the government to realise the Directive Principle enshrined in our Constitution and the urgency to do so can be inferred from the same.

**Recent Debate**

The debate about a Uniform Civil Code was rekindled in 2014 when the BJP included its adoption in their election manifesto. The Congress and a number of other parties have opposed the BJP’s proposal, arguing that the version of a Code that the party wishes to oppose is “communalized” and simply a way of restricting the freedom of Muslims to practise their religion. Even parties traditionally supportive of a Uniform Civil Code have opposed the BJP’s suggestion as they are of the opinion that it is inherently discriminatory in nature— the All India Muslim Personal Law Board accusing the government of attempting to sneak it in under the garb of promoting gender equality through its opposition to triple talaq in the Supreme Court. The BJP has rejected such claims, and has declared its intent to go through with its original plans.

**Merits of a Uniform Civil Code**

People belonging to different races, innumerable castes and religious beliefs showing no similarity whatsoever live in the sub-continent of India. Fissiparous tendencies, separatist attitudes, secessionist demands, divisive elements of casteism and communalism have not therefore been uncommon.

A uniform civil code has been suggested as one of the steps to achieve national integration. The code should apply to all irrespective of any differences in race, religion, sex or caste. Marriage, divorce, succession, guardianship and adoption may come within the purview of the code. Article 44 of the Constitution directs the state to endeavour to secure a uniform civil code. The provisions of Article 44 are not justiciable, nevertheless Article 37 provides that “they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”.
Though 69 years have elapsed after attainment of independence no successful efforts has been made by the state for securing uniform civil code. There is a glaring apathy and lack of mindfulness on the part of the state to implement this constitutional mandate. The tendency of government to bring reforms solely on electoral considerations, is glaringly revealed. Over the recent years, there have been several arguments raised for the need to implement a Uniform Civil Code.

Firstly, proponents of a Uniform Civil Code argue that the Common Civil Code will bring all the personal laws governing matters which includes: marriage, divorce, adoption, inheritance, succession to property, adoption, guardianship and child custody under a single roof and create a space for the practices of all communities in a just manner, while insuring that everyone is treated equally under the law.

Secondly, the one common argument given by all the political parties highlighting their reluctance to implement the Uniform Civil Code is that implementing Article 44 violates the rights of Indians provided under Article 25 i.e., "Freedom of conscience and free profession, practice and propagation of religion." The counter argument that can be cited is present in the same Article 25 itself under Clause 2, where it is clearly indicated that this article shall not affect the operation of any existing law or prevent the State from making any new law.

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of

Thirdly, with the non-implementation of Article 44 of the constitution, article 14 to 18 are being violated which provide for Right to Equality before Law and prohibition of discrimination on the grounds of sex and religion. Many personal laws relating to marriage, inheritance, guardianship, divorce, adoption and property relations in all communities are unjust, especially to women.
Fourthly, ambiguity is created due to the presence of different laws governing a social institution such as marriage, particularly in the case of polygamy and divorce; both within a religion as well as amongst different religions.

Fifthly, misapprehension prevails about polygamy in Islam. Ironically, Islamic countries like Syria, Tunisia, Morocco, Pakistan, Iran et cetera have codified the personal law where in the practice of polygamy has been either totally prohibited or severely curtailed to check the misuse and abuse of this obnoxious practice.

Lastly, one of the advantages of a uniform civil code will be a proper notice period and registration of the marriage. The ceremonies will become optional - parties can have ceremonies of their choice as a ritual, (i.e., Hindu—Saptapadi; Muslim—Nikah; Christian—Church blessing, etc.) However, the proof of the marriage will be the registration and compliance with what is required of notice, etc., as set out in the uniform civil code. Monogamy will be mandatory and the laws of divorce will be the same for men and women and this will lead to cohesion and non-fragmentation of society. Men and women must be entitled to equal property rights which can be enforced by law. This will be also ensure real equality between men and women, irrespective of their religion.

In addition, a uniform civil code will also help in reducing vote bank politics that most political parties indulge in during every election. If all religions are covered under the same laws, the political actors will have less to offer to certain minorities in exchange of their vote.

**Criticism of the Uniform Civil Code**

The objections raised for implementations of a Uniform Civil Code in India by communities show that the imposition of such a code can pose a serious threat to the sexual social fabric of the country and the minority community in general and the minority communities in particular.
Support for a uniform civil code from the Sangh Parivar has led minority communities to fear the imposition of the religious customs and rituals of the majority community under the garb of a uniform civil code.

A common civil code is also seen as an infringement on the Fundamental Rights enshrined in the Constitution of India which guarantee the right to freedom of conscience and free profession, practice and propagation of religion (Article 25) and freedom to manage religious affairs (Article 26).

Most religious scholars consider their scriptures and personal laws to be of Divine origin and ergo show strong resentment towards any sort of interference with same. They believe personal laws are sacrosanct and immutable and no legislature can amend it.

In addition, most religious practices have been carried out in conformity with these personal laws since times immemorial and any attempt to alter them can hurt religious sentiments and sow the seeds of mistrust among communities. The unfavourable response in the idea of the code it is very likely that protest would occur, if the code is shoved down the throats of the Indian public. Given the strained ethnic and religious fabric of this country, it is better to leave things that may cause tensions.

It is also worth noting that most discriminatory practices have found their bases in distorted codified personal laws which do not conform to the authentic sources. The fault therefore lies not in religious principles but in the flawed process of codification.

**Hindu Personal Laws**

The Supreme Court in the Sarla Mudgal case of 1995 took on the government for not having initiated any steps in the direction of introduction of a Uniform Civil Code. Justice Kuldip Singh and Justice R.M. Sahai in their judgement observed, “The utmost that has been done is to codify the Hindu law in the form of the
Hindu Marriage Act, 1955. The Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 which have replaced the traditional Hindu law based on different schools of thought and scriptural laws into one unified code.

When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India.” The main issue in the case was bigamy by Hindu men. However the issue got sidetracked amidst strengthening of the Hindutva forces. Uniform civil code became their main political plank in the elections that followed. Hence the various presumptions made by the judgment have remained unaddressed, some of which are listed below:

1. Hindu marriages are monogamous in nature;
2. The judiciary has consistently and systematically upheld the principle of monogamy among Hindus by penalising the errant husbands;
3. The only breach of monogamy among Hindus is by conversion to Islam. To quote from the judgment, "there is an open inducement to a Hindu husband, who wants to enter into a second marriage to become a Muslim"
4. A uniform civil code will plug this loophole and ameliorate the sufferings of Hindu women:
5. All the four petitions which the judgment dealt with were filed by women whose husbands had converted to Islam and remarried: and
6. Both the judges who heard the matter advocated enforcement of a uniform civil code on a priority basis as the only remedy to conversion and bigamy by Hindu men. Until 1955, Hindu marriages were polygamous and hence Hindu men did not attract the penal provision of Section 494 of the Indian Penal Code. The Hindu Marriage Act of 1955 for the first time laid down the principle of monogamy. To what extent has this principle been accepted by the Hindu society?
Additionally, even in spite of the Hindu Code Bill, the inheritance rights of women according to Hindu personal law shows that equal rights are not given to women on the ground that it would disturb family peace, lead to fight between brothers and sisters, result in fragmentation of land and so on. So, patriarchal order of family is promoted. When a woman is denied the ownership, inheritance and matrimonial rights, it indicates male dominance and dismissal of women's labor at home. Custody and adoption laws also enforce the notion of father as the natural guardian. A married Hindu woman is not allowed to adopt a child in her own name. Thus, there is legitimisation of male dominance in a family system. Similarly the Hindu succession law protects son’s rights by keeping the provision of making a will.

The Sikh, Jain, and Buddhist communities in India are governed by the same civil laws as the Hindus.

**Muslim Personal Laws**

As far as the Muslim perspective is concerned, some part of the Community not to be opposed to the idea of a common code as such since they can very well accept any law, provided it does not prohibit them from doing what is fard (compulsory) or forces them to do what is haram (prohibited) in the religion. Now it should be realised that though Islam gives permission for polygamy it does not hold it to be fard. So even if a Muslim is made to live under a law that established monogamy, he could abide by the law as polygamy is not fard. However, when given an option they would certainly prefer Shariyat Law over other laws.

As per Shariyat law, legal adoption is prohibited in Islam as is explicitly stated in the Quran (33:4), “...neither has He made your adopted sons as your own sons”.

In relation to marriage, Muslims are allowed to marry more than one wife but there is an upper limit of four as promulgated by the Quran (4:3), “Marry a woman of your choice in two, three or four but if you can’t do justice, marry only one.”
The consent of both the spouses in the marriage contract is essential for the validation of a marriage under Muslim personal laws.

Divorce is another aspect of personal laws and the Prophet conceded that of all the things, divorce is most tasteful to God, however it was allowed with certain restrictions, The Quran says in Chapter 4, verse 35, “If you fear a breach among them, then appoint two arbitrators, one from his family and one from hers. If they seek to set things alright, Allah will call their reconciliation.” This conception of divorce however does not seem consistent with the triple talaq that is being practiced by the Muslims with immunity in this part of the subcontinent.

Regarding guardianship, there are specific rules, both in Hindu law as well as in Muslim law. The details may differ but the substantive principle that the “interests of the child” should be a supreme consideration has been accepted by all systems.

A brief reference to the problem of maintenance is necessary. Under the Muslim law, it is a duty of the faithful husband to maintain his wife with the same standard of living which he has. The Quran ordains the same in the following verses, chapter 2, verses 240 and 241, “Those of who you die and leave widows should bequeath for their widows a year’s maintenance without expulsion. For divorced women also, there shall be provision to what is fair.” It was on ground of these verses that Mr. Daniel Latif argued in the Supreme Court in the Shah Bano's case.

**Christian Personal Laws**

The Christians in India have expressed varied opinions with regard to different aspects of the personal laws. A part of the Christian community believes that Section 10 of the Divorce Act is discriminatory against women, since much is expected by way of proof from them as against men. Most Christians (both Catholics and Protestants) support the introduction of a uniform civil code though
with some reservations. For example, the Catholics prefer annulment of marriage over divorce.

On the point of adoption, the Christians want full adoption to be legalised. Now there is a prohibition in Christian law; they cannot adopt and hence Christians are sent abroad for adoption. All of them are of the uniform view that all aspects of Christian personal law are negotiable. On the point of succession, they believe that though the Indian Succession Act is quite satisfactory, in case of intestacy, the Christian customary laws, that are discriminatory must go. According to them, the widow must get full rights in a husband's property to be divided between the children, as and when she likes.

In the John Vallamattom & Anr vs Union Of India case 2003, the Supreme Court declared Section 118 of the Indian Succession Act to be void as it found the provision to be discriminatory and violative of articles 14, 15, 25 and 26 of Constitution. The Section stated that “No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons”. The Christians found this to be an infringement upon their religious right to practice charities to attain spiritual salvation.

**Parsis and the UCC**

Parsis do not believe in conversion as conversion to Zoroastrianism is prohibited by religion. In case of adoption, Parsis do not like to adopt a non-Parsi child because it is only a Parsi who is entitled to visit the fire temple and to get the benefits from the private Parsi trust. They would want full adoption but in that case the adopted child must necessarily be a Parsi, and adoption must be by Parsi parents. Parsis are supportive of a uniform civil code on the condition that their rituals in marriage are preserved.
Polygamy was and is non-existent in Parsis, in fact, it is a ground for divorce under the Parsi law.

**Special Marriages Act and Indian Succession Act**

It can be argued that a uniform civil code is not a necessity since we already have non-religion-specific legislation, such as the Special Marriage Act, 1954. However, the first Special Marriage Act was enacted not in 1954 but in 1872. It required the parties marrying under it to renounce their religions. It is only when the Special Marriage Act was re-enacted in 1954 that it permitted inter-religious marriages without the couple having to renounce their religion. Parties marrying under this Act were governed by the Indian Succession Act, 1926 for purposes of inheritance. Subsequently in 1976, Hindu couples marrying under the Special Marriage Act of 1954 were taken out of its ambit, and could inherit under the Hindu Succession Act, 1956. This was a retrograde step, because for a Hindu wife her inheritance was depleted due to the coparcenary system.

**Goa Civil Code**

Goa is the only state in India which continues to be governed by Portuguese Laws with respect to Family Laws relating to marriage and Succession Laws. The corresponding laws of India are not extended to the state of Goa. Portuguese law is however applicable only to a Goan. A Goan citizenship under Article 18 of the Portuguese Civil Code, is acquired by

i) birth in Goa, or whose father is born in Goa or whose grandfather is born in Goa, or

ii) a woman by virtue of marriage, or

iii) by naturalisation

By default every Goan marries under a system called Communion of Assets, whereby, from the time of his marriage, his spouse acquires half undivided right in the assets of the other, unless a contract called the Ante Nuptial Contract is executed to avoid such system of law.
In the matter of gratuitous disposition of properties i.e by will or gift, there is a prohibition by which no disposition can exceed half right of a person. This is called disposable quota and the remaining part is called non-disposable quota.

**The Intermediate Position of the Uniform Civil Code- Gradual and/or Optional**

Many jurists have expressed their anxiety regarding the upheavals that might follow the introduction of a uniform civil code. They have promulgated an intermediate position, that is, the establishment of the uniform civil code must be done slowly, with the consent of all communities. In the Constituent Assembly, K. M. Munsh wanted to narrow the definition of religious practice. He pointed out that the personal law of Hindus was discriminatory against women and contravened an Indian citizen's right to equality. Therefore, "religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation."

Ambedkar can also be put in this group since he supported the inclusion of the uniform civil code in the directive principles but said that the code would only apply to those who wanted it to apply to them.

Syed Shahbuddin, former President of the All India Muslim Majlis-e-Mushawarat believes that the project to implement UCC should logically pass through three stages:

1. The codification of personal laws of various communities so that over a period of time there is adequate basis in terms of comparative jurisprudence to serve as a foundation to evolve common principles for a uniform civil code,
2. There is also to be a transitional phase of optionality, and
3. If the uniform civil code comes into conflict with Shariat, the Muslim community should be granted exemption when the UCC becomes obligatory.
However, such a piecemeal approach may give rise to new inconsistencies in personal laws across religions and hence defeat the very objective of a UCC.

**Feminists and UCC**

From the outset the problem with the uniform civil code debate was its gratuitous emphasis on uniformity. Both judicial pronouncements and public debate justified it as essential for national integrity. For a long time it was rarely articulated in the public consciousness as a feminist issue. It became a debate about uniformity versus minority rights, secularism versus religious laws and modernisation versus tradition in the context of the new nation state. As Tahir Mahmood, an expert in personal law, points out, the ultimate object of Article 44 (which enjoins the state to move forward towards a uniform civil code) is secularity in family law: ‘the call for uniformity is merely the means’.

Over the years, consensus has emerged among feminists that all religious personal laws are discriminatory and must therefore change. There are, however, disagreements over the means to achieve this objective, whether through a state-sponsored civil code or internal reform. Aware that legal change cannot be isolated from wider political conflicts and majoritarian politics, women’s groups made an attempt to distance feminist positions from the Hindu right’s demand for a uniform civil code. The women’s movement has since moved to a more nuanced position which combines the options of reform from within personal laws, with the formulation of gender-just laws deriving from the concept of a common civil code.

The All India Democratic Women’s Association, which has a leftist leaning supports a two-pronged strategy to achieve reconciliation between gender-just laws as well as reforms from within. It has actively engaged in mobilising Muslim women and encouraging community initiatives for legal reform, codification of personal laws, and at the same time demanding legislation with regard to matrimonial property and the custody of children, among other issues.
In the context of the controversies surrounding uniform civil code, an important development over the past few years has been the emergence of Muslim women’s activism seeking to promote women’s rights rather than focusing all energies on changing personal laws. Muslim women in India face considerable challenges as citizens and as members of the largest minority. They suffer from many disadvantages in areas such as education, employment and access to welfare programmes. The status of Muslim women broadly indicates the shortage of three essentials: knowledge (measured by literacy and average years of schooling), economic power (captured through participation in paid work and income), and autonomy (measured by decision making and physical mobility) as the defining features of women’s low status.

However the preoccupation with the either-or debate has meant glossing over the economic, political and social problems that define the everyday experiences of Muslim women.

A recent high-level committee on the status of the Muslim community, known as the Sachar Committee, has shown that they are impoverished, marginalised and underrepresented in public institutions. They do, however, have the right to have their own personal laws and to continue to practise these under state protection. From the point of view of Muslim women this has meant that the articulation of gender interests has been tightly controlled and articulated within the terms of an identity discourse. Political negotiations over personal laws have invariably favoured conservative voices among Muslims to the detriment of women’s voices and women’s rights. Those who argue for reform from within of Muslim personal laws as the best strategy for enhancing the scope of Muslim women’s rights ignore the fact that such an approach tends to freeze identities within religious boundaries. Very little attention has been paid to the multiple crosscutting identities of Muslim women based on class, language and region, among others. Implicit in this approach is the assumption of a homogeneous Muslim identity, which fails to hear the different voices within the community.
Replacing the system of personal laws with a uniform civil code right after independence could have nipped the bud; the problem, however, was that, in the immediate aftermath of Partition it would have given a signal of inferior status to the Muslim community, which was already reeling under a sense of insecurity. Now, more than six decades past independence, it will be difficult to accomplish the goal of reforming these personal laws even with the best intentions and will, and even with the considerable involvement of Muslim women.

Questions to Answer as a Committee

1. Does India need a Uniform Civil Code?
2. Does the government have a sufficient legal responsibility to enact a Uniform Civil Code?
3. Should a Uniform Civil Code be implemented in the country?
4. What should be the scope of its application?
5. Should acceptance of the code be optional for communities?
6. Should the Code be a blend of all the personal laws or should it be a new law adhering to the constitutional mandate?
7. How can the Code be implemented to prevent marginalization of minorities?
8. How can steps be taken to ensure the Code is adequately implemented in an executive sense?