

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 4

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Uniform Civil Code

S.VARUNI¹ AND K.VIGNESH²

ABSTRACT

Uniform civil code (UCC) is defined under the article - 44 of Directive principles of state policy in the Indian constitution. The Uniform Civil Code in India is to replace the personal laws based on the customs and scriptures of each religious community. It provides equal status of all citizens. A secular democratic republic should have a common civil law and personal laws for its citizens irrespective of their religion, caste, gender. Mostly personal laws of all religions are discriminatory towards women and there should be an upper preferential status for men in matters of succession and inheritance. Uniform Civil Code will bring men and women at par. Uniform Civil Code is to accommodate the aspirations of the young population. Their aspirations are shaped by the principles of equality, humanity, modernity. Their view on the basis of any religion has to be given a serious consideration. Before and now- a- day we have been faced and facing a many problems related to religions. All the citizens are equal before the law and with the implementation of Uniform Civil Code all the citizens will share the same set of personal laws.

I. INTRODUCTION

The India has been land of peace with several culture and religion. India is a state with no state religion and its constitution guarantees right to every citizen can follow or believe any religion. The main vision of constitution of India was not just equality before law but also equal protection of law. The part 3 and part 4 of the Indian constitution sets various provisions to ensure gender equality. Those gender equality of social justice ensure the first virtue of social institution. Under part 4, The Directive Principles Of State Policy provides directives, the government duty to apply the directive principles fundamentally in legislative procedures. Under this principle the concept of Uniform Civil Code has been interpreted.

After the 42nd amendment, enacted preamble converted India into a secular nation. The secularism is also reflected in article 25 to article 29 under part 3 of the constitution which guarantees citizen to practice any religion.

¹ Author is a student at The Tamilnadu Dr.Ambedkar Law University (School of Excellence in law), India.

² Author is a student at The Tamilnadu Dr.Ambedkar Law University (School of Excellence in law), India.

II. UNIFORM CIVIL CODE-“MEANING”:

³Uniform civil code means that all states of the society irrespective of their religion shall be treated equally according to a natural civil code which shall be applicable to all uniformly. This is a mirror which reflects” ONE COUNTRY ONE RULE”. Under part 4 of Indian Constitution article 44 of Directive Principles of State Policy represent uniform civil code says that “state shall endeavor to provide for its citizen a uniform civil code throughout the territory of India. It is extended to replace the system of personal law related with different religious community. They cover areas like – Marriage, divorce, maintenance, inheritance, adoption and succession of the property.

III. PERSONAL LAWS IN INDIA:

Personal laws are defined as a law that applies to certain class or group of people based on the religions. These are applicable to legal issues related to matters of inheritance, marriage, succession, adoption, the partition of family property and maintenance.

⁴The Hindu Succession Act, 1956, originally did not give daughters inheritance rights in ancestral property. They could only ask for a right to sustenance from a joint Hindu family. But this disparity was removed by an amendment to the Act on September 9, 2005.

- Hindu personal law is codified in four bills. They are the Hindu Marriage Act, Minority and Guardianship Act, Adoptions and maintenance act, Special Marriage Act-It was enacted in 1954 which provided for civil marriages outside of any religious personal law. The term ‘Hindu’ also includes Sikhs, Jains and Buddhists for the purpose of these laws outside of any religious personal law.

- Muslim personal law is not codified per se, and is based on their religious texts, though certain aspects of these are expressly recognized in India in acts such as the Shariat Application Act and Dissolution of Muslim Marriages Act.

- Christian marriages and divorces are governed by the Indian Christian Marriages Act and the Indian Divorce Act, while Zoroastrians are subject to the Parsi Marriage and Divorce Act.

IV. GENDER INEQUALITY:

Muslim men being allowed to marry multiple wives, but women being forbidden from having multiple husbands. For another example even after the 2005 amendment to the Hindu

³ www.legalserviceindia.com.

⁴ www.thequint.com.

Succession Act, women are still considered to be part of their husband's family after marriage. So, in case a Hindu widow dies without any heirs or will, her property will automatically go to her husband's family. Men (fathers) are also treated as 'natural guardians' and are given preference under the Hindu Minority and Guardianship Act. Muslim men initiate divorce through talaq and they do not need the wife's consent. This will lead to gender inequality.

Uniform Civil Code could lead to consistency and gender equality when it comes to personal laws, and usher in some much-needed reforms.

⁵MOHAMMAD AHMAD KHAN VS SHAH BANU:

In this case Shah Bano, a Muslim woman and wife of Mohammad Ahmad Khan filed a petition at a local court in Indore, against her husband under section 125 of the Code of Criminal Procedure, asking him for a maintenance amount for herself and her children. Husband gave an irrevocable talaq (divorce) to her which was his prerogative under Islamic law and took up the defense that since Shah Bano had ceased to be his wife and therefore he was under no obligation to provide maintenance for her as except prescribed under the Islamic law which was in total Rs. 5400. The issue was finally taken up by Supreme Court and it decided it in favour of Shah Bano using secular Criminal Procedure Code regardless of religion. The SC bench, in a verdict in favour of Bano, "there is no evidence of any official activity for framing a common civil code for the country. A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies."

- ✓ Uniform Civil Code will in the long run ensure Equality. Also, UCC will help to promote Gender equality.
- ✓ It will lead to national integration and draw minorities into the mainstream.
- ✓ It will encourage communal harmony.

In **sabarimala case(1991)**, the Kerala High Court upheld the restrictions of women at certain age inside the temple. In 2006 the Indian young lawyers filed a petition in Supreme Court seeking the entry of women between 10 to 50 years. In 2008 this case was referred to a three judge bench and after so many references the five judge benches of supreme court in 2018 allowed the entry of women in temple. This is also the gender inequality and it is the violation of article 14.

NATIONAL INTEGRITY:

The formation of Uniform civil Code will boost the national integrity. Even though our country

⁵ Mohammad Ahmad Khan v Shah Bano, A.I.R 1985 S.C. 945(India).

has diverse cultural values, a unified personal law irrespective of gender, caste, creed etc will boost the national unity.

V. CONSTITUTIONAL PROVISIONS:

The uniform civil code is under article 44 of Indian Constitution under part 4. This states country shall endeavor to secure all citizen under civil code uniformly throughout India and also under part 3 the fundamental rights reflects the concept of uniform civil code under certain articles. They are,

- Article 14-It states that the state shall not deny to any person equality before the law or equal protection of law throughout India.

- Article 15- No discrimination on grounds of religion, race, caste, sex or place of birth.

- In the case of ⁶**Nainsukhdas vs State of UP** held that the law provided for elections on the basis of separate electorates for members of different religious community is said to be unconstitutional and the violation of article 15. No Indian Citizen should be discriminate on the grounds of religion, caste and so on.

- Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on the grounds of public order, health and mortality.

- Article 25 (2)-provides for regulating secular activities associated with religious practices, social welfare and reform.

- Article 26- Right to establish and administer religious institutions.

Secularism

The word Secularism has been inserted in the preamble after the 42nd amendment of the constitution which converts India into a secular nation. Secularism is also a part of basic structure as the basis of the Indian Constitution is that all citizens are equal and that the religion of a citizen is irrelevant in the matter of his enjoyment of Fundamental Rights. Article 25 and 26 gave right to practice any religion and the Uniform Civil Code is not opposed to secularism. A secular state shall not discriminate anyone against the grounds of religion. A state should not concerned the relationship of man with religion.

In the case of ⁷ **S.R.Bommai vs Union of India**, the SC held that the “religion is the matter of individual faith and cannot be mixed with secular activities, Secular activities can be regulated

⁶ Nainsukhdas v State of UP(1953) S.C.R.1184(India).

⁷ S.R.Bommai v Union of India,(1994)2 S.C.R. 644(India).

by the State by enacting a law". So secularism is the basic feature of the constitution.

In the case ⁸**Santosh kumar vs Secy. Ministry of Human Resources Devolpment**, the SC held that the introduction of Sanskrit language in CBSC School is not against secularism. After that two judge bench court said that the "state tolerance of religion, does not make it either a religious or a theoretical state ".Secularism represents faith born out of the rational faculties and it enables to see the imperative requirements for human progress in all aspects. Secularism is neither ante –god nor pro- god, as it treats alike the devout, agnostic and the atheist.

- Article 27- It states that the no person shall be compelled to pay tax for promotion or maintenance of any religion.

- In the case of⁹ **Ratilal vs State of Bombay**, the supreme court held that a tax is in the nature of a compulsory exaction of money by a public authority for public purposes.

- In case of ¹⁰**Sri Jagannath vs State of Orissa** held that the object of the contribution was not the fostering or reservation of hindu religion or of the denomination within it, but to see that religious institutions were properly administered. ¹¹The prohibition is against giving aid to any particular religion. This means that if State aid is extended to all religious institutions along with secular ones alike without any discrimination, Article 27 will not be applicable in this case.

- Article 28- deals with the issue of religious instruction in educational institution.

In the case of¹² **D.A.V.College,Jallundhar vs State of Punjab** held that to make provision for the study the life and teaching of Guru Nanak is the prohibition of article 28 of the Indian Constitution.

VI. SUPREME COURT:

In the number of judgements various bench of supreme court have supported Uniform Civil Code and also the supreme court urged the parliament to formulate it.

In the judgement of ¹³**Sarla Mudgal vs Union of India**, the supreme court stated that "there is no justification, whatever to keep in abeyance any more the introduction of the Uniform civil code fix well the citizen in the territory of India.

⁸ Santosh Kumar v secy.Ministry of Human Resources devolpment,A.I.R 1995 S.C. 293 (India).

⁹ Ratilal Panachand Gandhi v State of Bombay (1954) S.C.R. 1035(India).

¹⁰ Sri Jagannath v State of Orissa (1954) S.C.R. 1046 (India).

¹¹ DR.J.N.PANDEY, The Constitution Law of India 344 -355 (49 ed.).

¹² D.A.V.College, Jallundhar v State of Punjab (1971)A.I.R.1737(India).

¹³ Sarla Mudgal v Union of India A.I.R.1995 S.C.1531(India).

In the judgement of¹⁴ **John Vallamattom vs Union of India** held that the “common civil code will help the cause of National Integration by remaining the contradiction based on ideologies.

DOMINATION OVER MINORITIES

Not only the personal laws and also because of certain judicial decision the denomination of minorities is increased from the time partition now the communities like muslims are dominated in India.

In the judgement of **Ayodhya verdict**, the five Supreme Court judges based on their unanimous and historic judgement on Hindus claim that the site is the birth place of Ram. In 16th century, Hindus were abolished the babri mosque which has been there in the ayodhya and sparking riots that killed nearby 2,000 people. The court said that the land should be given to the hindus for a temple to lord Ram and the muslims would be given suitable and prominent place to build mosque.

VII. CONCLUSION:

Jurisprudence behind Uniform Civil Code that it is national integration with one nation –one people motto. Uniform Civil Code brings the nation united, it removes the gender inequality and make everyone equal before the law. It removes all the variations among the people from different religions. Taking an example of a Uniform criminal law as a bench mark ¹⁵for the goddess of uniformity in personal laws is not correct. Secularism and National Integration will be strengthened by introducing Uniform Civil Code. Thus one can say that the need of the hour is to enact a Uniform Civil Code but that need to be done slowly and gradually after making the people especially the minorities hour about its scope and extent as well as their rights.

¹⁴ John Vallamattom vs Union of India (1997)Civil 242 (India).

¹⁵ www.thehindu.com