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**NAAC ACCREDITED 'A' GRADE**



**Topic:** Uniform Civil Code & Shah Bano Case

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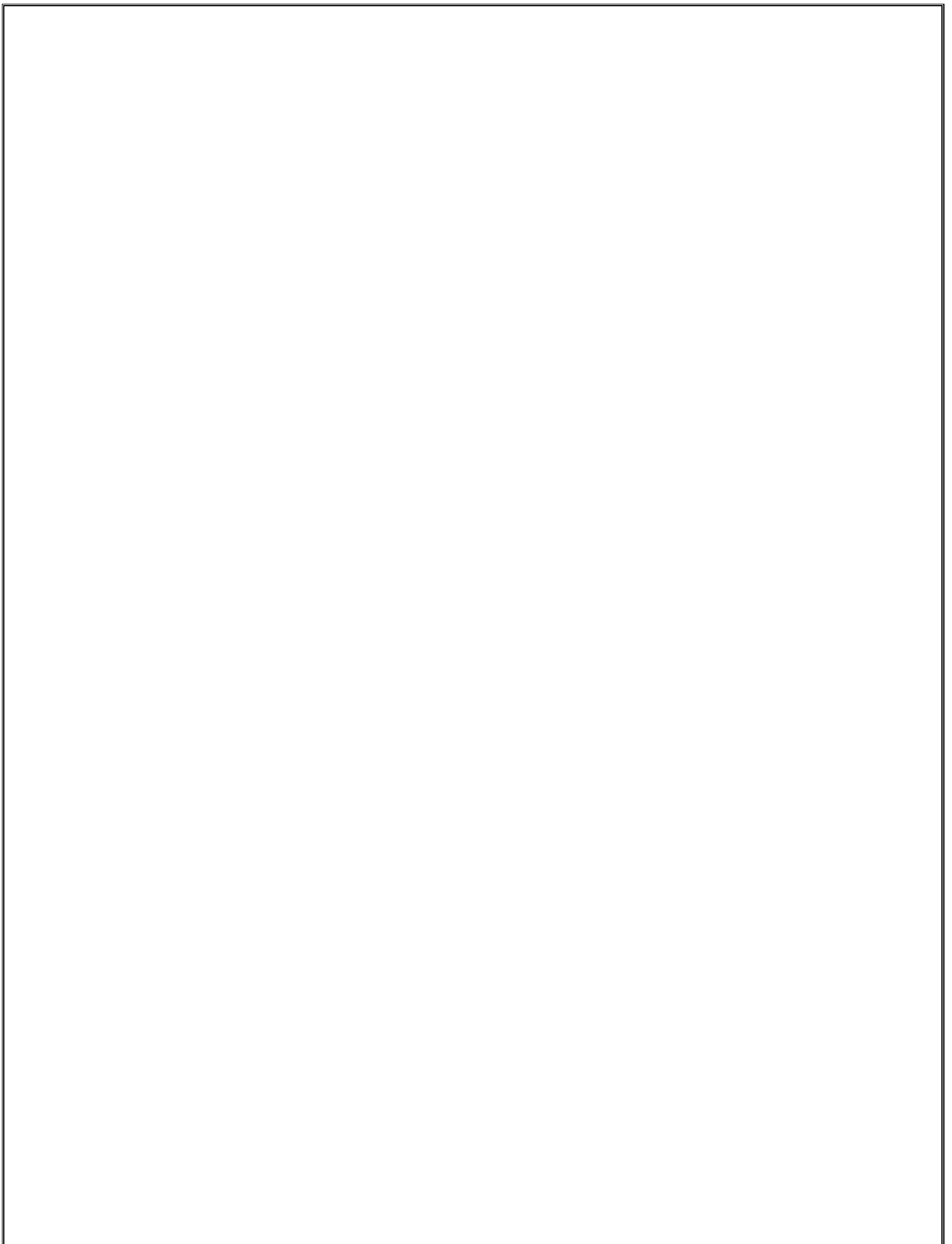
**Paper:** Women's Movement in Post-  
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# **UNIFORM CIVIL CODE AND** **SHAH BANO CASE**

## **Meaning of Uniform Civil Code**

Uniform civil code is the ongoing point of debate within Indian mandate to replace personal laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen. In India the purpose of uniform civil code is to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen.

A uniform civil code will mean a set of common personal laws for all citizens. Currently, for example, there are different personal laws for Hindus and Muslims. Personal law covers property, marriage and divorce, inheritance and succession

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The constitution has a provision for Uniform Civil Code in Article 44 as a Directive Principle of

State Policy which states that The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

The uniform civil code became a flashpoint in Indian politics in 1985 during the Shah Bano case. The Supreme Court had held that Bano, a Muslim woman, should get alimony from her ex-spouse. In the context of that judgment the court had said a uniform. 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.

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.

## **Indian Constitution on Uniform Civil Code**

There are a number of cases where

the Supreme Court has referred to Article 44 and the concept of uniform civil code, mainly to highlight the lackluster attitude of the executive and the legislature in the implementation of the directive.

**Article 44** of the Constitution calls upon the State to endeavor towards securing a uniform civil code throughout the territory of India. It falls within Part IV of the Constitution titled as **Directive Principles of State Policy** (DPSP) and understood as exhortations to the State to be kept in mind while governing the country. And divorce, inheritance and succession.

#### ▪ **Merits of Uniform Civil Code**

- If a Common Civil Code is enacted and enforced;
- It would help and accelerate national integration;
- Overlapping provisions of law could be avoided;
- Litigation due to personal law would decrease;
- Sense of oneness and the national spirit would be roused, and
- The country would emerge with new force and power to face any code or for that matter uniform law- civil or criminal. The European nations and US have a secular law that has finally defeated the communal and the divisionist forces

❖ International scenario on uniform civil code

*Israel, Japan, France and Russia are strong today because of their sense of oneness which we have yet to develop and propagate. Virtually all countries have uniform civil at applies equally and uniformly to all citizens irrespective of their religion. The Islamic countries have a uniform law based on shariah which applies to all individuals irrespective of their religion.*

❖ International scenario on uniform civil code  
Drawback for Uniform Civil Code

- *who is the government to decide about my religion?*
- *We are governed by the Constitution of India.*
- *The Constitution has given me the independence to follow my religion.*

**1. Difficulties due to India's diversity**

*The implementation of Uniform Civil Code is a cumbersome task due to wide diversity of our nation. Cultural differences from state to state and community to community is yet another hindrance for a unified personal law.*

## **2. Interference of state in personal matters**

The constitution provides for the right to freedom of religion of one's choice. With codification of uniform rules and its compulsion, the scope of the freedom of religion will be reduced.

**3.** The people from different communities are not willing to adopt the secular laws separated from personal laws. So, it is not fair to impose the traditions of one group upon other groups. The focus should be on other less contentious issues that the Indian society is facing.

**4.** As far as the protection of human rights or social obligations is concerned, the nation has laid bottom line policies through general laws. For instance, there is general law that prohibits child marriage and reigns over all personal laws.

**5.** 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.

## **The Shah Bano Case**

The Mod. Ahmad Khan vs. Shah Bano Begum & Ors. or the Shah Bano case is seen as one of the legal milestones in the Muslim women's battle to protect their rights. It clarified the extent to which courts can interfere in the Muslim Personal Law.

In April 1978, a 62-year-old Muslim woman filed a petition in court demanding alimony or maintenance from her divorced husband Mohammed Ahmad Khan, a renowned lawyer in Indore, Madhya Pradesh. The two were married in 1932 and had five children – three sons and two daughters.

Shah Bano demanded maintenance for her and her five children under **Section 123 of the CrPC**, which puts a legal obligation on a man to provide for his wife during marriage and after divorce too, if she is unable to fend for herself. However, Shah Bano's husband contested the claim saying the Muslim Personal Law required him to provide for her only until the Iddat period.

Iddat is the waiting period a woman must observe after divorce before she marries another man. It is usually supposed to last three months, but is longer if the wife is pregnant.

Khan's argument was supported by the **All India Muslim Personal Law Board (AIMPLB)**, which said the courts

cannot take the liberty to interfere with laws laid out in the Muslim Personal Law (Shariat) Application Act, 1937.

After a series of hearings, the Supreme Court, in 1985, ruled that the CrPC (**Code of Criminal Procedure**) applies to all Indian citizens regardless of their religion, and that it applied in Shah Bano's case too. Besides, the apex court increased the alimony sum to be given to Shah Bano.

### **Then what was the "mistake"?**

The Congress government, headed by then Prime Minister Rajiv Gandhi, overturned Supreme Court's landmark judgment in 1986 by passing the Muslim Women (**Protection on Divorce Act**).

The Act said maintenance is only liable for the iddat period and that the courts only had the power to direct the Waqf Board for providing alimony to an aggrieved wife who is not able to fend for herself.

Even though Shah Bano's lawyer Danial Latifi challenged the Act's constitutional validity, the top court upheld it, saying the liability can't be restricted to the period of iddat.

Shah Bano later withdrew the maintenance claim she had filed.

Both the Hindu right and liberals have pilloried Rajiv Gandhi for the flip-flop in the Shah Bano case and have viewed it as a move to appease minorities for votes by giving in to the orthodox Muslim clergy, even if at the expense of gender inequality.

However, according to a book written by Ziaur Rehman Ansari's (a minister in Rajiv Gandhi's cabinet) son called *Wings of Destiny: Ziaur Rahman Ansari – A life*, it was his father driven by religious zeal and armed with a resignation letter, who had prevailed upon Rajiv Gandhi to overturn the apex court's verdict.

The Lok Sabha, on July 25, passed the Triple Talaq bill as is. Now, the bill awaits the scrutiny of the Rajya Sabha.

## **Triple Talaq Bill**

The ominous Triple Talaq bill has been tabled in Parliament yet another time and is facing strong criticism from the Opposition.

Muslim Women (Protection of Rights on Marriage) Bill, 2018 has been back and forth in the Lok Sabha and the Rajya Sabha – with the government passing it in the Lower House and the Congress-led Opposition, which is still in majority in the Upper House, rejecting it.

While the ruling NDA government believes the abolition of talaq-e-biddat or instantaneous talaq, as a practice which discriminates against women, will be facilitated by criminalizing it, the Opposition is of the opinion that it impinges on the religious freedom of the Muslim community bestowed in Article 25 and 26 of the Indian Constitution.

Further, while the government asserts that the bill stands for women empowerment, the Opposition rebuts the claim saying the imprisonment of the husband will be detrimental for the wife and the family as he would not be able to provide for the maintenance (as promised in the *nikaahnama*) when he is in jail.

While both points of view hold water, there is one instance that the ruling NDA always digs out from the past which leaves the Congress red-faced. Even today, during the debate on triple talaq, Union Minister of Minority Affairs Mukhtar Abbas Naqvi, in an attempt to beseech the Opposition to pass the bill, said, “Don’t repeat the mistake of 1986.”

What is this “mistake” that haunts the Congress every time the Bill is debated, let’s find out.

Reference: <https://www.moneycontrol.com/news/politics/triple-talaq-bill-what-is-the-shah-bano-case-and-why-does-it-still-haunt-the-congress-4248631.html>