

Hello I am Ashwini Tallur, Associate at the Centre for Law and Policy Research.

This is Part 2 of the 4-part series on the Uniform Civil Code. Please refer to Part 1 of this series for the constitutional history and debates around this issue.

In this part we will be talking about the pronouncements by the Supreme Court around Article 44 of the Constitution, which is a directive principle to the State to endeavour for a uniform civil code.

The issue of a uniform civil code, or UCC, was dormant at the Supreme Court until 1985, when the Supreme Court passed a judgment in [\*Mohd. Ahmed Khan v. Shah Bano Begum\*](#). When Khan threw his 62 year old wife Shah Bano out, she filed a petition under section 125 of the Code of Criminal Procedure, asking to be paid a monthly maintenance of ₹500. Her husband said he is obligated to pay her a lumpsum of only ₹5400, as per the Islamic law. The court held that the definition of “wife” in section 125 includes a divorced wife **and** Muslim women, and held her to be entitled for maintenance.

The Court went on to say that a UCC will help “national integration by removing disparate loyalties to laws which have conflicting ideologies,” and that a beginning has to be made in this respect, if the Constitution is to have any meaning.

In the same year, in [\*Jorden Diengdeh v S S Chopra\*](#) the Court had to decide if a marriage could be nullified under the Indian Divorce Act, 1869, on grounds of impotence. The Court noted the lack of uniformity between codified personal laws related to divorce as the Hindu Marriage Act allows the marriage to be dissolved after a year of judicial separation, while the Indian Divorce Act does not. The Court saw this case as a proof of, to quote the Court, “totally unsatisfactory state of affairs consequent on the lack of a uniform civil code”. But, the court left it for the Ministry of Law and Justice to take the action they may deem fit.

For the history behind the drafting of this article, that is Article 44, please listen to part 1 of our series.

Let’s fast forward ten years. 1995. We have [\*Sarla Mudgal v UOI\*](#), when a Hindu man converts to Islam to solemnise his second marriage. The question in this case was whether the second marriage is valid, without having the first marriage dissolved. The judgment saw strong statements from the Court in favour of a UCC.

“When more than 80% of the citizens (*the Court was referring to Hindus here*) have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance the introduction of a uniform civil code.”

Another interesting judgement is [\*Pannalal Bansilal Pitti v State of Andhra Pradesh\*](#), just a year after *Sarla Mudgal*. This judgment recognised that India is a pluralist society with different religious beliefs and tenets. The Court said, and I quote, “The directive principles of the Constitution visualise diversity and attempt to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enacting it in one go perhaps may be counter-productive to unity and integrity of the nation.” The Court was not completely against uniformity in laws, but cautioned that it must be a gradual progressive change.

In 2003, [\*John Vallamattom\*](#), a Christian priest, challenged the constitutional validity of [\*Section 118 of the Indian Succession Act\*](#) claiming that it was discriminatory against Christians by placing restrictions on their ability to will away land for charitable and religious purposes. A three-judge bench struck down the provision, referred to *Sarla Mudgal*, and said that marriage, succession

and similar matters of a secular character cannot be brought within the right to freedom of religion under Article 25. The court reiterated *Sarla Mudgal* by saying that a UCC will help national integration by removing the contradictions based on ideologies.

In 2011, in *ABC v State*, the question was whether an unwed mother must notify the father of the child about her petition to be appointed as the guardian of the child. The Court noted that Christian unwed mothers in India are disadvantaged when compared to their Hindu counterparts, who are the natural guardians of their children by virtue of their maternity alone. Again, the Court observed that a uniform civil code remains an unaddressed constitutional expectation.

In 2014, in *Shabnam Hashmi v Union of India*, a case involving adoption, the court said that the Juvenile Justice Act is a small step in reaching the goal of a uniform civil code, by laying down procedure for a prospective parent to adopt an eligible child. The court said that personal beliefs and faiths, must be honoured, but legislation cannot be stultified by personal law.

The most recent judgment of *Shayara Bano v Union of India* involving an archaic practice of triple talaq reinitiated the conversation around religion, personal law, and uniform civil code. The issue of UCC came up because one of the counsels brought up the Constituent Assembly debates in his submissions, and said that the intent of the Constituent Assembly was to protect ‘personal laws’ of different communities by elevating their stature to that of other fundamental rights. The Court concluded that “this leads to the clear understanding, that the Constitution requires the State to provide for a uniform civil code, to remedy and assuage maladies.”

What is most interesting to note is that in February 2017, the Supreme Court, in this very case, [refused to hear the Uniform Civil Code issue along with the triple talaq issue](#). The bench said that the two are separate issues. It said: “Triple talaq is a matter of human rights, so we would deal with it properly,”

So we see that for the past 30 yrs, the Supreme Court has eluded to the need for a UCC, noted that India’s pluralism must be respected and mentioned the need for gender justice. Might I point out that all of these instances are **obiter dicta**: an opinion which not essential to the decision and not legally binding as a precedent. Nonetheless, the Supreme Court **has** prodded the legislature intermittently to begin efforts to draft the UCC.

Thank you for listening to part 2 of our series on the Uniform Civil Code.

Part 3 of this series covers the Politics of the Uniform Civil Code.

Stay tuned for Part 4 of this series, for our take and analysis on this issue.

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