



SOCIAL HISTORY OF INDIA SINCE INDEPENDENCE

ISOLATION:

- First, there was a school of thought which favoured isolation. Hutton, who was a Commissioner for Census of 1931, gave a solution to the tribal problems of uncontrolled acculturation. He suggested the creation of self-governing tribal areas with free power of self-determination.
- Earlier Verrier Elwin suggested the creation of National Parks where the tribal people could live safely without being victims of what Elwin calls an over-hasty and unregulated process to belief and civilization. But later on Elwin discarded the idea of a national park.
- Both Hutton and Elwin were severely criticized for recommending this policy of isolation which was looked upon as a proposal to create a museum or zoo, instead of helping the tribal people to utilize the resources of modern knowledge and improve their condition of life.

ASSIMILATION OF TRIBALS:

- Second, there is another school which favoured assimilation. According to G.S. Ghurye, the tribals are backward Hindus and they should be completely assimilated into Hindu culture.
- D.N. Majumdar has put forward a philosophy and programme of tribal welfare. He says that it is not possible to ignore the entire tribal population and leave them to their own lot. It is not also possible to completely assimilate them in the Hindu culture.
- Therefore, a gradual transformation of the tribal population is the best policy. We should try to help them in assimilating in their own way of life the elements of alien culture which they readily accept. This view was also supported by social reforms and voluntary organizations.
- The Christian missionaries and some social reformers like Thakkar Bapa have recommended and have worked for the assimilation of these tribal groups either into Christianity or into Hinduism.

INTEGRATION

- The third view, which is followed in the recent years, is that of integration. The policy of integration, as against isolation and assimilation, was laid down in five principles by Nehru in 1957.
- The **tribal 'Panchasheel'** as enunciated by him are as follows:
 - People should develop along the lines of their own genius and we should avoid imposing anything on them. We should try to encourage in every way their traditional art and culture.
 - Tribal rights in land and forests should be respected.
 - We should try to train and build up a team of their own people for the work of administration and development. Some technical personnel from outside will, no doubt be needed especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
 - We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through and not in rivalry to their own social and cultural institutions.
 - We should judge results not by statistics or the amount of money spent but by the quality of human character that is evolved.
- Thus by the Constitution Order 1950 issued by the President of India in exercise of powers conferred by Clause 9(i) of Article 342 of the Constitution of India, 255 tribes in 17 states were declared to be scheduled tribes. Besides enjoying the rights that all citizens and minorities have the member of the Schedule Tribes have been provide with special safeguards as follows:
- **Protective Safeguards:**
 - Educational safeguards – Article 15(4) and 29
 - Safeguards for employment – Article 16(4), 320(4) and 333
 - Economic safeguards – Article 19
 - Abolition of bonded labour – Article 23
 - Protection from social injustice and all forms of exploitation – Article 46
- **Political Safeguards:**
 - Reservation of seats for ST in Lok Sabha and Assemblies – Article 330, 332, 164
 - Appointment of Minister in charge of Tribal welfare
 - Special provisions in respect of Nagaland, Assam and Manipur – Article 371(A), 371(B) and 371

- **Development Safeguards:**

- Promoting the educational and economic interests of the Scheduled Tribes – Article 46
- Grants from Central Government to the states for welfare of Scheduled Tribes and raising the level of administration of Scheduled Areas – Article 75

CONCLUDING REMARKS:

- To conclude, the policy of isolation was neither possible nor desirable.
- Assimilation as advocated by some was not accepted because it would mean imposition.
- Only therefore, the policy accepted which would make available to the tribes the benefits of modern society and yet retain their separate identity is integration.
- However, the process of assimilation is bound to continue as some of tribal groups are adopting Hindu customs because of their association with the village people. Others have been converted to Christianity.

B. UNIFORM CIVIL CODE

Hindu Code Bills and Shah Bano to Shayara Bano

SHAH BANO'S CASE

(Muslim Women (Protection of Rights on Divorce) Act, 1986)

BACKGROUND:

- In 1932, Shah Bano married Mohammed Ahmad Khan. She had 5 children from the Marriage.
- After 14 years, Khan took a younger woman as second wife and after years of living with both wives, **he threw Shah Bano who was then aged 62 years and her five children out.**
- In April 1978, when Khan stopped giving her Rs. 200 per month he had apparently promised, claiming that she had no means to support herself and her children, she filed a petition at a local court in Indore, against her husband under section 125 of CrPC (Code of Criminal Procedure, 1973), asking him for the maintenance amount.
- On November 1978 her husband gave an irrevocable talaq (divorce) to her which is his prerogative under Islamic law and took up the defence that hence Bano had ceased to be his wife and therefore he was under no obligation to provide maintenance for her (**divorced at the age of 62**).

SUPREME COURT JUDGMENT: 1985

“It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.” – SC verdict in Shah Bano’s case.

- After many years of appeals against the judgment of local court and high court the case reached Supreme Court. Supreme Court ruled that Shah Bano be given maintenance money, similar to alimony. It said that there is no conflict between the provisions of section 125 and those of the Muslim Personal law as the Quran imposes an obligation on the Muslim husband to provide maintenance to the divorced wife who is unable to maintain herself.
- It also said that Article 44 w.nt Uniform Civil Code has remained a dead letter. It said that a common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies.

AFTERMATH

- **Opposition by Muslims:**
 - The judgement evoked criticisms among Muslims some of whom cited Qur’an to show that the judgement was in conflict with Islamic law.
 - They saw it as interference in their personal laws.
 - Processing were taken around the country. Muslims came out on streets against the judgement.
- **Congress’s reaction to it;**
 - Many Congress leaders including PM Rajiv Gandhi feared losing Muslim support in the coming elections if the government did not enact a law overturning the Supreme Court judgement.
 - Towards the ends of 1985, Congress lost a series of by-elections in northern India especially in constituencies with large Muslim populations. Congress viewed ‘Shah Bano factor’ as the reason for such loss.
 - And it was in this background that they passed the Muslim women (Protection of rights on Divorce) Act, 1986.

MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986:

- It nullified/diluted the Supreme Court’s judgement in the Shah Bano case.

- The 'liability' of husband is to pay the maintenance to his divorced wife during the period of iddat only (i.e. till 90 days after the divorce, according to the provisions of Islamic law). After that the burden is on relatives.
- This was in stark contrast to section 125 of the CrPC.
- In short she was denied alimony.

CRITICISM OF THE ACT:

- The law received severe criticism from several sections of the society.
- It was seen as discriminatory by women right groups as it denied divorced Muslim women the right to basic maintenance which women of other faiths had access to under secular law.
- The Opposition called it another act of "appeasement" towards the minority community by the Indian National Congress. It is one of the many examples of pseudo-secular tactics followed by parties to use religion for political ends.
- Demand of Uniform Civil Code (UCC) increased. Hindu nationalists have repeatedly contended that a separate Muslim code is tantamount of preferential treatment and demanded a uniform civil code
- It was also seen as a "violation of the sanctity of the country's highest court".

VIEW OF CRITIQUES ON RAJIV GANDHI'S LEADERSHIP:

- The personal law debates that across in the background of Shah Bano case in 1985-86 were in many ways similar to the personal law debates in the background of Hindu Code bill in late 1940s and early 1950s.
 - If now minority (Muslim) votes were at stake with no immediate general elections ahead, then at that time majority (Hindu) votes were being risked in the forthcoming general elections.
 - However, determined to reforming Hindu personal laws, Nehru fought and won the 1st general elections and passed the Hindu Code bill.
- Rajiv Gandhi already had to support the over 400 MPs. A reform of Muslim personal law to enhance the rights of women was comfortably within his reach. However, the PM chose an easier solution.
- Rajiv Gandhi initiatives in Punjab and Assam had show boldness but here he gave way to conservations for the fear of losing Muslim vote bank.
- In this background, a political analyst said, 'Rajiv Gandhi, the statesman started transforming himself into a politician.
- A historic opportunity to enact UCC was lost as at that time Rajiv Gandhi had massive absolute majority in Parliament and even the Supreme Court had said that UCC should be implemented as soon as possible. But it wasn't.

• SHAYARA BANO JUDGEMENT

JUDGEMENT:

- In August 2017, the five-judge bench of Supreme Court of India by a 3-2 majority declared instant triple talaq (Talaq-e-Bidat) as unconstitutional.
- Of it, three judges ruled that the practice was unconstitutional.
- Other two judges ruled that the practice is constitutional as freedom of religion subject to restrictions under Article 25 & 26 is “absolute”, but simultaneously asking the government to ban the practice by enacting a law.

BACKGROUND

- This judgement came in the background of the Shayara Bano case. Shayara Bano, a resident of Kashipur in Uttarakhand, was given instantaneous triple talaq by her husband. In February 2016 she approached the Supreme Court challenging the following long-standing practices –
 - Talaq-e-Bidat
 - Nikah Halala and
 - Polygamy
- Subsequently, Union government filed an affidavit supporting the petitioner’s demand.

TERMINOLOGY RELATED TO DIVORCE IN ISLAM:

Talaq

- The word talaq originally meant “rejection” or “repudiation”.
- In Muslim law, it means divorce initiated by the husband. Only the husband has a right of pronounce Talaq.
- Talaq can be effected in writing (Talaqnama) or orally.

Talaq-UI-Sunnat

- Under this form of talaq, once the husband initiates talaq, there has to be a three month waiting period (iddat) for reconciliation among the couples.

Talaq-e-Bidat

- It means instantaneous triple talaq. Under this, once the husband pronounces Talaq thrice in one sitting the divorce occurs immediately irrespective of iddat. Once pronounced, it cannot be revoked.
- It has no origin in Quran. According to Muslim scholar Tahir Mahmood, this form traces its origin to the time when the first caliph (Abu Bakr) used it once so as to grant instant divorce to a few women who were no longer willing to stay with their husbands.

Nikah-halala

Under this, if a female divorcee wants to remarry her previous husband then she has to following steps:

1. First she will have to marry someone else
2. Then consummate that marriage and
3. Then get a divorce

Then only she is eligible to marry her previous husband.

Khul'

- Khul' is a procedure through which a woman can divorce her husband in Islam through mutual consent or a judicial decree.

DIVORCE LAWS FOR MUSLIM COMMUNITY IN INDIA:

- **Dissolution of Muslim Marriages Act, 1939:** It has codified a Muslim woman's right to seek divorce (khul') which she can do by approaching the courts.
- **Muslim Personal Law (Shariat) Application Act, 1937:** According to it, on matters relating to talaq, the Shariat will govern Indian Muslims. But it doesn't specifies what exactly it is !!! (i.e. there is no codification) and **this has created the scope for personal convenient patriarchal interpretations.**

ARGUMENTS IN FAVOR OF TALAQ-E-BIDAT: The all India Muslim Personal Law Board (AIMPLB) a body that comprises just 12 per cent women – defends the practice arguing that:

- **Beneficial for women:** It saves women the shame of divorce proceedings which could damage her chances of re-marriage. It prevents the “murder of wives” by their husbands (instead of killing them they are just divorcing them).
- **Islamic:** It is an integral part of Islam and thus should be continued. The words of Allah are divine. On the other hand, clergy acknowledges Talaq-e-Bidat to be bad in theology, but valid & good in law.
- **Constitutional:** Article 25 of the constitution states that the religious faith should be protected.
- **Low Divorce Rate:** Despite their vulnerability to arbitrary divorce the divorce rate – number of divorcees per 1,000 marriages – among the Muslim community is not the highest. According to census 2011, the divorce rate among women among different religious community is as follows (in descending order): Buddhist (6.73), Christian (5.67), Muslims (5.63), Other communities (4.91), Jains (3.04), Hindus (2.60) and Sikhs (2.56).

ARGUMENTS AGAINST TALAQ-E-BIDAT:

- **Against women’s rights:** This barbaric practice is against women’s rights. Bharatiya Muslim Mahila Andolan (BMMA), in 2015 conducted a survey of 4,710 Muslim women in 10 states. It found that more than 90 per cent wanted an end to polygamy and triple talaq.
- **Un-Islamic:** According to many Muslim scholars talaq-e-bidat has no foundation in the Quran. Divorce is only permissible in extreme emergency cases and that too, only after all efforts for reconciliation have failed.
- **Global Scenerio:** Infact, around 20 Muslim majority countries including theocratic states like Pakistan and Afghanistan have banned triple talaq in one sitting.
- **Un-constitutional:** Shayara Bano’s petition argues that triple talaq is against the fundamental rights guaranteed (under Articles 14,15,21 and 25) by the Indian Constitution. On Article 25, the petition states that Article 25 merely protects religious faith and not practices that are against “morality, public order or health”.
- **Religious parity:** According to Hindus when personal law of Hindus have been codified and reformed, then why shouldn’t the same happen for Muslims.
- It doesn’t provide for the reconciliation which is necessary for preventing marital breakdown.

WAY AHEAD:

- It is a historic decision as it bans one of the most barbaric practice. But we should remember that doing away with Talaq-e-Bidat will not ensure absolute gender parity because men will still reserve the right to Talaq under Talaq-ul-Sunnat.
- We should go for codification of Muslim personal laws to pre-empt hegemonic interpretations by the clergy, as suggested by the Bharatiya Muslim Mahila Andolan.

- **Pam Rajput committee** (A high level committee on the status of women in India) which submitted its report in 2015 recommended reforms in personal laws of all communities in matters of marriage, divorce, succession and custody.
- **Lesson from Pakistan:** And to move in this direction we can adopt the rules in Pakistan's Family Laws Ordinance 1961. It's key features are as follows:
 - It provides for an Arbitration Council to bring reconciliation and a three month period for retraction.
 - Talaq must be pronounced by a notice in writing and communicated to the Council's Chairman.
 - The wife can stipulate a right to divorce in the nikahnama (Talaq tafuriz) (apart from having the right to divorce (khula)). In the nikahnama, she can add stipulations on visits to her family, pocket money, bar on a second wife and her family visits.

MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2018

- In December 2018, Muslim women (Protection of Rights on Marriage) bill, 2018, also known as Triple Talaq bill was passed by the Lok Sabha. It is yet to be passed in Rajya Sabha.
- This bill has been enacted to give effect the Supreme Court judgement that had pronounced talaq-e-bidat or triple talaq as unconstitutional.
- **Salient Features of the Bill:**
 - The bill will **replace the ordinance** promulgated in September 2018.
 - Clause 3 of the bill declares **pronouncement of talaq, both in written or electronic form**, as illegal and void.
 - Pronouncement of talaq is a punishable offence with **imprisonment for up to 3 years and a fine**. The bill also makes the women entitled to maintenance determined by a magistrate.
 - Cognisance of offence can be taken only on a **complaint** to magistrate **by the wife or her close relatives**.
 - There is **provision for bail** which can be granted by a magistrate only after hearing the wife.
 - The women **can also drop the case** against her husband if both reach a compromise.
- In February 2019, **The Muslim women (protection of rights on marriage) second ordinance, 2019** was promulgated to give continued effect to the provisions brought in by the earlier ordinance.

HINDU CODE BILLS

ABOUT

- The Hindu code bills were several laws passed in the 1950s that aimed to codify and reform Hindu personal law in India. Following India's independence in 1947, the Indian National Congress government led by Prime Minister Jawaharlal Nehru completed this codification and reform.

ACTS INCLUDED

They succeeded in passing four Hindu code bills in 1955-56:

- **The Hindu Marriage Act:**
 - The main purpose of the act was to amend and codify the law relating to marriage among Hindus and other. Besides amending and codifying Sastrik law, it introduced separation and divorce, which did not exist in Sastrik law.
 - This enactment brought uniformity of law for sections of Hindus. In India there are religion specific civil codes that separately govern adherents of certain other religions.
- **The Hindu Succession Act:**
 - It was enacted to amend and codify the law relating to intestate (not having made a will before one dies) or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The act lays down a uniform and comprehensive system of inheritance and succession into the act. The Hindu woman's limited estate is abolished by the Act.
 - Any property possessed by a Hindu female is to be held by her absolute property and she is given full power to deal with it and dispose it off by will as she likes.
- **The Hindu Minority and Guardianship Act:** It was meant to enhance the Guardians and Wards Act of 1890, not serve as its replacement. This Act specifically serves to define guardianship relationship between adults and minors, as well as between people of all ages and their respective property.
- **The Hindu Adoptions and Maintenance Act:** It dealt specifically with the legal process of adopting children by a Hindu adult, and with the legal obligations of a Hindu to provide "maintenance" to various family members including their wife or wives, parents, and in-laws.

FOUR NARRATIVES IN THE HINDU CODE BILL DISCOURSE:

Four prominent narratives can be identified while reviewing the Hindu code bill discourse of the 1940s and 1950s.

1. Religious narrative: The first may be termed as the orthodox or religious narrative, as it derived its legitimacy from the ancient religious scriptures of Hindu society. This narrative came from religious organizations spiritual leaders or right wing political parties.

2. Liberal Narrative: The second one was the liberal narrative that was premised on the notion that emerging Indian nation needed modern, forward looking legislation. This narrative got the backing of the liberal elite and the main political party, the Congress.

3. Gender Narrative: Progressive legislation, based on the notion of gender equality, was the central focus of third strand of legal narrative. The gender narrative was propagated by the pan-Indian, regional and local women's associations as well as leading ladies of Indian political set up

4. The Minority Narrative: The fourth narrative, which may be called the minority narrative, was entirely constructed by a leading socio-political figure, Dr. B.R. Ambedkar. Similar to the gender narrative, the minority narrative highlighted discriminations in Hindu society and underscored the need to address the caste inequalities in Hindu customary practices. The gender narrative was embedded in the minority narrative due to the "double status disadvantage" of lower caste women.

OPPOSITION TO BILL:

- It may be recalled that a draft Hindu Code Bill was introduced in the Constituent Assembly which incorporated several measures to empower Hindu women, including right to divorce.
- Various organizations launched a vicious campaign against Nehru and Ambedkar.
- Outside the Assembly, the cries against the bill grew louder. Already in March 1949 an All-India Anti-Hindu Code Bill Committee had been formed. This held that the Constituent assembly has 'no right to interfere with the personal laws of Hindus which are based on Dharma Shastras'.
- The Anti-Hindu Code Bill Committee held hundreds of meetings throughout India, where sundry swamis denounced the proposed legislation. The participants in this movement presented themselves as religious warriors (dharmaveer) fighting a religious war (dharmayudh).
- The Rashtriya Swayamsevak Sangh (RSS) threw its weight behind the agitation. On 11 December 1949, the RSS organized a public meeting at the Ram Lila ground in Delhi, where speaker after speaker condemned the bill. One called it 'an atom bomb on Hindu society'.

- Another linked it to the draconian Rowlatt Act introduced by the colonial state; just as the protests against that Act led to the downfall of the British, he said, the struggle against this bill would signal the downfall of Nehru's government.
- The leader of the movement against the new bill was one Swami Karpatriji Maharaj. He made pointed references to the law minister's caste, suggesting that a former "Untouchable" had no business meddling in matters normally the preserve of the Brahmins.

UNIFORM CIVIL CODE (UCC)

MEANING:

- It means having same set of secular civil laws which will govern all people instead of being governed by their own personal laws based on their religion or caste or tribe.
- The common areas covered by a civil code include laws related to personal matters like marriage, divorce, maintenance, adoption and inheritance.

PRESENT STATUS IN INDIA:

- At present India has a uniform and complete criminal code operating throughout the country which is contained in the Indian Penal Code and the Criminal Procedure Code.
- To have a UCC Article 44 was incorporated which states that **"The State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India"**.
- **However still we don't have a UCC.**
- Thus different religious communities are governed by different set of personal laws.
 - Hindus, Sikhs, Jains, and Buddhists are governed by Hindu code of laws.
 - Muslims are governed by their own personal laws based on the Sharia.
 - Christians are governed by their Christian laws based on specific statutes.
- **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.

History:

- 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.

- Since the UCC was a politically sensitive issue in the background of Independence & partition, it was placed under Article 44 as a directive principle of state policy.
- In 1956, instead of UCC, the Indian Parliament passed Hindu Code Bill amidst significant opposition. The Act was a bit diluted due to opposition from Hindu nationalists.
- Since then from time to time esp. starting with the Shah Bano case in 1985, Bharatiya Janata Party (BJP) and judiciary have raised the issue of implementation of UCC. This is opposed by minorities with Muslims being the most vocal.

CHALLENGES TO UCC:

- Main controversy revolves around secularism and freedom of religion enumerated in the Indian Constitution with critiques arguing that UCC is in opposition to these ideas.
- Minorities esp. Muslims argue that in the guise of UCC, Hindu communal organizations want to impose their customs on them. This will destroy their cultural identity.
- Muslims further argue that Islamic laws are sacrosanct and thus can't be changed.
- Then there is Codification challenge. There is a lot of literature churned out on UCC but there is no model law drafted.

ARGUMENTS IN FAVOUR:

“Apart from economic growth, social growth is also important.”

1. It is not against secularism nor does it violate Article 25 and 26 of the Constitution. Infact it is necessary **“To constitute India into Socialist Secular Democratic Republic”**.
2. It is not the communal agenda of any party. Judiciary in various cases (Shah Bano, Sarla Mudgal, Lily Thomas etc.) have directed the Executive to implement uniform civil code.
3. Islamic laws are also dynamic (if the Shariat is to be strictly observed, a thief should have his hands cut off). In advanced Muslim countries (Turkey, Egypt etc.), the personal laws are being amended in tune with modern times.
4. **Women empowerment:** Muslim women suffer from polygamy, lack rights to maintenance and have subordinate rights of inheritance. UCC will change it. For eg. Goa's family laws provide for compulsory registration of marriage to avoid multi-marriages, stringent provisions for divorce, equal sharing of property among the husband and the wife.
5. **Misuse of personal laws:** Many Hindu husbands have converted to Islam (which allows polygamy) in order to get married again without divorcing the first wife. Although in Sarla Mudgal case, 1995 SC directed that non-Muslims can't convert to Islam merely for bigamous relationship, but the practice continues.

6. **National integration:** UCC will help to construct an Indian national identity, over the separate identities of caste, religion and ethnicity. **After GST on the economic front, UCC is the ultimate measure to “unify” Indian society.**
7. If we can have a Uniform Criminal Code then why not have a Uniform Civil Code?
8. Though Directive Principles of State Policy (DPSP) are not enforceable by the Court of Law, but that does not reduce the importance of the directive principles.
9. Different personal laws for various communities creates unnecessary burden of the legal system. Bringing a Uniform Civil Code would **simplify the Indian legal system.**
10. If all Indians have same laws governing them, then the politicians will have less chance of indulging in vote bank politics.

WAY AHEAD:

- Male chauvinists and opportunistic politicians (who engage in minority appeasement) will definitely oppose it. But that shouldn't deter the government.
- In **Lily Thomas etc. V. Union of India**, the Supreme Court stated that “UCC can concretize only when social climate is properly built up by statesmen among the masses to accept the change.”
- For this, it should be realized that the Hindu code cannot be applied uniformly to all religions. Thus Law Commission of India should study all personal laws in detail to incorporate the most modern aspects in UCC. And this should be passed by building consensus among the masses by education and convincing them.



:9971053929,7275253434



:info@prismaticinstitute.com



www.prismaticinstitute.com

Regd. Office:-A-53, 3rd Floor Prashant Vihar Rohini Sector 14, New Delhi-110085