
AN ANALYSIS OF THE CHRONOLOGICAL JOURNEY OF UNIFORM CIVIL CODE

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Introduction

The Uniform Civil Code has been provided in the Constitution of India, 1950 under Article 44 which states, “*The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.*” Article 44 has been the bone of contention for many political reasons and there has been a constant demand to apply the Uniform Civil Code in India to bring parity in laws which would ultimately bring smooth administrative functioning for any Government but the application of Uniform Civil Code remains a distant dream after it being written in Indian Constitution almost 75 years earlier. This paper traces the journey of the Uniform Civil Code and analyses the expansion of the concept over the years.

The Uniform Civil Code and the Constituent Assembly debates

The Uniform Civil Code was originally Article 35 in the draft constitution and was the most debated article in constituent assembly and was adopted only when Mr. B.R. Ambedkar assured the assembly that it would not be thrust upon the minorities.¹ During the debates in Constituent assembly Md. Ismail, a member of the constituent assembly while opposing it stated that inserting this article in the constitution would mean tinkering with the personal laws which people have observed for generation and ages.² Another member Mr. Ali Baig pointed out that in Muslims their laws on succession, marriage, inheritance and divorce are completely dependent on the personal laws and hence inclusion of this article is not proper.³

However, answering in support of the Uniform Civil Code Dr. B.R. Ambedkar said that the opposing members are reading too much into the article which only proposes that the state shall strive towards a uniform civil code. Mr. B.R. Ambedkar fortifying the argument he gave the example of North Malabar (Kerala) where the Matriarchal Law, the Marumakkathayam Law is applied to all — not only to Hindus, but also to Muslims.⁴ He further stated “*It would be*

¹ Lok Sabha files ‘Constituent assembly of India debates (proceedings’)-volume vii, pg.1, 23rd November 1948

² Lok Sabha files ‘Constituent assembly of India debates (proceedings’)-volume vii, pg.13, 1948

³ Lok Sabha files ‘Constituent assembly of India debates (proceedings’)-volume vii, pg.17, 1948

⁴ Lok Sabha files ‘Constituent assembly of India debates (proceedings’)-volume vii, pg.26, 1948

perfectly possible for Parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified.”⁵

Uniform Civil Code’s journey through the lens of Judicial pronouncements

In **Mohd. Ahmed Khan vs Shah Bano Begum And Ors⁶**, the Court regretted that article 44 of the Constitution of India in relation to bringing of Uniform Civil Code in India remained a dead letter and held that a common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies, when a 62-year-old Muslim woman from Indore, Madhya Pradesh, approached the court after being divorced by her husband in 1978, leaving her destitute. The Hon’ble Court held that Section 125 of Crpc regarding maintenance finds application in this case as even the personal law recognizes the right to maintenance to a woman who is unable to maintain herself. It ruled that Shah Bano be given maintenance money, similar to alimony.⁷

However, the said judgment raised hue and cry with various Muslim groups who considered it as an attack on their personal laws. To nullify the effect of this judgment, the then congress government brought the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the judgment of the Supreme Court and restricted the right of Muslim divorcées to alimony from their former husbands for only 90 days after the divorce (the period of Iddah in Islamic Law).⁸ However, in the later judgments including the Daniel Latifi case and the Shamima Farooqui case the Supreme Court of India interpreted the act in a manner reassuring the validity of the case and consequently upheld the Shah Bano judgment.

The constitutional validity of The Muslim Women (Protection of Rights on Divorce) Act 1986 was challenged before the Supreme Court in **Danial Latifi & Anr v. Union Of India(2001)⁹**. The Supreme Court tried to maintain a balance between the personal laws and the gender rights and reiterated the validity of the Shah Bano judgment. The Court concluded that the Act does not preclude maintenance for divorced Muslim women, and that Muslim men must pay maintenance until such time as the divorced wife remarries. However the Court held

⁵ Supra Note 4

⁶ 1985 AIR 945

⁷ Mohd. Ahmed Khan vs Shah Bano Begum And Ors on 23 April, 1985, 1985 AIR 945, 1985 SCR (3) 844 Available at: <https://indiankanoon.org/doc/823221/> (Last visited 17.07.2022)

⁸ Mody Nawaz, ‘The Press in India: The Shah Bano Judgment and Its Aftermath’ Asian Survey, Vol. 27, No. 8 (Aug., 1987), pp. 935-953

⁹ Danial Latifi & Anr vs Union Of India on 28 September, 2001, Available at: <https://indiankanoon.org/doc/410660/> (last visited 17.07.2022)

that if the provisions of act are in conflict with Section 125 Crpc then it would be unconstitutional.

The provision in question was Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which states that "a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband". The Court held this provision means that reasonable and fair provision and maintenance is not limited for the iddat period (as evidenced by the use of word "within" and not "for"). It extends for the entire life of the divorced wife until she remarries.¹⁰

In **SARLA MUDGAL VS UOI (AIR 1995 SC 1531)**¹¹ – Kalyani, an NGO working for rights of women headed by Sarla Mudgal approached the Court regarding the issue of Hindu men converting to Islam to contract second marriage. The major two issues were 1. Whether a Hindu husband married under Hindu law is allowed to embrace Islam and then contract second marriage ? 2. Whether the husband can be charged under 494 of IPC? The Court held that the first marriage would have to be dissolved under the Hindu Marriage Act, 1955. Hence, the man's first marriage would therefore, still be valid and his second marriage solemnized after his conversion would be illegal under Section 494 of the Indian Penal Code, 1860. The Court held “ *since 1950 a no. of governments have come and gone but they have failed to make any efforts towards implementing the constitutional mandate under article 44 of the constitution. Consequently the problem today is that many Hindus have changed their religion and have converted to Islam only for the purpose of escaping the consequence of Bigamy ..*” Justice Kuldeep directed the government to take immediate steps to implement Article 44 of the Constitution.

In **LILY THOMAS VS UOI**¹²- The Court held that “ *this Court has no power to give directions for the enforcement of the Directive Principles of the State Policy as detailed in Chapter IV of the Constitution which includes Article 44. This Court has time and again reiterated the position that Directives, as detailed in Part IV of the Constitution are not enforceable in Courts as they do not create any justiciable rights in favour of any person...the review petition as also the writ petitions having no substance are hereby disposed of finally*

¹⁰ Supra Note 9

¹¹ SARLA MUDGAL VS UOI (AIR 1995 SC 1531), Available at: <https://indiankanoon.org/doc/733037/> (Last visited 17.07.2022)

¹² Lily Thomas vs Union Of India & Ors on 10 July, 2013, Available at: <https://indiankanoon.org/doc/63158859/> (Last visited: 17.07.2022)

with a clarification regarding the applicability of Article 44 of the Constitution already stated.”

In **JOHN VALLAMATTON VS UOI**¹³- The court expressed regret over non-enactment of Common Civil Code and held that a Common Civil Code will enhance the cause of national integration by removing the contradictions based on ideologies. The Court said that Article 44 is based on the premise that there is no necessary connection between religion and personal law in a civilized society and in a secular country like India this notion will help in Intergration.

In **SEEMA VS ASHWANI KUMAR**¹⁴- In this case the court highlighted the importance of Uniform Civil Code and held that civil registration of marriage must be made mandatory. Likewise the registration of births and deaths must be made mandatory as well which would help in brining parity to the laws and which will help in better and smooth administration.

In **SHABNAM HASHMI VS UOI (2014)**¹⁵- It was held in this case that Muslim parents have right to adoption under provisions of the Juvenile Justice Act 2000 even though the same is not permitted under the personal laws. The right of adoption was granted via this judgment and the need of Uniform Civil code was reiterated.

In **SHAMIMA FAROOQUI VS SHAHID KHAN (2015)**¹⁶- It was held in this case that Muslim Woman is entitled to maintenance from former husband till she remarries and the enactment of Uniform Civil Code is the need of the Hour.

Hence, it can be concluded that time and again the Courts have reiterated that there is an urgent need of the Uniform Civil Code in India. The progression and expansion of the concept of the uniform Civil Code could be seen through these catena of judgments. These judgments are the testament to the fact that the Judiciary has kept the flame of the Uniform Civil Code burning despite the fact that many governments have failed to implement the Uniform Civil Code in India.

¹³ John Vallamattom & Anr vs Union Of India on 21 July, 2003, Available at: <https://indiankanoon.org/doc/533870/> (Last visited: 17.07.2022)

¹⁴ Smt. Seema vs Ashwani Kumar on 14 February, 2006, Available at: <https://indiankanoon.org/doc/1037437/> (Last visited: 17.07.2022)

¹⁵ M/S Shabnam Hashmi vs Union Of India & Ors on 19 February, 2014, Available at: <https://indiankanoon.org/doc/105818923/> (Last visited 20.07.2022)

¹⁶ Shamima Farooqui vs Shahid Khan on 6 April, 2015, Available at: <https://indiankanoon.org/doc/189967724/> (Last visited: 20.07.2022)

Conclusion and Suggestions

The need of Uniform Civil Code reflects in the facts that the Law Commission of India in 2016 was seeking opinion of the general public on the same topic by way of questionnaires. Sh. Yogi Adityanath tried to bring a private member bill on the subject as well (which however lapsed), shows the importance of the subject. The private member bill is a good alternative to bring implementation of Uniform Civil Code if the succeeding governments fail in implementation of the Uniform Civil Code.

The need for Uniform Civil Code is time and again reiterated stating reasons such as befitting for a secular country like India to have a Uniform Civil Code and it will help in the promotion of the secularism. The smooth functioning of the administration would also be there due to the parity of laws. The success of Uniform Civil Code in the state of Goa and various nations governed by Uniform Civil Code is given as case in point that the benefits of Uniform Civil Code outdo the problems that it might pose. The Uniform Civil Code stares in face of the 'Equality before law' which one of the basic tenets of Indian Constitution expressly given in Article 14 of Indian Constitution. Gender justice is also one of the major benefits of the Uniform Civil Code as some personal laws are heavily biased towards men and the parity of laws in case of inheritance, adoption or marriage will help in bridging the gender gap which means more power to the women rights in India. The women rights in India would get a major push in the form of Uniform Civil Code which would help in growth of the half of the Nation which would ultimately help in the development of Nation on a whole. The nation like India which is diverse and still functions as a quasi-federal system of Governance efficiently the Uniform Civil Code will help in bringing Integration in the Nation and it will ultimately help in the better administration of the Country. The Uniform Civil Code is the need of the hour and must not be delayed by any means now.