



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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UNIFORM CIVIL CODE: A JUDICIAL APPROACH

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ABSTRACT

Indian Constitution provides provision for the implementation of Uniform Civil Code (UCC) in India. Article 44 of the Indian Constitution gives direction to the State to implement it, but the UCC could not be implemented in India due to various conflicts in personal laws. The Supreme Court of India in various cases has given direction to the government to implement UCC but due to lack of political determination, it could not be achieved. Significantly, requirement of UCC had been raised repeatedly before independence too, but nothing could be achieved even after 75 years of independence. Even our judiciary has played a positive role through its decisions in favour of uniform civil code. Judiciary has number of times urged government to implement Uniform Civil Code so that there be no disparity in giving justice.. In this paper the approach of Judiciary towards Uniform Civil Code has been discussed.

KEY WORDS: Uniform Civil Code, Personal Laws, Judiciary, Constitution of India

INTRODUCTION

India is a multi-religious and multi lingual country that is divided on many facets, yet united by nationalist spirit. All people are today governed by their personal laws with respect to marriage, succession, divorce, etc.. There are different codes for different communities like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act, Hindu Guardianship Act. Muslims and Christians are governed by their personal laws. There are also many different sects and they are ruled by their customs, traditions etc. These codes are based on different personal laws of different religious communities, but this classification based on religion faces many difficulties, whenever the question arises on matter of succession, marriage, divorce, inheritance, adoption, maintenance, guardianship, custody of children etc. There is difficulty in distribution of justice; hence decisive steps were taken towards national consolidation in form of idea of uniform civil code which was for the first time mooted seriously in the Constituent Assembly in 1947. The debate over constitutionalising the

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requirement for a Uniform Civil Code (UCC) began even before partition. Discussions began in the sub- committee on Fundamental Rights, which met between February and April 1947. Demands for a uniform civil code came not only from extreme Hindu nationalists, but from Modernists as well. Minoos Masani, a Parsi- member of Congress from Bombay, and Amrit Kaur, a Christian- member of Congress who represented CP and Behar, jointly demanded that the provision be included in the justiciable part of the constitution so that it could be enforceable by court. They argued that “One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life.” However, the majority of sub-committee members opposed this demand, and the provision was recommended to be incorporated in the Directive Principles section of the constitution. Eventually, the framers agreed with the draftsmen and decided to include the reference to a uniform civil code in the “Directive Principle of State Policy” as Article 44.

CONCEPT OF UNIFORM CIVIL CODE

Uniform civil code is a rule that says “One law for all”. A uniform civil code is a code that provides the same set of secular civil laws to govern all the people of a nation irrespective of their different regions and religions. This form of law supplements the rights of the citizens to be governed under the different personal laws based upon the religion, customs and traditional practices. It is the entire body of laws governing the rights relating to the property and the other personal matters like marriage, divorce, maintenance, adoption and inheritance. Article 44 in the part IV of the Indian constitution quotes the concept of Uniform civil code, laying down that: “The state shall endeavour to secure for all the citizens a uniform civil code throughout the territory of India”. The Uniform Civil Code protects the secular character of India which is envisaged in the Preamble of our constitution by 42nd Amendment Act. A Uniform civil code means that all the citizens of India have to follow the same laws whether they are Hindus, Sikhs, Muslims, Christians etc. It does not mean that it will limit the freedom of people to follow their religion, it just means that every person will be treated the same. It will also promote gender equality. Our society is extremely a Patriarchal society condemning all Indian women to mistreatment. A Uniform civil code will help in changing these old traditions that have no place in today’s society where we do understand that women should be treated fairly and given equal rights. A Uniform civil code will also help in reducing the Vote bank politics that most political parties indulge in during every elections. If all religions are covered under

the same laws, the politicians will have less to offer to certain minorities in exchange of their vote. However, all laws in our country are uniform whether it is Criminal Laws, Civil Laws but only civil law which lacks the uniform character is Marriage and Succession.

JUDICIAL APPROACH TOWARDS UNIFORM CIVIL CODE

The judiciary played an important role in suggesting enacting the uniform civil code. Article 44 is in the part 4 of the constitution of India and clearly states that the provisions contained in this Part shall not be enforceable by any court, but the principles laid down are nevertheless basic in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Mr. Justice Gajendra Gadkar, former Chief Justice of India has observed that in any event the non implementation of the Introduction provision contained in Article 44 amounts to a great failure of democracy and the sooner we take suitable actions in that behalf, the better and that "In the process of evolving a new Secular Social order a uniform Civil Code is a must"²

The series of case laws shows the positive interpretation of judiciary on uniform civil code. In 1985, for the first time in Indian history, the Supreme Court in *Mohammad Ahmed Khan v. Shah Bano Begum*³, directed the Parliament to enact a UCC. The Hon'ble Justice Y V Chandrachud, the then Chief Justice of India has stated that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A uniform Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the India and, unquestionably; it has the legislative competence to do so."

*Sarla Mudgal v. Union of India*⁴ In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose Of contracting bigamous circumvents Section 494 of

² Gajendra Gadkar, *Secularism and the Constitution of India*, p. 126(1971)

³ AIR 1985 SC 945

⁴ AIR 1995, 1995 SCC (3) 635

IPC. Such marriages have been declared as bigamous and void by the Supreme court. The court after referring to various judgements on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to the second marriage while the first marriage is subsisting to become a Muslim. Here the Court was also pointing out the injustice done to the first wife, legally wedded. The Judges of various High Courts and Supreme Court became the main instrument for bringing important gradual legal developments which also put its impact on the question of uniform civil code. Justice Kuldeep singh suggested the central government to take step towards s Uniform civil code. The Hon'ble Supreme Court has observed that "the legislation not religion being the authority under which personal laws were permitted to operate and is continuing to operate, the same can be supplemented by introducing the Uniform Civil Code. In this view of the matter, no community can opposed the introduction of Uniform Civil Code for all the citizens in the India. Justice Hedge, a former judge of the Supreme Court has also observed that "Religion oriented personal laws were a concept of medieval times alien to modern societies which are secular as well as cosmopolitan" and that "so long as our laws are religion oriented we can hardly build up a homogenous nation⁵.

The Supreme Court of India in its judgment in *John Vallamottom v. Union of India*⁶ delivered by three judge Bench comprising of Mr. Justice V.N. Khare the Chief Justice of India and S.B. Sinha and A.R. Lakshmann J.J. which is highlighted in the national press where in the court has emphasized the need to enactment of Uniform Civil Code as envisaged under Article 44 of the Constitution of indian. This evoked a public debate in the country. In this case the Constitutionality of the Section 118 of Indian Succession Act 1925 was in question. It was contended that the said Section was discriminatory to the Christian community because it prevented a Christian from bequeathing his property for religious and charitable purpose. While delivering the judgment justice V.N. Khare, the Chief justice of India with both judges has made reference to Uniform Civil Code.

In *Lily Thomas and Others v. Union of India*⁷ the question raised that whether a Hindu who is already married and having wife living gets converted into Islam and marries again commits bigamy or not under Section 494 of the Indian Penal Code, 1860. The apex court held that till

⁵ 5 K.S. Hegde, Islamic Law in Modern India edited by Taliir Mahmood, Indian Law Institute, 1972, p. 3

⁶ AIR 2003 SC 2903

⁷ AIR 2000 SC 1650

the time of marriage of a Hindu is dissolved under the Act none of the spouses can contract second marriage. Further, the Supreme Court has emphasized that in order to curb the tendency on the part of Hindu males to resort to conversion to Islam whenever they want to have second wife, the legislature must enact Uniform Civil Code as directed under Article 44 of the Constitution. But the court added that the desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by the elite of the society, statesman amongst leaders who instead of gaining personal mileage rise above and awakes the masses to accept the change. The issue should be entrusted to the law commission which may examine the same in consultation with the Minorities Commission. That is why the court the court clarified that its direction was only an obiter dictum and not legally binding on the Government.

In *Ms. Jorden Diengdeh v. S.S. Chopra*⁸ case also Justice Reddy observed the need for uniform civil code and unsatisfactory state of affairs. In the judgment of Kerala High Court, it was stated that it is not a mandate to codify all the laws related to religious community. The court further stated that there is a need to bring amendment in the marriage laws of the country particularly with reference to Triple Talaq.

In another case by filing a petition the requirement of UCC was again addressed to the S.C. on the basis that, statutes cover matrimonial related provisions for Hindus only viz. their maintenance and residence related women's rights in matrimonial disputes situations, but in matrimonial related Christian's cases, parties are left with no option to resolve and settle their disputes due to unavailability of any peculiar law. Therefore, in India there is a need for the implementation of Uniform Civil Code.⁹ In *Mayra Alias Vaishnvi Vilas v. state of UP and Others*¹⁰ SC also emphasised on the importance of Uniform Civil Code in today's perspective. The court observed a common **civil code** will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a **uniform civil code** for the citizens of the country and, unquestionably, it has the legislative competence to do so. The Supreme Court speaking

⁸ AIR 1985, 1985 SCR Supl.(1)704;

⁹ Agnes Alias Kunjumol vs. Regeena Thomas AIR 2010

¹⁰ <https://indiankanoon.org/docfragment/179849774/?formInput=uniform%20civil%20code>. visited on 12/09/22

through Justice Kuldeep Singh had humbly requested the Government through the Prime Minister to intervene and initiate the process of framing the UCC by appointing a committee, but after a lapse of so many decades nothing has been done.

CONCLUSION

After conducting an analysis it can be seen that the Supreme Court in India time and again emphasised upon that Uniform Civil Code has been agreed to be the need of an hour in India. As a Uniform Civil Code not only promotes national integration but also prohibits the evils of discrimination against the minorities. As S Krishna Iyer has aptly stated: "It will be Indian, not Hindu. Nor will any Islamic group be allowed to be a law unto itself. Some of the finest principles of Islamic jurisprudence may find their way into the Uniform Civil Code, even as some of the noblest conceptions of the Hindu in the area of Family Law will become the common estate for all Indians."¹¹ The Government should draft a Common Civil Code with the opinion of Law Commission, National Human Right Commission, and National Commission for Women, Former Attorney Generals, Solicitor Generals and Judges of the Supreme Court and must implement the UCC in spirit of the Article-44 of the Constitution on priority. In India, implementation of UCC is only one way to secularize and integrate India in personal matters too. Therefore, it is mandatory to implement Uniform Civil Code in India. A Uniform Civil Code would guarantee gender equality and equal status for all people, regardless of their community of origin and / or religions. Most especially, as religion based personal laws are misogynistic; and therefore, UCC is required because it will give equal rights to the women in India. UCC should be adopted as a measure to promote gender equality, and for the implementation of UCC both religious and personal laws should be examined and the best features from all religions as well as from the personal laws of other countries should be collected and implemented, but it should be based on broad consultations. UCC will transform centuries-old customs and practices that have no place in today's modern society because women should be granted equal rights and must be treated equally, as equal as men, as per the rules of modern civilized societies. "Uniform Civil Code will help the case of national integration by removing disparate loyalties to laws which have conflicting ideologies".¹² In today's modern world a country needs new laws which will promote unity and peace whereas personal laws still follow old age customs and traditions. UCC is a sign of modernization and

¹¹ VR Krishna Iyer, "The Shah Bano Case, The Constitutional and the Court" (1986) vol.13 JBCI1 at 2.

¹² Hon'ble S. C. of India stressed on UCC in the case of Mohd. Ahmed Khan vs. Shah Bano Begum and Ors. AIR 1985; <https://indiankanoon.org/doc/823221/> (last visited on 24-03-2021)

an advanced progressive nation. It removes personal laws and moves the nation away from politics based on religion and caste. It prevents discrimination not only against women in fact every individual on the basis of caste and religion. People will be able to enjoy real secularism. Thus, the Uniform Civil Code is not just a matter of gender justice, it is also a question of how a nation accommodates its own diversity.