

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Article on Maintenance under sec 125 CrPC with reference Uniform Civil Code

KISHORE SAURABH¹

ABSTRACT

Article 44 corresponds with Directive Principles of State Policy stating that State shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of India.

A Uniform Civil Code means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly. They cover areas like- Marriage, divorce, maintenance, inheritance, adoption and succession of the property. It is based on the premise that there is no connection between religion and law in modern civilization.

In general term, maintenance is the amount which is paid by one person to another in their relation who is not able to maintain themselves. The word 'maintenance' is however not defined in Code of Criminal Procedure. Section 125 of CrPC deals with the order of maintenance. It is secular provision and therefore, people from all religions can claim maintenance under this section. Under section 125(3), the court can take action if the person is not complying with the order without sufficient cause. It has been provided that an arrear for one year can be recovered. On every default, the court can send the person to jail for one month if he doesn't comply with the order after the recovery warrant. According to Section 421 of Indian Penal Code, the maintenance is recoverable as fine. Also, the order of enforcement can be executed anywhere in the territory of India as per Section 128 of CrPC.

I. INTRODUCTION

Section 125 of the Code of Criminal Procedure is one of the most invoked and discussed provisions of the code. This code provides that **any person who has sufficient means to maintain himself cannot deny the maintenance to the wife, children, and parents** if they are not able to maintain themselves

Under this provision, if any person who have **sufficient means and neglects or refuses to maintain:**

¹ Author is a student at New Law College Pune, India.

- his wife,
- his legitimate or illegitimate minor child (whether married or not),
- his legitimate or illegitimate major children (not being a married daughter) who by reason of any mental or physical abnormality or injury.
- his father or mother,

II. FUNDAMENTAL DUTIES & PART IV (DPSP)

Every citizen of India is fundamentally duty-bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. Directive Principles of State Policy to enshrine the idea of promoting welfare of people. They were added to the Indian Constitution to make sure the laws and administration is being carried out with a fervour to protect and help people all over the country.

Article 38 provides for the State to secure a social order for the promotion of welfare of the people. One way to promote this welfare is by the means of removing disparities with respect to justice served in cases civil cases relating to personal laws. Therefore, article 44 presents the concept of Uniform Civil Code which unifies the personal laws for people belonging to different religions and ensures that the scale of justice remains balanced.

III. AIMS AND OBJECTIVE BEHIND INCORPORATING UCC IN PART IV

Uniform Civil Code resonates with one country one rule, to be applied to all religious communities. The term, 'Uniform Civil Code' is explicitly mentioned in Part 4, Article 44 of the Indian Constitution. Article 44 says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

IV. OBSTACLES IN BRINGING UCC INTO REALITY

The Supreme Court has regretted that Article 44 has so long remained a dead letter and recommends early legislation to implement it. It requested the Government of India through the Prime Minister to have a fresh look at Article 44 and "endeavor to secure for the citizens a uniform civil code throughout the territory of India".

The Apex Court regretted that Article 44 has not been given effect to. Parliament is still to step in for framing a common civil code in the country which will help the cause of national integration by removing the contradictions based on ideologies.

In a pluralistic society like India, where people have confidence in their respective religious beliefs or doctrines that have been presented by different religions or their offspring, the founding fathers were, when they made the Constitution, faced with problems to the people of India to unite and integrate the different religious professing faiths that were born in different castes, beliefs or subsections of society, speak different languages and dialects in different regions and provided a secular constitution for the integration of all sections of the society presented as united Bharat.

The Supreme Court of India has, in large number of cases, rejected attempts of certain petitioners who prayed as under:

- a) To declare Muslim Personal Law which allows polygamy as void, as offending Articles 14 and 15 of the Constitution.
- b) To declare Muslim Personal Law which enables a Muslim male to give a unilateral Talaq to his wife without her consent and without resort to judicial process of courts, as void, offending Articles 13, 14 and 15 of the Constitution.
- c) To declare that mere fact that a Muslim husband takes more than one wife is an act of cruelty within the meaning of sub-section (8) of section 2 of the Dissolution of Muslim Marriages Act, 1939.
- d) To declare Section 2(2), 5 (ii) and (iii), 6 and Explanation to Section 30 of the Hindu Succession Act, 1956, as void, as offending Article 14 and 15 read with Article 13 of the Constitution of India.

V. ANALYSIS OF LANDMARK JUDGEMENTS

1. Danial Latif V Union Of India

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonised it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

2. Mohs Ahmed Khan V Shah Bano Begum

A 73-year-old woman called Shah Bano was divorced by her husband using triple talaq (saying "I divorce thee" three times) and was denied maintenance. She approached the courts and the District Court and the High Court ruled in her favour. This led to her husband appealing to the

Supreme Court saying that he had fulfilled all his obligations under Islamic law.

The Supreme Court ruled in her favour in 1985 under the “maintenance of wives, children and parents” provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, It recommended that a uniform civil code be set up.

Facts about the case:

Under Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days).

Section 125 of CrPC (criminal procedure code) that applied to all citizens, provided for maintenance of the wife.

VI. CONCLUSION

India has a unique blend of codified personal laws of Hindus, Muslims, Christians, Parsis. There exists no uniform family-related law in a single statute book for all Indians which is acceptable to all religious communities who co-exist in India. However, a majority of them believe that UCC is definitely desirable would go a long way in strengthening and consolidating the Indian nationhood. The differences of opinion are on its timing and the manner in which it should be realized. Instead of using it as an emotive issue to gain political advantage, political and intellectual leaders should try to evolve a consensus. The question is not of minority protection, or even of national unity, it is simply one of treating each human person with dignity, something which personal laws have so far failed to do.

VII. REFERENCE

- <https://www.legalserviceindia.com/legal/article-91-challenges-faced-by-endeavours-to-achieve-uniform-civil-code.html>
- www.lawspice.com
- code of criminal procedure 1973
