

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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"SECULAR LAWS AT LOGGERHEADS WITH PERSONAL LAWS: THE TUG OF WAR IN INDIAN JURISPRUDENCE"

AUTHORED BY - ARPITA JAIN

Institute - Campus Law Centre, Faculty of Law, University of Delhi

Abstract

In the ever-evolving tapestry of secular laws, the convoluted interplay of secular laws & the constitution presents a compelling and contemplative paradox. This article ventures into this thought-provoking dilemma, delving into how the application of Uniform Civil Code can intricately sculpt the very essence of democratic ethos. Through meticulous analysis of landmark cases, the article probes the pivotal role of secular laws in upholding the bedrock of constitutional morality. It navigates the delicate equilibrium between laws guiding religious practices, casting a spotlight on instances where their interplay tests the fortitude of uniformity of democratic principles. Against a backdrop of intensifying disparity in laws, the article underscores the pressing imperative of building an evolution from passive adherents to proactive citizens advocating uniformity of laws.

It urges a moment of introspection, encouraging societies to assess the trajectory of religious laws with conscious responsibility. The revolutionary journey from beholders to guardians comes off as the cornerstone of a world deviated towards unification of laws. In summation, this discourse encapsulates the very heart of the tussle between the disparity between personal laws and constitutional laws. It ardently champions collective efforts to safeguard sacrosanct religious principles, fostering a society where the pillars of liberty, freedom, and constitutional morality remain steadfast with secular laws, poised against the backdrop of ever-shifting societal currents.

On June 14, the Law Commission of India decided to solicit and deliberate from the public about the Uniform Civil Code (UCC). After a hiatus of just five years, when the Commission summed up that the '*UCC is neither necessary nor desirable*', the air in the nation is thick with anticipation that keeps the pot boiling on one of India's most ideologically as well as

politically talked about issues. Though we believe that the enactment of the UCC in an articulate manner would be in tune with the spirit of *Article 44*, however, the attempt here is to invoke attention to one particular consideration that must weigh with the Commission as it undertakes this exercise de novo. The rhetoric surrounding personal laws is basically the question of personal and religious autonomy versus the state's authority to refurbish familial laws. Since each religious group has distinct autonomy, it is thus being argued that the community should itself come forward to seek reforms. This is the justification for the adoption & enactment of internal law reform or voluntary UCC. In fact, the Special Marriage Act, 1954 and the Indian Succession Act, 1925 are nothing but examples of advertent adoption of the UCC though the recently enacted unconventional love jihad laws by prohibiting inter-faith marriages basically strangulates the spirit of Special Marriage Act.

Historical background

In the archives of India's history, the concept of a Uniform Civil Code (UCC) acts as a profound thread that connects the country's colonial bequest with its ardent struggle for independence. As the Britishers sought to govern a diverse and intricate land, they codified personal laws based on religious beliefs, giving rise to a patchwork of legalities. However, with the winds of change blowing fiercely during the independence movement, lawmakers envisioned a secular and inclusive India, where the unity of the nation prevailed above all else. **During the colonial era, personal laws laid the foundation for a diverse legal landscape, where personal matters such as marriage, divorce, and inheritance were governed by religious customs.** As the lawmakers of the independence movement dreamt of a new India, the idea of a UCC emerged as a pivotal instrument to uphold the ideals of equality before the law & foster national integration.

Introduction

Article 44: The State shall endeavour to secure for the citizen a Uniform Civil Code through the territory of India.¹

The questionable rhetoric surrounding uniform civil code (UCC) in India has ushered in a slew of concerns that need to be addressed before any vindication is ruled out concerning the issue. More than seven decades as an independent nation but the idea of UCC still seems uncalled &

¹ [Article 44 in Constitution of India](#)

uncanny to the lawmakers of our country even today. The rekindled debate underscores the complex & intertwined structure of the relationship between religion and law in our country.

The Idea of Uniform Civil Court was first reflected in “*Sarla Mudgal VS Union Of India Case*”² which ruled that unsolicited conversion of Hindus to Muslim religion to solemnise second marriage is in contravention to the law as conversion must be driven by a pious intention to embrace the religion and not based on any ulterior motive. Henceforth, the Apex Court directed the government to reflect upon steps to secure a UCC.

In the landmark Case of “*Mohammad Ahmed Khan v. Shah Bano Begum*”³, wherein Shah Bano moved to the Apex Court in order to seek maintenance under section 125 of the CrPC as her husband divorced her by pronouncing triple talaq and refused to give her maintenance. The Supreme Court quoted it “As a matter of great despondency, desolation and repentance that *Article 44* ever since its existence has remained a dead letter”. As UCC shall help the cause of national integration by wiping out disparate loyalties to laws that have multifaceted concerns. Again, in *Sarla Mudgal Case* (1995), which revolved around the issues of bigamy. A major war between personal laws in matrimonial matters in the court highlighted the need for UCC again. A UCC envisages a comprehensive statute of personal laws that will govern Indian society uniformly on issues relating to marriage, maintenance, guardianship, adoption, succession etc. UCC is aimed at bringing the potentially divisive issues pertaining to varied secular laws under focus in order to ensure uniform enforceability. The ideology behind UCC originates from the very definition of secularism, which in English refers to the prime difference between church and state.

Article 44 of the Indian Constitution, which is one of the *Directive Principles of State Policy*, states that the State shall endeavour to secure for its citizens a uniform civil code in the country. Presently, secular laws are governed by their own personal laws as Hindus are governed by the Hindu Marriage Act while Shariah law governs Muslims, the Christian Marriage Act governs Christians and the Special Marriage Act, 1972 governs all marriages in India irrespective of religion.

The apprehension of a UCC being a threat to the rich cultural tapestry of India due to

² Smt. Sarla Mudgal, President, Kalyani & ... vs Union Of India & Ors 995 AIR 1531

³ Mohd. Ahmed Khan vs Shah Bano Begum And Ors 1985 AIR 945

formulation of a unilateral law in place of diverse secular laws, cannot be denied. However, the apprehension might be misplaced, for a UCC shall not prevent anyone from wilfully professing their religion or tradition, but shall only administer uniform application of personal laws to ensure national integration. Not only does it ensure equal treatment of rights for women in inheritance and divorce, among other benefits, but also prevents undue and unfair jurisdiction in private matters. It's inevitable to regulate speedy justice keeping in view the myriad of civil laws. For effective discharge of justice with no discrimination, it's egregiously important to adopt uniform civil code. As it shall address all loopholes arising out of variegated personal laws by formulating a comprehensive and cohesive legal system. Personal Laws have arisen from scriptures, therefore a UCC shall form an inclusive law which then will apply to all citizens uniformly regardless of their religion, caste, ethnicity.

Relevant Articles in the Constitution of India

➤ **Article 25 (Freedom of conscience and free profession, practice and propagation of religion)**

Subject to public order, morality and health and to the other provisions of this Part, All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

➤ **Article 26 (Freedom to manage religious affairs)**

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- to establish and maintain institutions for religious and charitable purposes;
- to manage its own affairs in matters of religion;
- to own and acquire movable and immovable property; and
- to administer such property in accordance with laws

➤ **Article 44 (Uniform civil code for the citizens)**

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Secular Laws at Loggerheads with Personal Laws

1) **Danial Latifi & Anr vs Union Of India**

The constitutional validity of the **Muslim Women (Protection of Rights on Divorce) Act, 1986** was brought into scrutiny in the Landmark case of "*Danial Latifi & Anr vs Union Of*

*India*⁴” in 2001. The argument raised by petitioner is that the rationale of Section 125 CrPC is to fetch a culminating point wherein a divorced wife is not led into destitution or vagrancy & it is enacted to prevent such a situation in furtherance of the idea of social justice as mentioned in *Article 21* of the Constitution.⁵

The discriminatory law not only stems from gross injustice but further leads to a monstrous proposition of nullifying a law declared by this Court in Shah Bano's case. Thus there is a blatant violation of equality before law and inherent infringement of *Article 21* as well as basic human values. It distorts the very purpose of Section 125 CrPC that is to avoid hardships, the remedy thereunder cannot be denied to Muslim women.

The Act is an un-islamic, unconstitutional and it has the potential of suffocating the muslim women and it negates the value of secular character, which is the essence of the Constitution; that there is no rhyme or reason to expropriate the muslim women from the applicability of the provisions of Section 125CrPC. Apparently, excluding the application of Section 125 CrPC is violative of *Articles 14 and 21* of the Constitution and defying a muslim woman to exercise the remedies under Section 125 CrPC is violative of equality before law and such an inadequacy would render the act blatantly unconstitutional, as there is no nexus to refrain muslim woman from availing the remedies available under Section 125 CrPC.

2) **Mary Roy V. The State Of Kerala** ⁶

In *Mary Roy V. The State Of Kerala*, Mary Roy, an educator and human rights activist who is the mother of renowned writer Arundhati Roy. She is the woman who conducted the legal battle and the apex court ruled in 1986 that women had equal rights in their father's property. This was a landmark judgement that persuaded the right of Christian women to enjoy equal property rights. In this particular case, the Supreme Court held that Christian women are entitled to have an equal share in their father's property. ⁷

3) **Smt. Sarla Mudgal, President vs Union Of India & Ors**⁸

In *Smt. Sarla Mudgal, President vs Union Of India & Ors*, *Article 44* of the Indian

⁴ Danial Latifi & Anr vs Union Of India AIR 2001 SC 3958

⁵ [Article 21 in Constitution of India](#)

⁶ Mary Roy V. The State Of Kerala 1986 AIR 1011, 1986 Scr (1) 371

⁷ [Mary Roy V. The State Of Kerala 1986 Air 1011, 1986 Scr \(1\) 371](#)

⁸ Smt. Sarla Mudgal, President, Kalyani & ... vs Union Of India & Ors 995 AIR 1531

Constitution reads, "The State shall endeavour to secure for the citizens a uniform civil code through-out the territory of India" which calls for introducing a uniform personal law - a decisive step towards consolidation of unified personal laws instead of variegated laws at the national level. It is an unequivocal mandate made under *Article 44*

Pandit Jawahar Lal Nehru, while referring to the introduction of the Hindu Code Bill instead of a UCC in the Parliament, asserted "*I do not think that in the current scenario, the time is ripe in India for me to try to push it through*". However, it seems that even 41 years thereafter, our country is still engulfed in the darkness of variegated laws thus not set on the bandwagon to retrieve Article 44 from the cold storage where it has been kept untouched since 1949. Governments have come and gone, although the lawmakers have budged inches but the petitions for invigorating Section-44 seems to have fallen into deaf ears. They have so far failed to make any constructive steps towards introducing "unified personal law for all Indians". The rationality behind the untoward delay is too obvious to be stated.

The questions for our consideration are:

- Whether a Hindu husband, married under the statute of Hindu law, by embracing Islam, can solemnise second marriage?
- Whether such a marriage without having the first marriage dissolved under Hindu law, would be a valid marriage qua the first wife who continues to be Hindu?
- Whether the husband, who renounced religion, would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)

Countries with or Without a Uniform Civil Code

- Uniform Civil Code is followed in countries like **Tunisia, Bangladesh, Malaysia, Turkey, Indonesia, Egypt and Ireland**. All these countries do not have variegated laws rather they follow Uniform laws and there are no separate laws for any particular religion or community.
- **United States**
The United States does not follow UCC. Instead, it follows a regime of state-specific family laws with variegated laws governing marriage, divorce, and inheritance across states.
- **United Kingdom**
The UK has extravagant diversity with various religious communities, but it does not have a UCC. It allows religious councils such as Sharia councils for Muslims etc. to

operate parallel to the legal system.

Debate for enactment

Various academicians and activists were persuaded that the implementation of UCC could produce beneficial developments for the longer run.

Firstly, the social horoscope of India is convoluted with intricacies of cultural and religious patterns brushed by the strokes of different norms, values, rituals and traditions. The adherents of UCC plunge into the diverging course of religion in matters of personal law creating disparities and variances among people. By adopting UCC, equality before law will be in prevalence which will govern all citizens, despite their religious background, thus fostering a sense of equality and fairness. As Prof. Tahir Mahmood aptly connotes, “The principle behind the Uniform Civil Code is that all citizens should be equal before the law, irrespective of their religious beliefs.”

Secondly, the innumerable identities have created factions within society resulting in identity conflicts, animosity and weakening of nations’ strength. Advocates of UCC profoundly believe that a common civil code can help create collective identity by fostering a more integrated & legally constructive society. And could be constructive in building a resilient nation, enabling citizens to focus on pivotal goals rather than dwelling on petty & trivial issues.

Furthermore, a Uniform Civil Code can help prevent gender inequalities prevalent in certain personal laws. Many existing personal laws have discriminatory nuances that affect women’s rights, including unequal inheritance rights, restrictive custody arrangements. & limited access to divorce. A uniform code will provide women with equal rights and opportunities, thus obliterating inadequacies & paving way to gender justice and equality before law.

Justice V.R. Krishna Iyer, in this context states that the “*Uniform Civil Code is essential to ensure gender justice and to eliminate discrimination against women entrenched in personal laws.*”⁹

While the UCC propels a series of positive attributes, many have also contended that it would bring tides of denigrating consequences for India. The future of Indian society depends on the essence of “Indianness”, which gives prominence to diversity. If tinkered with, it would carry

⁹ [The feasibility of Uniform Civil Code \(UCC\) in Indian society - Politics for India](#)

off the spark and spirit of India's rich culture. Critics argue that a UCC will restrict the growth of cultural and religious pluralism by invigorating a uniform set of laws on all citizens, disregarding their unique customs and practices. As Justice B.S Law Commission of India in 2018 states, "cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation". Furthermore, the opponents of the UCC fear that it could adversely affect minority communities and their varied personal laws. There are also considerations pertaining to implementing a single civil code that may violate the rights of religious minorities, leading to possible marginalisation. While proponents of the UCC argue that it would promote gender equality as the focus should be on effectively reforming these laws rather than formulating a uniform code.

Critical Assessment

UCC poses a wide spectrum of interrogatives such as the uniformity of laws, diversity of thoughts, plurality, and equality. And although the debate over its enactment finds many tribulations from both ends, what remains a determining factor is how the process of implementation will take place if there are many stakeholders at loggerheads.

Many eminent advocates of UCC state that the political environment is not conducive for the implementation of UCC. As *Articles 25-30* give citizens of India the Freedom of conscience and profession, practice, and propagation of religion. There cannot be a contradictory connotation of fundamental rights and DPSP where the latter is not enforceable. Furthermore, UCC should prioritise inclusivity and sensitivity towards the rights and traditions of all religious communities. It should aim to protect the interest of the minority while promoting equality and justice for all citizens. Additionally, it should consider the immaculate historical, cultural, and social contexts of India, comprehending the relevance of legal pluralism while also striving for a uniform and just legal framework. Any recommendation on UCC should be informed by the expertise of legal scholars and constitutional experts who can navigate the complexities of harmonising different legal systems and ensure that it complies with the principles of the Indian Constitutional

Conclusion

In order to substantiate the present needs, the laws ought to promote national integration by eliminating adherence to long standing customs & becoming more gender-neutral, and more progressive. The 22nd Law Commission of India is deliberating afresh on examining and soliciting views and ideas of the public pertaining to achieve a common code among its citizens through Uniform Civil Code. Legal pluralism is contemplated as a pitfall rather it calls for equality and a one-size fit all approach. Uniform regimes ought to exist between varied personal laws to embark non-discrimination policy. Successful implementation of UCC will work to transform our society into an egalitarian one. However UCC can only be enforced through an evolutionary process preserving the secular laws of multifarious religions and developing a codified law giving equal importance to all religions. Although, the codification and implementation of UCC may be less of a challenge at this moment than drafting its details. UCC might help address the imminent problems posed by discriminative secular laws. It is implicit herein that current lawmakers need to democratise the legislative regime and develop pluralism in our society focusing on cohesiveness in lawmaking. UCC as a centrist policy has worked for countries like the US and UK. However it remains to be seen how the successful implementation of UCC takes course in India.

