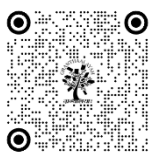


# EMPOWERING WOMEN THROUGH UNIFORM CIVIL CODE: LEGAL AND SOCIAL DIMENSIONS

Dr. Megha Garg <sup>1</sup>

<sup>1</sup> Assistant Professor, School of Legal Studies K.R. Mangalam University, India



## DOI

[10.29121/shodhkosh.v4.i1.2023.5775](https://doi.org/10.29121/shodhkosh.v4.i1.2023.5775)

**Funding:** This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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## ABSTRACT

India is a secular state that is state does not have any religion of its own. All religion is equal for a state. Article 44 of Indian Constitution as a Directive principle of state policy provides that state shall secure to every citizen of India a uniform civil code. There are many civil laws such as C.P.C. 1909, Law of contracts, The Transfer of property act etc., but these are for personal matters such as marriage, divorce, inheritance, maintenance etc. communities are governed by their own personal laws. So, we can say UCC refers to personal laws. UCC is replacing the personal laws of major religion communities in India with common civil law. Concept of UCC is governed by the idea of gender justice and national integration. Women in India are still facing discrimination and inequality specially focused to the practices of Triple talaq and Halala etc. to protect the rights of women and to provide the gender equality. Voice has been raised many times for implementation of UCC, but UCC has been wrongly posited as an attack on religion. The demand of change in personal laws is essential as it would directly improve the status of women in many spheres like marriage, divorce, adoption, maintenance etc. But even after 69 years of independence, the implementation of UCC is just a distant dream. This paper is based on the implementation of UCC as a tool to provide religious harmony and to protect the rights of women and gender equality as given under our constitution of India.

**Keywords:** India, Women, Civil, State, Religion



## 1. INTRODUCTION

Indian Constitution expressly stands for gender equality. Article 44 of Constitution of India provides for UCC for all citizens and says that the State shall endeavor to secure for all citizens a Uniform Civil Code. But this idea is still a dead letter. Women who make up half of India are still fighting for gender just code to enjoy equality and justice irrespective of their personal laws. That is why UCC is needed not only to provide uniformity of laws between all communities but also uniformity to provide equality between men and women.

### Concept of UCC:

The voice for implementation of UCC has been raised recently because many Muslim women have knocked the door of Supreme Court to protect their rights and dignity from which they are deprived in their respective personal laws. Uniform Civil Code is the replacement of personal laws of all major communities in India with a uniform civil law governing every citizen in the matter of marriage, divorce, inheritance, maintenance etc.

Uniform Civil Code is made up of three words. UNIFORM which means same in similar condition, civil means citizens and CODE means Codified laws. This supersedes the right of Citizens to be governed by their own personal laws. The UCC is conceived as part of secularization of personal laws without interfering in religious beliefs<sup>1</sup>.

### 1.1. NEED OF UCC

Uniform Civil Code is needed to promote Secularism which is the basic feature of constitution of India as was held by the Supreme Court in *S. R. Bomai V. Union of India*<sup>2</sup>. Implementation of UCC is needed to promote national integration and to reform Personal laws. It will also provide equal treatment to all specially to women. In 21<sup>st</sup> century where a Hindu wife or a Christian wife can charge her husband for bigamy if he remarry during her lifetime and also during the subsistence of their marriage then why a Muslim wife cannot?

Under Muslim law polygamy is permitted where a Muslim man have four wives but if we go through the Quran it says that a Muslim man can marry one, two, three or four but he has to give equal treatment to all of them and it is impossible for him to treat them all equally. So in other sense Quran also suggested for monogamy but polygamy is the practice among Muslims<sup>3</sup>.

The application of a uniform civil code will provide equal protection to all women irrespective of their Personal Laws moreover it will give more rights to the women.

### 1.2. UCC AND THE INDIAN CONSTITUTION

According to our Constitution India is a secular state that is state does not have any religion of its own. All religion are same for a state. Article 25 to 28 provides the freedom of religion that is every person has freedom of conscience and right to profess, practice and propagate their own religion subjected to public order and morality. Preamble of our constitution starts with the word; 'we the people of India' includes men and women assured dignity of individuals includes dignity of women too. On this basis many enactments have been made<sup>4</sup>.

Article 14 provides for equality before law and the equal protection of the law which is also for the men and women both. Article 15 provides a guarantee to every citizen that there shall be no discrimination on any ground and in 15 (3). It is provided the state can make special provision relating to women and children.

Article 16 provides equal opportunity for employment to all. Article 42 directs the state to make provision for just and humane condition of work for maternity relief. And most importantly article 44 which is a directive principle of state policy provides for uniform civil code for all citizens throughout the territory of India<sup>5</sup>.

There are many Uniform Civil Laws such as Law of Contract, Civil Procedure Code and Transfer of Property Act etc. which are applicable to all citizens irrespective of their culture or religion, but when it comes to the personal matters like marriage, divorce, inheritance, maintenance, adoption etc.; the communities are governed by Personal Laws. And in Personal Laws we can notice the prevalence of discrimination against women in different major communities in India.

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<sup>1</sup> Salim Akhtar and Ahmad Naseem, *Personal Laws and Uniform Civil Code*, P.39 (1998)

<sup>2</sup> (1994) 3 SCC 1

<sup>3</sup> Tahir Mahmood, *Personal Laws and Crisis*, p.3 (1986)

<sup>4</sup> J.N. Pandey "Constitutional Laws of India"

<sup>5</sup> V.N.Shukla "The Constitution of India" (2001)

### 1.3. COMMUNITY SPECIFIC PERSONAL LAWS IN CONTRAVENTION OF CONSTITUTIONAL PROVISIONS AND OTHER UNIFORM CODES:

One of the most important reason because of which the Civil Rights are demanding the application of Uniform Civil Code to ascertain the equal right to women, all major religious communities in India follow practices which are against the right of women and don't allow their socio-economic progress. For example, according to section 6 Hindu Minority and Guardianship Act, 1956 when the question arises as to the Guardianship of mother she cannot be natural guardian during lifetime of husband which is violation of article 14 and 15 of India Constitution.

In relation to Muslims usages are very rigid; there was practice of triple talaq where the Muslim husband had irresistible power to take divorce, even without assigning the reason which is now

declared unconstitutional by Honorable Supreme Court of India in *Shyra Bano V. Union of India*<sup>6</sup>. Another is Halala which is very inhumane and discriminatory for a woman and foremost is polygamy which is not the rule established by Quran. Polygamy is in contravention of section 494 of Indian Penal Code, which is Uniform Code so it should be applicable to all communities in India.

In Muslim Personal Laws there is no provision for the maintenance to wife in case of divorce, after the completion of period of iddat.

It was decided in *Shah Bano case*<sup>7</sup> that a Muslim women can claim maintenance under section 125 of CrPC, thus Supreme Court puts the Uniform Law of CrPC above Muslim Personal Laws to provide equality to the women.

Other communities like Christian, Parsis and Jews also having discriminatory provisions like a Christian husband can divorce his wife on the ground of adultery but for wife she has to put additional ground with adultery for obtaining divorce.

This is against the constitutional provision of equality before law. These provisions of inequality in personal laws of different communities needs to be replaced with Uniform Civil Code which will make everybody equal before law in real sense.

### 2. JUDICIAL RESPONSE IN SUPPORT OF UNIFORM CIVIL CODE:

The issue of Implementation of UCC was first raised in the year of 1985,

in the case of *Mohammad Ahmad Khan V. Shah Bano Bagum*<sup>8</sup> in which the Muslim Wife claimed maintenance from her husband under section 125 of CrPC after which her husband gave triple talaq to her & Supreme Court held that the Muslim women has right to get maintenance under section 125 CrPC. The then Chief Justice of India Y. V. Chandrachud observes that "A common Civil Code will help the cause of national integration by removing disparate loyalties to law."

After this many meetings and agitations were held and subsequently Muslim women (right to protection on divorce) Act, 1986 was passed which restricted the right of Muslim Women to claim maintenance under section 125 of CrPC.

The Second instance is a case of *Sarla Mudgal V. Union of India*<sup>9</sup>, where Supreme Court directed the government of India to have a note of article 44 in this case, a Hindu husband had solemnized second marriage by embracing Islam. He was charged for bigamy and court held that a Hindu can solemnize second marriage only by taking divorce from first wife. Conversion to Islam and marrying away is not a ground to dissolve the first marriage and thus a second

Marriage solemnized after converting to Islam is an offence under section 494 of IPC.

Here again the Supreme Court requested the Central Government to have fresh look of article 44 for implementation of UCC.

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<sup>6</sup> Writ petition decided by Honorable Supreme Court in 2017

<sup>7</sup> AIR 1985 SC 945

<sup>8</sup> ibid

<sup>9</sup> AIR 1995 SC 153

Again in Lily Thomas V. Union of India<sup>10</sup>, Supreme Court held that UCC is very desirable but it can be implemented in a socially build up climate.

Supreme Court orders are first step towards implementation of UCC. In Seema V. Ashwin Kumar<sup>11</sup>, Court held that all marriages irrespective of their religion compulsory be registered as it is the need of time.

### **Obstacle to UCC<sup>12</sup>:**

The following objections are raised for implementations of UCC in India by communities:

First objection is Article 44 of Indian Constitution must be repealed from the Indian Constitution as it is an attack on the personal laws because personal laws are sacred and absolute and no legislature can amend it. A popular fallacy which shrouds the issue of 'personal laws' is that these laws are based on religious texts and hence pre-ordinate, infallible, sanctimonious and static. But such an objection is groundless, absurd and meaningless because there is nothing divine about personal laws.

Another is UCC is against fundamental right guaranteed under Art. 25 and 26.

Both Article 25 (the right freely to profess, practice and propagate religion) and Article 26 (freedom to manage religious affairs) are, however, "subject to public order, morality and health" and to the values enshrined in all other fundamental rights such equality and social justice. Article 25, while protecting religious freedom, also empowers the State to regulate or restrict "any economic, financial, political or other secular activity which may be associated with religious practice". This introduces an important distinction between sacred and secular. Thus practices such as witchcraft, superstition, ordeals, sati, child marriage, prohibitions against widow remarriage, caste discrimination, casual triple talaq and polygamy may be and have been barred or regulated.

The another defense taken against Art. 44 is that it is also against of Art. 29 that guarantees right as to 'culture'. It is contended that personal law forms a part of 'culture'. The word 'culture' is not defined in Art. 29. Firstly, it has to be noted that Articles 25-28 are grouped under the heading 'freedom of religion' and thereafter, comes the heading

'Cultural & Educational rights' including there under Articles 29 & 30. it would follow that the 'culture' referred to in Art. 29(1) is something which is not founded on religion and which may belong to any section of the citizens' which may not be necessarily a religious minority. The distinction between culture and religion needs to be taken into consideration. The best illustration of this proposition would be a saying "I am Muslim by religion, but a Hindu by culture". If this proposition be true, a Muslim's claim to be governed by a different personal law, alleged to be founded on religion, cannot be defended as a fundamental right under Article 29(1).

## **3. CONCLUSION**

The object behind Article 44 is to making of India as an integrated nation by bringing all communities based on different personal laws on a common platform on matters which are presently governed by diverse personal laws but which do not form the core of any religion.

To conclude, I would like to say that citizens belonging to different religions and denominations follow different property and matrimonial laws which is not only affront to the nations unity and integrity, but also makes one wonder whether we are a sovereign, secular, republic or a loose confederation of feudal states, where people live at the whim and fancies of maulvis, bishops and pundits

Justice Leila Seth's words aptly express the present perception which is starting to spread rapidly among citizens:

<sup>10</sup> AIR 2000 SC 1650

<sup>11</sup> AIR 2006 SC 11

<sup>12</sup> South Asian Journal of Multi disciplinary studies ISSN 2349 – 7858

"These are not Hindu or Muslim or Christian or Parsi demands or laws – these are a cry for gender just laws; for giving women their human rights and their mandated constitutional rights. If we can't give them all the rights in one go, let us progress little by little but let us not be stagnant. Let us move towards gender just laws and a uniform civil code." ....

The Constitution was enacted for the whole country, it is binding on the whole country, and every section and community must accept its provisions and its directives."So, Article 44 should be made mandatory provision binding the government.