

Study
On
Article 44 - Uniform Civil Code For The Citizen

Submitted by
SHAILESH JAYPRAKASH SINGH
Seat No - LLB20350,
Semester - II, LLB-3Yrs

Under the Guidance
of
Prof. Adv. YOGESH JADHAV



**Bharatratna Dr. Babasaheb Ambedkar Law College
Bhiwandi**

Session 2020-21

INDEX

SR NO.	CONTENTS	PAGE NO.
PART - A (Article 44 - Uniform Civil Code For The Citizen)		
1.	Introduction	1
2.	Background of Uniform Civil Code	1-2
3.	Importance Of Article 44	3
4.	UCC & Implications	4
5.	Challenges To UCC	5
6.	Way Forward	5
PART - B (Case Law 1 : Mohd. Ahmad Khan v/s Shah Bano Begum)		
7.	Introduction	7
8.	Facts Of The Case	8
9.	Issues Raised	9
10.	Case Laws Stated	9
11.	Judgement	10-11
12.	Conclusion	12
PART - C (Case Law 2 : Sarla Mudgal, President, Kalyani v/s Union of India)		
13.	Introduction	14-15
14.	Facts Of The Case	16-17
15.	Issues Raised	17
16.	Arguments Advanced From Both Parties	17-18
17.	Judgement	18-20

PART - A

Article 44 - Uniform Civil Code For The Citizen

INTRODUCTION

Article 44 of the Indian Constitution states that "the state shall endeavour to secure for the citizens a uniform civil code (UCC) throughout the territory of India." The desirability of a uniform civil code is consistent with human rights and the principles of equality, fairness and justice.

The Uniform Civil Code (UCC) calls for the foundation of one law for India, which would be applicable to all religious communities in matter such as marriage, divorce, inheritance, adoption. The code comes under Article 44 of the Constitution, which lays down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

BACKGROUND OF UNIFORM CIVIL CODE

→ The origin of the UCC dates back to colonial India when the British government submitted its report in 1835 stressing the need for uniformity in the codification of Indian law relating to crimes, evidence and contracts, specifically recommending that personal laws of Hindus & Muslims be kept outside such codification.

- Increase in legislation dealing with personal issues in the far end of the British rule forced the government to form the B N Rau committee to codify Hindu Law in 1941
- Based on these recommendations, a bill was then adopted in 1956 as the Hindu succession Act to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains and Sikhs. However, there were separate personal laws for Muslim, Christians and Parsis.
- In order to bring uniformity, the courts have often said in their judgements that the government should move towards a Uniform civil code. The judgement in the Shah Bano case is well known, but the courts have made the same point in several other major judgements.
- By arguing that practices such as triple talaq and polygamy impact adversely on the right of women to a life of dignity, the Center has raised the question whether constitutional protection given to religious practices should extend even to those that are not in compliance with the fundamental rights.

IMPORTANCE OF ARTICLE 44.

The objective of Article 44 of the Directive Principles in the Indian Constitution was to address the discrimination against vulnerable groups and harmonise diverse culture groups across the country. Dr. B.R. Ambedkar, while formulating the Constitution had said that a UCC is desirable but for the moment it should remain voluntary and thus the Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in Part IV of the Constitution of India as Article 44. It was incorporated in Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.

Dr. B.R. Ambedkar in his speech in Constituent Assembly had said, "No one need be apprehensive that if the state has the power, the state will immediately proceed to execute. That power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so."

UCC AND IMPLICATIONS

→ Protection to vulnerable Section of Society :-

The UCC aims to provide protection to vulnerable sections as envisaged by Ambedkar including women and religious minorities, while also promoting nationalistic fervour through unity.

→ Simplification of Law :-

The code will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all. The same civil law will then be applicable to all citizens irrespective of their faith.

→ Adhering to ideal of Secularism :-

Secularism is the objective enshrined in the Preamble, a secular republic needs a common law for all citizens rather than differentiated rules based on religious practices.

→ Gender Justice :-

India has separate sets of personal laws for each religion governing marriages, divorce, succession, adoption and maintenance. However, if the a UCC is enacted, all personal laws will ceased to exist. and gender equality for women on the ground that they violate the right to equality.

CHALLENGES TO UCC

→ Exceptions in Central Family Laws :

The preliminary sections in all central family law Acts enacted by Parliament since independence declare that they will apply to "the whole of India except the state of Jammu and Kashmir".

→ Communal Politics :-

The demand for a uniform civil code has been framed in the context of communal politics.

A large section of society sees it as majoritarianism under the garb of social reform.

→ Constitutional Hurdle :-

Article 25 of Indian constitution, that seeks to preserve the freedom to practise and propagate any religion gets into conflict with the concepts of equality enshrined under Article 14 of Indian Constitution.

WAY FORWARD

- Collaborative Approach
- Brick by Brick Approach.
- Gender - sensitive Approach.
- Pan - India Approach

PART - B : CASE LAW 1

Mohd. Ahmad Khan

v/s

Shah Bano Begum

Citation	1985 AIR 945 , 1985 SCR (3) 44
----------	--------------------------------

Date Of Judgement	23 April , 1985
-------------------	-----------------

Bench	Justice Chandrachud, Justice Y.V (C.J) Justice Desai, Justice D.A., Justice Reddy, Justice Chinnappa, Justice Venkataramiah, Justice E.S, Justice Mishra Rangnath.
-------	--

Court	Supreme Court
-------	---------------

Petitioner	Mohd. Ahmad Khan
------------	------------------

Respondent	Shah Bano Begum
------------	-----------------

INTRODUCTION

Section 125(1) of the Criminal Procedure Code deals with answers to the question as to "Who can claim Maintenance?"

1. Wife from his husband.
2. Legitimate or illegitimate minor child from his father.
3. Legitimate or illegitimate minor child (physical or mental abnormality) from his father,
4. Father or mother from his son or daughter.

Essential conditions for granting maintenance includes the following points:

1. Sufficient means for maintenance are available (person who has to give the maintenance should have means to give the same)
2. Neglect or refusal to maintain after the demand for maintenance (if the person defaults/omits to provide maintenance or if he denies his obligation of maintaining then it amounts to neglect respectively)
3. The person claiming maintenance must be unable to maintain himself/ herself. (only if the person is unable to maintain themselves)
4. Quantum of maintenance (depends on the standard of living)

FACTS OF THE CASE

Mohd Ahmed Khan (the appealing party) who was a Lawyer by profession, married to Shah Bano Begum (the respondent) in 1932, had three sons and two daughters from this marriage. In 1975, when Shah Bano's age was 62 years, she was disowned by her spouse and was tossed out from her marital home together with her children. In 1978, she filed an appeal in the presence of Judicial Magistrate of Indore, because she was abandoned from the maintenance of Rs. 200 per month, which was guaranteed to be provided by him. She demanded Rs. 500/month as maintenance. Subsequently, the husband gave her irrevocable triple talaq on November 6th, 1978. and used it as a defence to not to pay maintenance.

The magistrate, in August 1979, directed the husband to pay an entirely of Rs. 25/month as maintenance. Shah Bano in July 1908 made a plea to the High Court of M.P. to change the sum of maintenance to Rs 179 each month, and high court increased the maintenance to the said amount i.e. Rs 179 per month. The same was challenged by the spouse within the Supreme Court as a special leave petition, to the High Court's decision.

ISSUES RAISED

1. Criminal Procedure Code (II of 1974), section 125. Whether the "WIFE" definition includes a divorced Muslim woman?
2. Criminal Procedure Code (II of 1974), Section 125. Whether it overrides personal law?
3. Criminal Procedure Code (II of 1974), Section 125. Whether a Muslim husband's obligation to provide maintenance for a divorced wife is in or not in the conflict between section 125 and Muslim Personal Law?
4. Criminal Procedure Code (II of 1974), section 127(3)(b) What is the sum payable on divorce? The meaning of Mehar or dower is not summed payable on divorce?

CASE LAWS STATED

1. Fuzlunbi v/s. K. Khader Vali & Ors [(1980) 4 S.C.C. 125]
2. Bai Tahira v/s Ali Hasan F. C & Ors [(1979) 2 S.C.C. 316]
3. Nanak Chand v/s Chandra Kishore & Ors [AIR 1970 SC 446]
4. Mst Jagir Kaur v/s ANR v. Jaswant Singh [AIR 1963, SC 1521]
5. Hamira Bibi v/s Zubaida Bibi [AIR 1916 PC 46]
6. Syed Sabir Husain v/s Farzand Hasan [AIR 1938, PC 80]

JUDGEMENT

The verdict was given by C.J, Y.C Chandrachud, and the appeal of Mohd. Ahmed Khan was dismissed.

Supreme Court said Section of the code applies to all citizens independent of their religion and consequently Section 125(3) of Code of Criminal Procedure is pertinent to Muslims as well, without any sort of discrimination. The court further stated that Section 125 overrides the personal law if there is any conflict between the two. It makes clear that there's no strife between the provisions of Section 125 and those of the Muslim Personal Law on the address of the Muslim husband's obligation to provide maintenance for a divorced wife who is incapable to maintain herself..

Supreme Court in this case duly held that since the obligation of Muslim husband towards her divorced wife is restricted to the degree of "Iddat" period, indeed through this circumstances does not contemplate the rule of law that's said in Section 125 of CrPC 1973 and subsequently the obligation of the husband

to pay maintenance to the wife extends beyond the iddat period in that event that the "wife" does not have sufficient means to maintain herself. It was further stated by the court that this rule according to Muslim Law was against humanity or was wrong because here a divorced wife was not in a condition to maintain herself.

The payment of Mehar by the husband on divorce is not sufficient to exempt him from the duty to pay maintenance to the wife.

After a long court procedure, the Supreme Court finally concluded that the husbands' legal liability will come to an end if a divorced wife is competent to maintain herself. But this situation will be switched in the case when the wife isn't able in a condition to maintain herself after the Iddat period, she will be entitled to get maintenance or alimony under Section 125 of CrPC.

CONCLUSION

Though the court took a long time the decision of rejecting the appeal is very historic because it keeps up the truth and faith of the individuals in the judiciary. The judgement has marked the significance of maintenance which ought to be given to the divorced Muslim women who are not in the condition to earn and maintain themselves. The Shah Bano Judgement pulled in a lot of opposition with authoritative bodies being against the decision for the reason of it being against the provisions of Islamic Law, but SC passed the impartial judgement and at least, it had maintained the trust and faith of citizens in the judiciary. This lead to enactment of Muslim Women (Protection of Rights on Divorce) Act, 1986 which gives Muslim women receiving a huge one-time payment from their husbands amid the period of Iddat, instead of a maximum monthly payment of Rs 500 - an upper limit which has since been expelled.

PART-C : CASE LAW 2

Sarla Mudgal, President, Kalyani
v/s
Union of India

Citation	1995 AIR 1531, 1995 SCC (3) 635
Date of Judgement	20 May, 1995
Bench	Justice Kuldip Singh
Court	Supreme Court
Petitioner	SMT. Sarla Mudgal, President, Kalyani & ORS.
Respondent	Union of India & ORS.

INTRODUCTION

Our Constitution gives the freedom to practice and professes any religion, which also includes the freedom to convert to any other religion which was not assigned to a person by birth. However, with diverse religions and personal laws, this provision is sometimes misused. Bigamy is punishable for all religion under IPC, except those tribes or communities whose personal law permits polygamy, such as, the Muslim Law. In order to practice bigamy, all a person has to do is relinquish his religion and adopt Islam. The instances of men doing this are not uncommon. Under the Parsi Marriage and Divorce Act and Special Marriage Act, the second marriage of any party is void if the first marriage is already subsisting under this Act. In other words, the second marriage after the conversion to any other religion allowing bigamy is not valid. However, the Hindu Marriage Act, 1955 has not specified the status of a person marrying after conversion. It declares subsequent marriage between two Hindus is void if their partner is living and they have not divorced at that time. A change of religion does not permit a person to defeat the provisions of law and to commit bigamy.

and a child was born out of wedlock. However, under the influence of Mecha Mather, the respondent gave an undertaking in 1988, that he will convert back to Hinduism and maintain his first wife and three children. As she continues being Muslim, she was not being maintained by her husband and had no protection under either of the personal laws.

Thirdly, a petition registered as Writ Petition 424 / 1992 was filed in the apex court. The petitioner, Geeta Rani was married to Pradeep Kumar in 1988 according to the Hindu rites. In December 1991, the petitioner learned that her husband converted to Islam and married to another woman, Deepa. The petitioner asserts that the sole purpose of conversion to Islam was to facilitate the second marriage.

Lastly, Sushmita Ghosh who was petitioner in the Civil Writ Petition 509/1992, married to G.C. Ghosh according to Hindu Rites in 1984. In 1992, her husband / respondent asked her to agree to divorce by mutual consent as he did not want to live with her anymore. The petitioner was shocked, and when she questioned him more, he revealed that he had

FACTS OF THE CASE

There were four petitions filed in the Supreme Court under Article 32 of the Indian Constitution that were held together. Firstly, in Writ Petition 1079/89 where there were two petitioners. Petitioner 1 was Sarla Mudgal, the president of a registered society called Kalyani, which was a not for profit organisation, working for the welfare of needy families and distressed women. Petitioner 2 found out that was Meena Mathur, who was married to Jitender Mathur since 1978 and had three children born out of wedlock. Petitioner 2 found out that her husband had married another woman, Sunita Narula alias Fathima, after they both converted themselves to Islam. She contends that the conversion of her husband to Islam was only to marry Sunita, thereby avoiding Section 494, IPC. The respondent asserts that after converting to Islam, he can have four wives irrespective of the fact that his first wife continues to be Hindu.

Another petition was filed by Sunita Narula alias Fathima, registered as Writ Petition 347/1990, where she contended that she and the respondent converted to Islam to marry,

converted to Islam and would marry Vinita Gupta. In the Writ petition, she prayed that her husband must be restrained from entering into a second marriage.

ISSUES RAISED

- A] Whether a Hindu husband, married under Hindu Law, by embracing Islam, can solemnise a second marriage?
- B] Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continues to be Hindu?
- C] Whether the apostate husband would be guilty of the offence under Section 494 of the IPC?

ARGUMENTS ADVANCED FROM BOTH SIDES

Petitioners

All the petitioners collectively argued that the respondents converted themselves to Islam to circumvent the provisions of bigamy given under Section 494 IPC and facilitate their second marriage with other woman.

Respondents

The respondents in all the petitions assert a common contention that once they convert to Islam, they can have four wives despite having a first wife who continues to be a Hindu. Thus, they are not subject to the applicability of the Hindu Marriage Act, 1955 and IPC.

JUDGEMENT

The court discussed all the issues in question in detail and laid down the following:

1. When a marriage takes place under Hindu Marriage Act, 1955 certain rights and status are acquired by both the parties, and if one of the parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would destroy the existing rights of the spouse who continues to be Hindu. A marriage performed under the act cannot be dissolved except on the grounds given under Section 13 of the same act. Until this is done neither can marry again. The second marriage of an apostate would, therefore, be illegal marriage qua his wife who, married him, under the Act, and

continues to be Hindu. It further held that such marriage is violative of justice, equity and good conscience. It also emphasized the need for harmonious working of two systems of law, in the same manner as to bring harmony between two communities.

2. Secondly, the court further held that the apostate husband would be guilty under Section 494 of IPC. The expression 'void' used in the Hindu Marriage Act, 1955 and the Indian Penal Code have different purposes. Conversion to Islam and marrying again would not, by itself, dissolve the previous Hindu marriage under the Act, but it will be a ground for divorce. However, it can be inferred from the ingredients of Section 494 explained in detail in the above section that the second marriage would be void and the apostate husband would be guilty under IPC.

3. Lastly, the court advocated the necessity of the Uniform Civil Code (hereinafter UCC) in the Indian legal system, that will stop Indians from trespassing the personal law of one another.

The court further directed the Government of India through the Secretary of Ministry of Law and Justice, to file an affidavit regarding the steps taken by the Government of India towards securing a Uniform Civil Code (UCC) for the citizens of India.