**Law Commission of India**

[**Questionnaire on Uniform Civil Code**](http://lawcommissionofindia.nic.in/questionnaire.pdf)**[[1]](#footnote-1)**

1. **Are you aware that Article 44 of the Constitution of India provides that "the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India"?**
2. **Yes 🗹**
3. No

**In your view, does this matter require any further initiatives?**

Swarna Bharat Party is India’s only liberal party. We consider everything from first principles in which the citizen is master and government a servant. A government exists to defend citizens’ liberties. Any public policy must be consistent with the principle of liberty.

SBP does not agree with the concept of Directive Principles of State Policy since a Constitution should limit the government’s role and powers and focus on citizens’ fundamental rights. Policy matters should remain the domain of elected governments.

We respectfully do not agree with the (undefined) policy principle outlined in Article 44 and commend a more refined approach that is consistent with liberty, while ensuring accountability.

1. **The various religious denominations are governed by personal laws and customary practices in India on matters of family law, should the UCC include all or some of these subjects?**
2. **Marriage**
3. **Divorce**
4. **Adoption**
5. **Guardianship and Child custody**
6. **Maintenance**
7. **Successions and**
8. **Inheritance**
9. **Yes, it should include all these**
10. **No, it should exclude \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
11. **It should further include\_\_\_\_\_\_\_\_\_\_\_\_\_**

We do not see any option that allows our Party’s position to be reflected. Our position is **(d) Other. We do not see the need to discuss a uniform civil code. Instead, we should discuss minimum standards of accountability, as detailed below.**

Religious obligations on families are outside the scope of a government’s jurisdiction. That is a basic principle of a liberal state: the separation of state and religion.

Even in non-religious personal arrangements about marriage, there is fundamentally no role for government. Families should be able to structure themselves without violating the life or liberty of family members or others. A marriage contract or sacrament is a matter of personal taste about which the state can have nothing substantial to say.

The only role a state can have in regard to any of these matters relates to establishing norm-setting minimum standards of accountability. These could include minimum standards for outcomes (such as a minimum age of marriage, minimum maintenance requirements upon divorce and minimum inheritance requirements in absence of a will) and reasonable minimum specifications about the process of signing up to (or revoking) long term personal relationships, for instance, a minimum “time for reflection” for marriage or divorce.

All citizens would need to abide by the legislated minimum standards of accountability even as they are free to comply with the expectations of their individual faith (or other beliefs).

More broadly, since there is no role for the state in matters of religion, SBP wants a review and potential repeal of all religious (e.g. Hindu/ Muslim) legislation on the statue books, with these laws replaced by generic rules of accountability as outlined above. It is crucial for the state and religion to be kept separate at all times – something which India has failed to do. A government must focus on its core functions, never dabble with (or try to “codify”) the personal beliefs and practices of its citizens. That is not its job.

By enacting (“codifying”) religious laws, a government not only interferes in the domain of religion, but creates religious monopolies and prevents the natural growth (or decline) of religions and beliefs. The creation of state-approved religious monopolies is directly violative of the principles of freedom, competition and violative of the constitutional duty “to develop the scientific temper, humanism and the spirit of inquiry and reform”.

1. **Do you agree that the existing personal laws and customary practices need codification and would benefit the people?**
2. **Yes**
3. **No 🗹**
4. **Personal laws and customary practices should be replaced by a uniform code**
5. **Personal laws and customa1y practices should be codified to bring them in line with fundamental rights .**

We do not believe that the state has any role in any customary (religious) law. Our party’s position is to review and repeal all parliamentary laws on matters of religion. What people believe is not the business of government. Only actions that people undertake that may harm others can fall within the scope of the business of government.

1. **Will uniform civil code or codification of personal law and customary practices ensure gender equality?**
2. **Yes**
3. **No**

As indicated, our party has a different option which is not reflected either in Yes or No. We respond with

 **c. Other** **🗹**

We do not agree with the UCC/ codification of personal law and hence do not agree with the question. The idea of minimum standards of accountability that SBP recommends are the only way to enhance citizens’ freedoms and equality of status (including gender status) under the law.

1. **Should the uniform civil code be optional?**
2. **Yes**
3. **No**

As indicated, our party has a different option which is not reflected either in Yes or No. We respond with

 **c. Other** **🗹**

We do not agree with the UCC. The minimum standards of accountability that SBP recommends must be mandatory, but these should largely be outcome based – not prescriptive – leaving it to the citizens to work out how they wish to achieve them.

1. **Should the following practices be banned and regulated?**
2. **Polygamy (Banned/ Regulated)**
3. **Polyandry (Banned/ Regulated)**
4. **Similar customary practices such as *Maitri-karaar* (friendship deed) et al. (Banned/ Regulated)**

As indicated, our party has a different option which is not reflected either in a, b, or c. We respond with

 **d. Other** **🗹**

In particular, we believe in regulating outcomes (i.e. voluntarism, no harm to be caused to others) and not the specific form of marriage between a man and woman. The minimum standards of accountability being performance and outcome based, would be designed to ensure the absence of harm, without specifying which form of marriage is acceptable and which is not.

1. **Should the practice of triple talaq be**
2. **Abolished *in toto.***
3. **Retained the custom**
4. **Retained with suitable amendments**

As indicated, our party has a different option which is not reflected either in a, b, or c. We respond with

 **d. Other** **🗹**

As indicated earlier, the minimum standards of accountability could include reasonable minimum restrictions on the process of signing up to (or revoking) long term personal relationships. For instance, a minimum “time for reflection” principle would apply for marriage and divorce. Different countries have experimented with different minimum time for reflection and their experience should be taken into account.

The detailed process of divorce is, however, far less relevant from a government’s perspective than the outcomes of divorce, particularly whether all parties involved (including children) are free from harm.

1. **Do you think that steps should be taken to ensure that Hindu women are better able to exercise their right to property, which is often bequeathed to sons under customary practices?**
2. **Yes, Hindu women must be made aware of this right and measures should be taken to ensure that women, under pressure from family do not forego their property.**
3. **No there are adequate protections in the existing law.**
4. **Legal provisions will not help in what is primarily a cultural practice, steps have to be taken so sensitise the society instead.**

As indicated, our party has a different option which is not reflected either in a, b, or c. We respond with

 **d. Other** **🗹**

A Government has no business, as servant of the people, to distinguish between women on the nature of their beliefs (e.g. Hindu or others). Legislation that deals with matters of property must be made religion-free and focused only on outcomes. The existing law is grossly intrusive into matters of personal belief and much of it needs to be repealed or otherwise subsumed into general minimum standards of accountability.

A government’s role is to clarify property rights. To that extent we need standard laws of inheritance that are consistent with world’s best practice. These laws can even prescribe a default order of inheritance that would be implemented unless the property owner has left a legally valid will and last testament (to the extent it does not over-ride minimum standards of accountability that apply to all citizens).

1. **Do you agree that the two-year period of wait for finalising divorce violates Christian women's right to equality?**
2. **Yes, it should be made uniform across all marriages**
3. **No . This period is sufficient and in-keeping with religious sentiments.**

As indicated, our party has a different option which is not reflected either in Yes or No. We respond with

 **c. Other** **🗹**

As indicated earlier, the minimum standards of accountability could include reasonable minimum requirements on the process of signing up to (or revoking) long term personal relationships, for instance, a minimum “time for reflection” for marriage or divorce. Different countries have experimented with different minimum time for reflection and their experience can be taken into account. We do not see any need to consider such standards for citizens based on their religious belief, so question 9 is not relevant. It is fundamentally improper for the Law Commission to try to even recognise citizens on the basis of their religious belief.

1. **Do you agree that there should be a uniform age of consent for marriage across all personal laws and customary practices?**
2. **Yes. 🗹**
3. **No, customary laws locate this age at the attainment of puberty.**
4. **The prevailing system of recognising 'voidable' marriages is sufficient.**

This is consistent with the party’s position on minimum standards of accountability.

1. **Do you agree that all the religious denominations should have the common grounds for divorce?**
2. **Yes**
3. **No, cultural difference must be preserved. 🗹**
4. **No, but there should be the same grounds for divorce available for men and women within personal law.**

As indicated earlier, the party sees no reason for a government to interfere in the personal beliefs of citizens. However, minimum standards can be prescribed, as detailed earlier.

1. **Would uniform civil code aid in addressing the problem of denial of maintenance or insufficient maintenance to women upon divorce?**
2. **Yes**
3. **No. Give reasons:**

As indicated, our party has a different option which is not reflected either in Yes or No. We respond with

 **c. Other** **🗹**

We believe that there must be minimum standards for maintenance of an unemployed spouse and dependent children. That does not require a “uniform civil code” – for every person can set higher standards if they so wish – but legislation that deals with minimum standards.

1. **How can compulsory registration of marriages be implemented better?**

Registration of a marriage should be compulsory where anyone wishes to avail of any government benefits that are available to married persons. Decentralised and online models can be considered to register marriages. A family that makes a claim on a government benefit as a family must produce evidence of marriage, the first time it makes such a claim.

1. **What measures should we take to protect couples who enter into inter-religion and inter-caste marriages?**

The government must be totally and unequivocally blind to the religion or caste of the citizens. If any harm is caused to others, the law must treat that harm objectively based on standard penal laws. There is no need for any additional criminal laws that are specific to “inter-caste” marriage. Only outcome based laws (based on an objective definition of harm) are needed. The caste (if any) of a person cannot determine the nature of harm.

1. **Would uniform civil code infringe an individual's right to freedom of religion?**
2. **Yes 🗹**
3. **No**

**Give reasons:**

Only minimum standards of accountability are consistent with liberty. The idea of a uniform civil code is fundamentally inconsistent with liberty.

1. **What measures should be taken to sensitize the society towards a common code or codification of personal law?**

There is no need to codify any personal law (in fact, all that have been so codified must be repealed). There is only a need to lay down minimum standards. A government has no business in the personal beliefs of an individual but does have a role in ensuring accountability and setting a minimum standards for property rights, maintenance and redressal/ prevention of harm.

**Remarks**

By marriage – for purposes of this questionnaire – we only refer to a long term relationship between a man and woman. Marriage as a form of social contract that long preceded various religious innovations. Objectively considering the implications of marriage on property rights, due process and prevention of harm in a general context is within the scope of government.

As it is commonly perceived, however, the idea of UCC is not based on a well-considered view about the role of government in this ancient institution of marriage. Instead, it has come to represent a political fight for dominance between religions. The issues of marriage should not be considered by policy makers from a religious point of view (which means that all religious laws must be repealed) but from the view of general principles of freedom and accountability.

In Swarna Bharat Party’s view, a government can only step into personal relationships between citizens (a) as a registrar of property rights/ long term traditional relationships, (b) as an entity that clarifies property rights, and (c) as an entity that prescribes minimum standards where any physical harm could be involved (e.g any harm to children - e.g. through adoption; harm to unemployed spouse; issues of maintenance, “minimum time to reflect” before divorce, etc.).

In general, however, how citizens live their lives in a peaceful manner is not the business of a government. A government – being a servant of the people (not their master) – cannot impose its views on a free people’s social or economic arrangements. Its job is limited to minimising and/or addressing real harm.

**Please provide us with your name, contact number and address.**

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1. PDF form converted into Word by [Swarna Bharat Party](http://swarnabharat.in/), India’s only liberal party. [↑](#footnote-ref-1)