

**INDIAN JOURNAL OF CONSTITUTIONAL STUDIES**

**Issue - July, 2017**

**Volume I Issue VI**

Copyright © 2016-17. All rights reserved with the Editors of Indian Journal of Constitutional Studies.

**ISSN 2456 - 5008**

Published bimonthly

**- - Disclaimer - -**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of the Indian Journal of Constitutional Studies. The Indian Journal of Constitutional Studies (hereinafter IJCS) and its affiliates holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Board or Board of Advisors for the Indian Journal of Constitutional Studies. Though all efforts are made to ensure the accuracy and correctness of the information published, the Editorial Board or the Board of Advisors for IJCS are not responsible for any errors caused due to oversight or otherwise.

**- - Note - -**

This compilation has continuous footnoting. Kindly read the references to previous footnotes in all the Articles in isolation upon the particular Article only.

**Publisher Details -**

**Bishikh Mohanty**

**E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,**

**Khorda, Odisha, Pin - 751021**

**Telephone: +91 8106743973**

**Email: editor@ijcons.com**

## **The Board of Advisors**

---

**Dr. Bisnu Charan Patro**

Assistant - Editor, National Institute of Health and Family Welfare

**Ms. Sudha Kaveri**

Asst. Professor, Damodaram Sanjivayya National Law University

---

## **Panel of Experts**

---

**Ms. Prathyusha Samvedam**

LL.M., National Law University, Jodhpur

**Adv. Siddharth Sharma**

M.P. High Court

---

## **The Board of Editors**

---

**Mr. Bishikh Mohanty**

Managing Editor

**Ms. Ammu Sasidharan**

Senior Editor

**Ms. Vanya Srikant**

Compiling Editor

**Associate Editors**

Ms. Sudipta Lenka

Mr. Himanshu Gupta

Ms. Yashasvi Gupta

Ms. Ojaswini Tripathi

---

**- Acknowledgement -**

Efforts from many quarters have gone into the successful publication of this Inaugural Issue of the Indian Journal of Constitutional Studies. We would like to express a deep sense of gratitude towards our blind peers who thoroughly validated all articles sent to them for reviews. We would also like to thank our contributors for contributing extraordinary submissions to the issue which stood at par on the rigorous scrutiny.

# UNIFORM CIVIL CODE: THE INTERMINABLE CRUSADE

## THE AUTHOR

Riddhima Gowel, Joyce Jacob, students, Delhi Metropolitan Education

## CONTENTS

- I. Introduction
- II. Constitutional Aspect
- III. Why does India need a Uniform Civil Code
- IV. Personal Laws v. Uniform Civil Code
- V. Model of Goa
- VI. Approach of the Judiciary
- VII. Conclusion

---

## I. INTRODUCTION

Each religious head stands holding their own diverse set of rules and yet, for once they are all unified. Unified against this code, grappling for their own diminutive rules against the mother of all rules. Those rules are a taboo followed since years where people are obligated to burn themselves in the fire of atrocities, the fire which is only meant for one to suffer, facing the inequalities she wants to surrender but this patriarchal society does not permit. The mother wants to provide warmth but the little warriors stand firm back and forth.

Recently, the issue of having a Uniform Civil Code is wide spreading in every lane of our society. Amidst all the chaos in the country, eyes of our people glitter again with a hope of experiencing impartiality where all religions will be equally treated with same laws, where male will not suppress the female. India being a secular country has diverse personal laws. Disparate cultures follow different rules of inheritance, marriage and divorce. To end this inequality the government aims for a Uniform Civil Code in order to bring about equal status to all. Problems such as increase in child marriages, triple talaq, polygamy and Nikah Halala are the major ones which have created a fuss in the lives of women. Therefore, we see, many Muslim women have started raising their voices to fight these 'old forced customs'. Dr BR Ambedkar had argued for the common civil code to mark an end to the religious decrees governing marriage, divorce and property rights. Thus, the question arises whether these different heads of our secular nation will be able to leave back the privileges and make its people live an equal spiritual life? The establishment of a Uniform Civil Code is an ongoing debate. Some are of the opinion that the code should come into existence however, others are of the opinion that the personal laws of all religions should be kept untouched. As a layman, people would wonder what is Uniform Civil Code? Why do we need it or will it be useful? What laws do we have for it? What is the recent status of the Code? What problems are caused which leads to the need this code? And if we need it then what obstacles is the code facing for its establishment? The answers of all the above questions will be answered as one reads the topics given below.

---

## II. CONSTITUTIONAL ASPECT

Article 44 under the of Directive Principles of State Policy contained in Part IV of the Indian Constitution requires the State to secure for the citizens a Uniform Civil Code throughout the territory of India.

This Article has been the subject of much debate, yet at the same time not of enough.

Dr B.R. Ambedkar was an untiring advocate of the Uniform Civil Code but due to antagonism from the members of the parliament, he couldn't get it through more than a status of Directive Principles the State Policy. This directive principle is bourn to achieve, gradually, rather than at once, more far-reaching equality for all the citizens. The state has been entrusted with this voluminous task. Yet no prominent steps have been taken by the government.

A major deterrence arises while bringing citizens governed by disparate religions under one roof. This leads to a question whether the enactment of a Uniform Civil Code violate certain rights and be tyrannical to citizens?

In this connection, references have been made to certain articles of the constitution of India.

Article 14 guarantees that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 requires the State to prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

The personal laws are inconsistent with morality and human rights. They create a disparity between men and women in matters of marriage, divorce and succession by giving men the significant share. A woman has to rely either on her father or husband depending upon her religion. In fact, the personal laws infringe the right to equality of women in our country. Hence, a civil code will bring equality among the genders.

In the Constituent Assembly, an objection was put forward against the making of a uniform civil code applying throughout India: it would infringe the fundamental right to freedom of religion mentioned in Article 25.

In *John Vallamattom v. Union of India*,<sup>1</sup> the Court stated, "The directive contained in Article 44 in no way infringes the freedom of religion guaranteed by Article 25. Clause (2) of that article particularly secures secular activities associated with religious practices from the guarantee of religious freedom contained in clause (1) of Article 25." The objection is, therefore, misconceived.

The provision in Article 44 is an implementation of the objective of 'justice with equality' which is included in the Preamble of our Constitution. They neither violate the rights nor are tyrannical to the citizens of this country.

---

<sup>1</sup> A.I.R 2003 S.C.C. 611 (India)

### III. WHY DOES INDIA NEED A UNIFORM CIVIL CODE?

Indeed, India is a secular nation where all the people live with great tenderness. There are Hindus, Muslims, Christians, Parsis and many more who live together in the same country with different beliefs, customs and traditions and yet, happily. If we study it deeper, we see that we also have our own different laws for marriage, divorce, inheritance, maintenance which are considered as personal laws of every religion. These personal laws were kept untouched until the atrocities raised its voice in the ears of innocent women who are victims of these old norms. Norms where men say ‘talaq, talaq, talaq’ and the women is left in misery, where women have to fight for her property, where the lady has to share her husband with many women, where girls are married in an age when they are supposed to play, where the couple has to live apart for two years in order to file for separation irrespective of the fact that it is one year in other religions. To abrogate such norms, comes in the Uniform Civil Code to abolish these scriptures based on personal laws with a legislation that is binding on all citizens. However, the religious heads stand firm to protect these laws which hence, leads to tension in the society. The initiative is taken by the Modi government to apply the Code and hush back the atrocities faced by women and walk on the path to bring equality in the country. Thus, the needs are as follows: Firstly, India is a secular nation. A Uniform Civil Code will ensure that all the citizens of India follow the same laws irrespective of which religion they belong. Secondly, it is a step towards a better country, eradicating the inequalities between men or women, Hindu or Muslim. A great example of this would be triple talaq where many Muslim men employ to divorce their wives instantaneously and without their consent, merely by uttering the word talaq thrice. To end this gender inequality, it is very essential to bring such a code. Thirdly, our society being extremely patriarchal and misogynistic will lead to a better life for Indian women who are victims of subjugation and mistreatment. Fourthly, this code will help our country progress and move away from the caste and religious politics. A Uniform Civil Code will help the society upgrade socially and culturally and move forward as a developing nation. One national civil code of conduct will definitely bring the change that is needed for our advancement.

“The issue of Uniform Civil Code was not just about triple talaq or Muslims, it is about the people of all religions in the country including Hindus, Christians, Muslims, Parsis and others,” as said by former bureaucrat S.M. Jamadar<sup>2</sup>. However, giving an overview on how Muslims will be affected by the coming of Uniform Civil Code we see that it is gathering momentum which is happening in two phases. First, being the action against triple talaq which the All India Muslim Personal Law Board, dominated by men wants to retain. Second, to mark an end to polygamy in India.

---

### IV. PERSONAL LAWS V. UNIFORM CIVIL CODE

- **Hindu Law**

---

<sup>2</sup>HUBBALLI October 26, 2016; <http://www.thehindu.com/news/national/karnataka/Uniform-Civil-Code-not-just-about-Muslims-S.M.-Jamadar/article16082346.ece>

The Indian Parliament had discussed the Hindu law committee report during the 1948-51 and 1951-54 sessions under the Chairmanship of B. R. Ambedkar for the purpose to formulate the code of Hindu Law. According to Derret, the Hindu Code was a step in the direction of a Uniform Civil Code. The Hindu Bill received criticism in matters concerning monogamy, divorce, the abolition of co-parcenaries (women inheriting the shared title) and inheritance to daughters. Hence, it was dropped due to opposition. But from 1995-56, a lesser version of this Bill was passed in four separate acts, the Hindu Marriage Act (1955), Hindu Succession Act (1956), Hindu Minority and Guardianship Act (1956) and Hindu Adoption and Maintenance Act (1956).

After the codification of Hindu Laws, do Hindus need a Uniform Civil Code?

The overall effect of the codification of these rules was negative. Hindu women were given the notion that they do not have equal rights. Hindu law appeared secular in nature as compared to Muslim law and codification fossilised Hindu customs and laws into a conservative mould.<sup>3</sup>

A sine qua non of a Hindu marriage is the ritual of kanyadaan (gifting his maiden daughter in marriage to groom by her father), the notion of girls as a paraya dhan (wealth belonging to the other which her parents have to keep till her rightful owner claims her), the pious obligation of the father to marry off his daughter which stimulates dowry and in some cases she is sent back even after facing domestic violence with the risk of being killed or committing suicide, still subsist to dominate the Hindu social ethos and judicial discourse despite amendments and established of the Protection of Women from Domestic Violence Act 2005.

The orthodox notions about the symbols of marriage- sindhoor and mangalsutra- are appraised as marks of respect, status of a wife and protection against advances from other men and a husband having a right to treat his wife as a property still prevail in this society. Also, honour killing, where a girl is killed by her own parents if she marries someone from a lower caste and transgresses boundaries, is still conducted today.

The issues regarding registration of marriages and nullity of child marriage endure in our country. In *Seema v. Ashwani Kumari*,<sup>4</sup> a two-Judge Bench of the Supreme Court comprising of Justice Arijit Pasayat and Justice S.H. Kapadia, held, “All marriages, irrespective of their religion, be compulsorily registered.” Moved by the plight of women fighting for their rights under marriage like maintenance and custody of their children, the Bench directed the Centre and State Governments to amend the law or frame rules and notify them within three months. The Court directed the government to provide for “consequences of non-registration of marriages” in the rules which should be formalised after inviting public response and considering them. The Court said, “The rules so framed would continue to operate till the respective governments framed proper legislations for it. This will prevent child marriage, check bigamy and polygamy, help women to exercise their rights under marriage- maintenance- custody of children, enable widows to claim the inheritance and deter husbands from deserting their wives. The ruling of the

<sup>3</sup>Kishwar Madhu, Codified Hindu Law: Myth and Reality, 29 EPW 2145, 2146 (1994)

<sup>4</sup>A.I.R. 2006 S.C. 1158 (India)



Court will itself facilitate the object of having a common civil code as most problems relating to it are due to the non- registration of marriages.”

As aforementioned, there are certain issues in the Hindu religion or Hindu religion practice which needs to be regulated in order to elevate the position of Hindu women to that of men and this can only be done by a Uniform Civil Code.

- **Muslim Law**

Uniform Civil Code is to offend the largest minority in India which is by far the greatest problem the country is facing. The government supports to abolish the medieval practices such as triple talaq, polygamy and Nikah Halala. The Centre explains that these practices are against constitutional principles such as gender equality, secularism, international laws which have to be fought. All India Women Personal Law Board demands a ban on triple talaq, they want men to be punished who divorce arbitrarily, they plead that even women get the right to seek talaq and ban on Nikah Halala. According to All India Women Personal Law Board it is a hanging dagger for Muslim women. However, according to All India Muslim Personal Law Board, practices of polygamy, triple talaq and Nikah Halala are issues of religious policy and cannot be interfered especially since they are based on the interpretation of Holy Quran. In 1985, the Supreme Court directed the Parliament for the first time to frame a Uniform Civil Code in the *Shah Bano Case*<sup>5</sup> after which it led to discussions, meetings and agitation. In this case, Shah Bano had claimed for maintenance from her husband under section 125 of the Code of Criminal Procedure after she was given triple talaq from him. As a matter of fact, the SC held that the husband would be liable for giving maintenance under Sec 125. The Chief Justice of India Y.V. Chandrachud observed that, “A common civil code will help the cause of national integrity by removing disparate loyalties to law which have conflicting ideologies.” As the thunder of Shah Bano case was still bellowing, another thunderbolt struck the land when Rajiv Gandhi led the government overturned by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which under Sec 125 of the Code of Criminal Procedure gave the Muslim women the right for maintenance.

The All India Muslim Personal Law Board (AIMPLB) has opposed the Law Commissions’ questionnaire on the possibility of a Uniform Civil Code which is the greatest hurdle that the Code is facing. Some other Muslim organisations too have supported the AIMPLB. They feel that Uniform Civil Code intends to snatch their religious freedom that is guaranteed in the Indian Constitution. The Modi government is questioned calling it a “nefarious design to annihilate Islam”. It is now that the Muslim women have finally spoken and thus, it is our responsibility that we give them full support to reject these outdated practices. The government’s efforts have been interpreted as a desire to disparage Muslims and fuel Hindu binaries for electoral gains. In the previous year, the Law Commission of India sought public opinion through a questionnaire consisting of 16 questions on the Uniform Civil Code. This questionnaire was rejected by the AIMPLB whereas the Bhartiya Muslim Mahila Andolan (BMMA) ensured all Muslim women participation. The AIMPLB reluctantly refuses to accept the change. In *Danial Latifi v. Union of*

<sup>5</sup> Ahmed Khan v. Shah Bano Begum, 1985 SCR (3) 844

India<sup>6</sup>, the Supreme Court has discussed the problem of a Muslim divorcee woman. Liberally interpreting Sec 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Court ruled that a Muslim husband is liable to make provision for the future of the divorced wife even after the Iddat period. The question that comes to my mind is if countries like Malaysia have forbidden the practice and another country like Indonesia have strict rules to suppress it, then why can't Indian Muslims do the aforesaid?

---

## V. MODEL OF GOA

In the 19<sup>th</sup> century, the Portuguese had enforced a Portuguese Civil Code which ensured Uniform Civil Code for all citizens. This model remains in force even today. Goa is the only state in India where Uniform Civil Code prevails. Thus, the question pops that if Uniform Civil Code can be practiced in one state of the country then why not the other states as well? Registration of every marriage is made compulsory in Goa. Men cannot have more than one wife or by any chance divorce his wife by pronouncing talaq thrice. All the spouses are given equal opportunities and in case of property both have equal right over the property. In case any one of them dies then ownership over half of the property is retained by the other. This Code has definitely made Goa richer socially and culturally. The people thus, experience equality and also the status of women there is way better than other states. All the states must ensure of establishing this code and contribute to the development of the nation. Hence, it is essential to have a Uniform Civil Code.

---

## VI. APPROACH OF THE JUDICIARY

Judiciary is one of the most vital organs of the Indian government. Its role as a 'watchdog' of the Indian Constitution is formidable. The Judiciary interprets the Constitution as the final arbiter and acts as a guardian in protecting the fundamental rights of the people.

The perspective of the judiciary on Uniform Civil Code has been contradictory. Some decisions of the Supreme Court emphasised that a common civil code will help the cause of national integration while in others it is evident that the Court is somewhat reluctant to interfere in the matters of personal law.

The question arises that how are the judgements of the Court causing contradictions for the enactment of a Uniform Civil Code? Will these contradictions help the nation in forming a common civil code?

The Supreme Court has emphasised that steps be initiated to enact a uniform civil code as envisaged by Art. 44. Reviewing the various laws prevailing in the area of marriage in India, the Court has said in *Ms Jorden Diengdeh v. S.S. Choprar*,<sup>7</sup> "The laws relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely, now the time has come for a complete ameliorate of the law of marriage and making a uniform law applicable to all people irrespective of their religion or caste. We suggest for the intervention of the legislature in these matters to provide a uniform code of marriage and divorce."

---

<sup>6</sup>2001 AIR 3958, 2001( 3 )Suppl.SCR 419, 2001( 7 )SCC 740, 2001( 6 )SCALE537 , 2001( 8 )JT 218

<sup>7</sup>A.I.R. 1985 S.C. 934, 940 (India)

In another case, *Mohd. Ahmed Khan v. Shah Bano Begum*,<sup>8</sup> the court ruled, “A Muslim husband is liable to pay maintenance to the divorced wife beyond the iddat period.” The Court has repented that Art. 44 has remained a “dead letter” as there is “no evidence of any official activity for framing a common civil code for the country”. The Court has emphasised: “A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.”

The Court recapitulated its views on the need to have a uniform civil code in *Sarla Mudgal v. Union of India*,<sup>9</sup> the Court stated, “Art. 44 is based on the concept that there is no necessary relation between religion and personal laws in a civilised society. Article 25 assures religious freedom whereas Article 44 seeks to deprive religion of social relations and personal law. Matters like marriage, succession are of a secular character cannot be brought within the guarantee enshrined in the Articles 25, 26 and 27. The Hindu Law though of a sacramental origin has been secularised. The successive governments in India till date have been wholly remiss in their duty of implementing the constitutional mandate under Art.44”. Accordingly, the Court has again adjured the government of India to have a fresh look at Art. 44 and “endeavour to secure for the citizens a uniform civil code thought the territory of India.”

But in *Lily Thomas v. Union of India*,<sup>10</sup> the Court clarified the utterance made by it earlier in *Sarla Mudgal* case by asserting that it has not issued any edict in that case for the enactment of a common civil code.

In *Maharshi Avadhesh v. Union of India*,<sup>11</sup> a petition seeking a writ of *mandamus* was dismissed by the Supreme Court against the Government of India to introduce a Common Civil Code. The court proclaimed, “It is a matter for the legislature and the court cannot legislate in these matters.”

In *Reynold Rajamani v. Union of India*,<sup>12</sup> the Court withheld a prayer to abolish discrimination between men and women under Section 10 of the Indian Divorce Act, 1869 (applicable to Christians). The court based on its approach to the “limits” of the courts’ jurisdiction held, “When a legislative provision cites the grounds of divorce, those grounds limit the courts’ jurisdiction and it cannot re-draft the law, so as to add grounds of divorce not permissible under the section.”

On the other hand, in *Seema v. Ashwani Kumar*,<sup>13</sup> the Supreme Court directed the government to render for “consequences of non-registration of marriages” in the rules which should be formalised after inviting public response and considering them. The Court said, “The rules so framed would continue to operate till the respective governments framed proper legislations for it.”

<sup>8</sup> A.I.R. 1985 S.C. 945, 954 (India)

<sup>9</sup> A.I.R. 1995 S.C. 635 (India)

<sup>10</sup> A.I.R. 2000 S.C.C. 224 (India)

<sup>11</sup> A.I.R. 1994 S.C. 713 (India)

<sup>12</sup> A.I.R. 1982 S.C. 1261 (India)

<sup>13</sup> A.I.R. 2006 S.C. 1158 (India)

Hence, it is quite evident that the decisions of the court have been in contradiction regarding the enactment of Uniform Civil Code. For our country to have a Common Civil Code it is imperative for the Courts to accentuate the importance of the Code.

---

## VII. CONCLUSION

After such an intense debate, it can be said that the mere three words and the nation disintegrates into frenzied ecstasy and berserk lament. Time has changed and it is high time that India too reforms its old forced norms and releases the birds that have been caged to fly just like other birds in the open sky of egalitarianism. Personal laws are sacrosanct and immutable. This code once established will act in the best interests of all religions and will create a balance between the fundamental rights and religious dogmas of individuals. The code will for sure bring changes in the lives of people and especially women as it will lead to a better life where there would be no biasness, no discrimination and equal opportunities.

Therefore, Art 44 requires the state to take steps for establishing a Uniform Civil Code in the territory of India. Though not much progress has so far been made towards achieving the ideal of the Uniform Civil Code however it still remains a dream, eyes of people are still glittering with that hope. The only step taken till now is the codification and secularisation of Hindu Law. Also, the first ever attempt has been made by drafting the Uniform Civil Code Bill of rights for its citizens to bring specific issues before the public for a better overview. The complication is that the codification of Muslim law remains an issue which is still an ongoing quest, yet to win.

In order to achieve this goal, the procedure should be undeviating and with the consent of the people concerned. Law must be divorced from religion. This will lead to the disappearance of the present-day separation and divineness between the various religious groups and India will emerge as much more cohesive and integrated nation.

---