

LATEST DEVELOPMENT OF A UNIFORM CIVIL CODE IN THE INDIAN JUDICIARY

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ABSTRACT

This paper is related to a current burning issue that is thought to act as a coolant to the communal riots and violence and hatred that we can see even in this 21st century. India being a secular country should not indulge in such kind of human behaviour in the name of religion. Every religion in this world was created in order to uplift human beings from the torture of the tyrant. The objective of Article 44 is to create an integrated India by bringing together all communities on the same footing on matters which are at present governed by different personal laws but which do not form the basis of any religion. In the words of Dr. Tahir Mahmood, "in persons of the goal of secularism, the state must stop administering religion-based personal laws."

Keywords: Uniform Civil Code, Article 44, Indian Judiciary, Secularism.

INTRODUCTION

India from the very beginning is a country with diversity and various cultures. Diversity is the uniqueness of the country be it in the culture, the food items, the attire, the language, the religion, and the gods and Goddesses. The Constitution of India was framed by keeping in mind this variedness in the country. Owing to the fact that the country is a mixture of diverse cultures, the Constitution makers of this country framed the constitution in accordance with it. Secularism is the single word by which we can describe the religious belief of India. Personal laws of India are governed by religion but is it absolutely true to govern civil matters and family-related rights with different religious perspectives?

Having different marriage laws for the Hindus and some else for Muslims and others for Christians and other religions is not something that suits the official religion of India, which is Secularism. It is neither Islam nor Hinduism, not even Christianity or any other religion of the world, but it is a beautiful array of different religions, it is Secularism. With every trouble and hardship, India has acquired the status of equality in every field be it education, be it wages, be it any other application of basic human rights.

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The family rights of women differ from religion to religion, the property rights, as well as the rights relating to divorce vary from religion to religion. Speaking about the Hindus, after the 2005 amendment women have got a share in the coparcenary property but this doesn't work for the Muslim religion women. Does this actually prove the fact that article 14 of the Constitution of India applies to each and every person living in India?

Mentioning the judgement of *Captain Ramesh Chandra Kaushal v Veena Kaushal*¹ where the court held that the provision for additional safeguards and special privileges for disadvantaged groups is grounded in Article 15(3) of our constitution the court also commented that Section 125 Code of Criminal Procedure which is specially enacted to protect women and children falls within the constitutional ambit of Article 15(3). It has been therefore embedded within the constitutional area thereby ensuring social justice and is a reflection of a social responsibility that the state places upon economically stable members of the family to provide shelter and other necessities to the economically weaker members.

WHAT IS A UNIFORM CIVIL CODE?

In the judgement of *Lily Thomas v. Union of India*,² the supreme court held that religion is not a commodity and one cannot use it at its inconvenience mockingly the court stressed the need for Uniform Civil Code so that husbands may not convert to Islam to have the advantage of the second wife without divorcing his first wife. Uniform Civil Code is something that has been proposed by various jurists and judges in Landmark judgements. A uniform system of law to deal with family matters should be made, in order to provide equal status to women of every religion in their family, as has been prevailing in the countries of the Middle East in Asia. They have had a Uniform Civil Code for a very long time. Their civil matters especially related to family and property are governed by one specific law, which is equal for every man and woman belonging to any religion. In a secular country like India, it is obvious to have a uniform civil code for governing every citizen on an equal footing.

Religion has proved to be a formidable barrier to the Reform of the laws in respect of marriage divorce adoption, succession maintenance, and guardianship. Even in this 21st century, these areas are governed by the personal laws of various communities. Despite Article 44 of the constitution which requires the state to secure for the citizens and the Uniform Civil Code the country, the state has shown reluctance to interfere with those laws.

¹ *Captain Ramesh Chandra Kaushal v Veena Kaushal* (1979) Cr.LJ 3

² *Lily Thomas v Union of India* (2000) 6 SCC 224

According to Professor DD Basu, "*anybody who raises an objection to the implementation of Article 44 becomes guilty of a violation of Preamble article 44 as well as article 51-A of the Constitution.*"³

Article 44 of the constitution was created with the motive to introduce a system of uniformity in personal law for the purpose of national consolidation. It moves on the principle that there is no particular connection between religion and personal law in a civilised society which is having secularism as its national religion. As stated in Article 25 of the constitution guarantees freedom of conscience and of religion thereby seeking to divert religion from personal law, social relations, and loss governing inheritance succession and marriage just as it has been done even in Muslim countries and Turkey or Egypt⁴.

PRESENT SITUATION

Case Study of *Anoop Baranwal v Union of India*⁵

In this present case, the petition that was made is based largely on the judgement of *State of Bombay v. Narasu Appa Mali*⁶ a case of 1951 which stated that personal law is not "law" according to the meaning of Article 13 and thus cannot be scrutinised on grounds of violating fundamental rights. The Indian Law Commission had taken up a test for the viability of a Uniform Civil Code on the request of the Centre to look into the matter in detail and submitted a report. It submitted its findings back in the year 2018 which were based on the essential recognition of contrast that existed in Indian society and was of the opinion that the formation of a Uniform Civil Code was neither necessary nor desirable at the present stage.

Such has been stated by Justice J.B Pardiwala and Chief Justice of India U.U Lalit on the judgement of 30th September 2022⁷ by refusing to entertain the petition of Uniform Civil Code for India the bench remarked that the Uniform Civil Code was not desirable and has its basis on the judgement which had been twice controversy by the Supreme Court of India, therefore, going to the fact that Uniform Civil Code is having a shaky foundation. The report that was submitted by the law commission mentioned the importance of recognising of variedness that existed in Indian society and is of the opinion that the establishment of a Uniform Civil Code was neither necessary nor desirable at this particular stage thereby asserting the fact that while

³ <https://www.thestatesman.com/opinion/of-the-constitution-1502948731.html>

⁴ https://m.timesofindia.com/city/delhi/implement-uniform-civil-code-for-gender-justice-says-jnu-vc-santishree-dhulipudi-pandit/amp_articleshow/93721685.cms

⁵ *Anoop Baranwal v Union of India* Writ Petition (Civil) No. 1259/2021

⁶ *State of Bombay v Narasu Appa Mali* (1952) Bom 84

⁷ *Anoop Baranwal* (n 5)

several matters were frequently brought up in public debate they could not be and need not be dealt with law.

In my opinion, this judgement is not to the standard of the development that we experience in our daily life. A society that aspires to build a civilisation in the outer universe cannot lock itself by the shackles of religious narrowness which is unfortunately a widely accepted fact of Indian society. The women are the greatest sufferers of this backward conception which, after this particular judgement has got injected into the very vitals of the Indian judiciary system. A certain Muslim woman cannot take an action against her husband if he indulges in polygamy but a Hindu or a Christian woman is well protected. Thereby we all ourselves a developed race of intelligent primates.

Religion looks beautiful if kept within the four walls of shrines and inside the very core of the hearts to inculcate moral values and to get mental peace but when it gets involved with the laws, it started causing hindrance to the development and discrimination which are not expected in a secular country that is quite progressive. The Indian Constitution provides every citizen of India the right to practise and profess any religion that they wish to, although that same Constitutional book guarantees every citizen equality in every aspect of life. In order to understand this we should keep in mind that India is a secular country yet it has equal laws for everyone as has been thought by the Constitution makers but to the very disappointment even in this 21st century we failed to achieve that status.

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JUDGEMENTS SO FAR

Starting with the first case related to Uniform Civil Code, *State of Bombay v. Narasu Appa Mali*⁸ in which the division bench of The High Court held that personal laws were immune from constitutional challenge on the ground that they violated the Right to Equality it was held that personal laws were not lost within the meaning of Article 13 of the constitution and thus do not have to stand judicial standards for their constitutionality they were part of the tradition and hence outside the definition as mentioned in Article 13 of the constitution this judgement not only upholds plural legal system and furthers the public-private divide but also declares that the area of the private need not to be subjected to the discipline of the constitution.

Next, we have the judgement of *Sarala Mudgal v. Union of India*⁹ where the union government was directed to examine article 44 once again. There the Supreme Court opined

⁸ AIR 1952 Bom 84

⁹ AIR 1995 SC 1531

that it is imperative for both the protection of the oppressed and the promotion of national unity and integrity.

In the case of *Muhammad Ahmed Khan v. Shahbanu Begum*,¹⁰ a Muslim divorced his wife who later filed a petition for maintenance under Section 125 of The Criminal Procedure Code, the husband refused to pay her maintenance on the basis that she was paid during the iddat period and so under Muslim personal law the husband is no longer bound to maintain her the Supreme Court held that even after the iddat period the husband must maintain his wife under Section 125 notwithstanding anything mentioned in the personal law.

Immediately after this judgement, a huge controversy regarding the Muslim women's right to maintenance under Section 125 erupted throughout the nation and due to the pressure from Muslim Fundamentalist organisations the government found a way to modify the decision by enacting the Muslim women's rights to protection on divorce act 1986 with this act the rights of Muslim women were cut down for maintenance as under section 125 of criminal code of procedure.

After that in the case of *Daniel Latifi v. Union of India*,¹¹ the constitutionality of the above said Act was challenged on the ground that the law under section 125 of the state act is the reflection of the moral virtue of the law and or not to have been similar to religion and religion based personal laws hence such act is violative of article 14 and 25 of the constitution the court thereby while upholding the validity of such act, clarified that to construe the provisions of this act as of less benefit than the provisions of chapter 9 of The Criminal Procedure Code which holds husband responsible to pay maintenance only for the iddat period would result in discrimination against the divorce Muslim wife and would be rendered the act violative of article 14 15 and 21 of the constitution.

As has been stated in the judgement of *Sarala Mudgal and Lily Thomas* (supra) the Supreme Court decided the matter of whether conversion to another religion ends the previous marriage. It was therefore concluded that conversion to another religion does not dissolve the previous marriage automatically and unless the existing marriage is dissolved remarriage is void and punishable under section 494 of the Indian Penal Code.

Now focusing on the restitution of conjugal rights which has been provided under section 9 of the Hindu Marriage Act of 1955 as well as all the communities of India have the availability

¹⁰ (1985) 2 SCC 556

¹¹ (2001) 7 SCC 740

of the restitution of conjugal rights as a matrimonial remedy it was held in the Supreme Court judgement of *Saroj Rani v. Sudarshan Kumar*¹² the Andhra Pradesh high court observed that the validity of section 9 of the act according to the constitution, when looked into on the touchstone of equal protection of laws also leads to a conclusion of its invalidity and it is also violative of Article 14 and 21 of the constitution and termed as the uncivilised barbarians savage and an engine of suppression. The same has also been held in the case of *T Sareetha v. T. Venkata Subaiya*¹³ and *Harminder Kaur v. Harminder Singh*.¹⁴

Looking into the judgement of *Pragati Vergese v. Cyril George Verghese*,¹⁵ the court omitted section 10 of the Indian divorce act of 1969 which forces the wife to continue to live with her husband who has deserted her or has treated her with cruelty. They observe that this provision is a violation of the protection of rights and personal liberty under Article 21 of the constitution.

In the case of *John Vellamathom v State of India*, the Supreme Court appealed that Section 118 of the Indian Succession Act which imposed unreasonable restrictions on their donation of property for religious and charitable purposes by will was unconstitutional and violative of Article 14 Supreme Court neglected for not giving effect to Article 44 of the constitution.

CONCLUSION

As said by Justice Kuldeep Singh in the course of his judgement observed that Article 44 is based on the concept that there is no necessary connection between religion and personal law. In the absence of this code, the court tried to interpret the provisions of the constitution to confirm the rights of women even in matters involving personnel laws; it has rightly been observed that in India Women's problems are similar regardless of their caste, community, or religion. Women are suppressed and denied their dignity from time immemorial. A multiplicity of family laws try to divide and create confusion among them and they find it difficult to get full awareness of their rights if they were governed by one set of just rules, they would feel strong and confident.

Therefore the study related to a current burning issue which is thought to act as a coolant to the communal riots and violence and hatred that we can see even in this 21st century India is a secular country that should not indulge in such kind of human behavior in the name of religion. Every religion in this world was created in order to uplift human beings from the torture of the

¹² AIR 1984 SC 1562

¹³ *T Sareetha v T. Venkata Subaiya* (1984) AP 346

¹⁴ *Harminder Kaur v Harminder Singh* (1984) Del. 66

¹⁵ *Pragati Vergese v Cyril George Verghese* (1997) Bom. 349

tyrant. The object behind Article 44 is to effect an integration of India by bringing all communities on a common platform on matters which are at present governed by different personal laws but which do not form the basis of any religion.

In the words of Dr. Tahir Mahmood, *“in persons of the goal of secularism, the state must stop administering religion-based personal laws.”*¹⁶

In the conclusion, I must say that Judiciary and even legislatures have put their best efforts for meeting the ends of social justice and gender justice with numerous new enactments as well as amendments in the recent past in the laws like Hindu Marriage Act 1955 Hindu adoption and maintenance act of 1956 Hindu Succession act of 1956 the Indian divorce act to achieve de facto equality for women but still remains a lot to be done in order to bring equality. As is relevant from the Shahbaz case where it has been observed 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.



¹⁶ <https://www.thehindu.com/opinion/op-ed/Tahir-Mahmood-writes-on-Uniform-Civil-Code-Consider-it-seriously/article62116270.ece>