



Law@DME

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Letter from the Editorial Board



It is our pleasure to welcome you to the May edition of Law@DME. As the semester came to a close, so did our emphasis on intensive co-curricular activities, allowing our students to shift gears and focus on their upcoming examinations. Our members of faculty took advantage of this period to engage in robust discussions over the theme of this month, revolving around the possibility of enacting a Uniform Civil Code. Three of them have contributed stellar think pieces on the subject, combining the social realities of the country with their opinions on the law and the rights of the people.

With summer break upon us, and given that this is our final edition for the Academic Year 2016-17, we would like to take the opportunity to thank everyone who accompanied us on our journey. The previous editions of Law@DME received tremendous support in the form of suggestions, contributions, and reviews from experts and lay persons alike. We owe our strength and evolution to this feedback and hope to continue receiving it in the future, at law.newsletter@dme.ac.in. In this spirit, we urge our students to continue sending us articles on the upcoming theme of the month. Alongside this, we welcome submissions detailing students' achievements, whether they be participation in co-curricular activities, publication of papers in journals of repute, or even notable internships.

We hope you will join us again for our September edition in the coming Academic Year. In the mean time, we wish everyone a happy and fun-filled summer, and to our students, all the best for your exams!

Upcoming Theme of the Month (for August): The Criminal Law (Amendment) Act, 2013

Editorial Board:

Dr. Jaya M Prosad, Ms Charvi Kumar,
Ms Tulika Narbar, Ms Navjot Suri

Message from the Director's Desk



The Constitution of our great nation has conferred upon every citizen the fundamental right to education, and yet, only a privileged few are fortunate enough to receive it in the hallowed halls of learning that law schools of repute provide. At Delhi Metropolitan Education, we have always put our students first – their needs, their development, their education, their future are the cornerstones of every initiative of ours. We have aimed to bolster their exceptional classroom-education with conferences, workshops, guest sessions, field trips, and co-curricular activities that helped them reach their potential. In my time here, I have been overwhelmed by the hard work that every member of faculty and student has put in. You are the reason behind the institute's meteoric rise to one of the most esteemed law schools in the region. You will be the architects of our legacy.

With this in mind, I urge everyone to continue to strive for excellence and progress. Pursue an internship, take up a hobby, learn a new language – in short, wholeheartedly devote yourself to the task of self-actualisation. When DME opens again for the Academic Year 2017-18, our earliest batch of law students will have entered their final year, just as a new batch of fresh-faced aspirants will grace our halls. I cannot wait to see the dizzying heights you will achieve, and I promise you, we at DME will be there every step of the way, your guides, mentors, and cheerleaders.

Prof. (Dr) Bhavish Gupta
Director (Officiating)

Students Learn All About Negotiable Instruments Through Interactive Lecture

The School of Law organised a session on the Negotiable Instruments Act, 1881 for its first year students. Dr. Susmitha Mallaya, Assistant Professor, Indian Law Institute, was invited to speak. With years of teaching and research experience in the field of contract and commercial laws under her belt, Dr. Sushmitha Mallaya was ideally situated to impart detailed insights on the recent amendments introduced to the Act in 2015. Consequently, the lecture was extremely well attended by our students.

Our Director General, Hon'ble Mr Justice Bhanwar Singh, Officiating Director and Head of the Department of Law, Prof. (Dr) Bhavish Gupta, and Head of the Department of Management, Prof. (Dr) Azad S Chillar were also in attendance, along with other faculty members.

Dr. Mallaya delivered an informative lecture, serving to enlighten both the novices and experts in the field. She began with the basics, the kinds and importance of negotiable instruments, before moving on to discuss the fundamentals of the Negotiable Instruments (Amendment) Act, 2015. She touched upon the ways in which Section 138 was transformed, specifically with regard to the courts' jurisdiction. The students listened attentively and participated actively in the session, asking numerous questions. Given that their classes on the subject had just concluded, the session served as an excellent refresher. The lecture concluded with the vote of thanks, proposed by Ms. Sunaina Mishra, Assistant Professor (Law).

Need for a Uniform Civil Code



Ms Sunaina Mishra, Assistant Professor (Law)

*'This is a court of law, young man,
not a court of justice.'*

-- Justice Oliver Wendell Holmes Jr

India is a diverse country where people of various castes, religions, and creeds reside. Keeping in mind this diversity, the Constituent Assembly opted for a detailed written Constitution, the essence of which is 'Constitutionalism'. This means that there are constitutional 'checks and balances' on the powers of the legislature and the executive. This has been provided by Articles 13 and 372. Thus, every law in India has to pass this test of constitutionality, failing which it would simply be struck down.

If we go by this simple phenomenon, we may conclude that the same would apply to personal laws also. But this is not the case in India. In several circumstances, even the Constitutional Courts' attempts to answer the question have been futile. They have held that the personal laws in India are not subject to judicial review. The courts have clarified that these laws, having their origin in religious scriptures, cannot be challenged on the grounds of violation of Fundamental Rights. This policy of the courts has raised many questions.

The question of the Uniform Civil Code has arisen before the Judiciary and Legislature several times. The courts have squarely placed the burden on shoulders of the Legislature and the Legislature is not willing to take a single step towards achieving this goal. The only reason behind this is vote bank politics. In the case of *Ahmedabad Woman Action Group v Union of India*, a PIL was filed before the Hon'ble Supreme Court of India for directing a writ of Mandamus against the defendants for enacting a Uniform Civil Code. Another objective was to invalidate the concepts of bigamy and 'triple talaq'. The Apex Court clearly held that this was a matter for the Legislature to legislate upon and the Court cannot interfere in a matter of policy-making. In a democratic country like India, where justice is of essence to the legal system, are the Judiciary and the Legislature satisfied in shifting the burden on each other? Where is justice and equity?

Law in a society exists for the welfare of its citizens. If it fails to do so, it is no law and there is no point in having a legal system. A deep study of the Constitution shows the shift of the Judiciary from a strict interpreter of law to an activist one. There was a time when judgments like *ADM Jabalpur* were delivered, where the courts interpreted law in strict sense. Then we came to *Maneka Gandhi*, wherein it was held that mere presence of law is not sufficient and that law should be just.

The Supreme Court took an activist turn and started delivering judgments in the pursuit of justice, equity, and good conscience. A question which certainly arises is that in India, where the courts have passed several judgments in light of justice and equality (*Air India v Nargeesh Misra*, *Mohammed Ahmed Khan v Shah Bano Begum*, and *Maneka Gandhi v Union of India*, to name but a few), why is it that in dealing with personal laws specifically they are shifting their duty of maintaining justice and fairness on the Legislature?

The most important aspect which is highlighted is that the concept of 'justice' has faded in this tussle between the Legislature and Judiciary. Are the courts in India merely courts of law and not justice? A mere reason that the Uniform Civil Code is a matter for the legislature to legislate upon can never be sufficient. We cannot afford to go back to the era of *ADM Jabalpur*. Why, when countries like Pakistan, Malaysia et cetera – which have a huge Muslim population – have banned divorce in one sitting, can we not take a step ahead?

Is It Time for the Legislature to Deliver a Uniform Civil Code?



Ms Navjot Suri, Assistant Professor (Law)

'We would like to state that Article 44 provides that the State shall endeavour to secure for all citizens a Uniform Civil Code throughout the territory of India. It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.'

-- Chief Justice Khare

The coming of a Uniform Civil Code will help in integrating India and also help in reducing vote bank politics. It is a sign of modernity and progress, propelling India towards its goal of becoming a developed nation. It will also help in improving the condition of women in the country by providing equal rights to them. It will create equality by making all the laws on marriage, inheritance, family, and land et cetera equal for everyone. Real secularism will be promoted which means that all the citizens of India will follow the same laws irrespective of the religion to which they belong. Conflict between overlapping provisions of the law will be avoided, litigation over the vagaries of personal laws will decrease, and the country will emerge with new force and power.

The Supreme Court for the first time directed the Parliament to frame a Uniform Civil Code in the year 1985 in the case of *Mohammad Ahmed Khan v Shah Bano Begum*. Therein, it

was stated that Muslim women have a right to receive maintenance from their husbands under Section 125 of the Code of Criminal Procedure. Following this landmark judgment, nationwide discussions, meetings, and agitations were organised. Then the Muslim Women (Right to Protection on Divorce) Act, 1986 came into force. It curtailed this right of Muslim women to maintenance under Section 125 and overturned the *Shah Bano* case decision. The explanation given for implementing this Act was that there should be no interference with the personal laws unless the demand comes from within the community. The judgment in *Mary Roy v State of Kerala* has been characterised as a 'momentous' decision in the direction of ensuring gender equality in the matter of succession. Finally, the Supreme Court has issued a directive to the Union of India in *Sarla Mudgal v Union of India* on framing a Uniform Civil Code.

A Uniform Civil Code Bill is almost ready for introduction in the session of Parliament. It covers personal laws relating to marriage, divorce, minority, maintenance, guardianship and succession. Dr BR Ambedkar, the principal architect of the Indian Constitution, was of the view that on the one hand we, under the Indian constitution, ensure Fundamental Rights to each citizen under Article 14 (equality), Article 15 (non-discrimination), Article 16 (equal status at the work place), and Article 25 (freedom of free profession, practice and propagation of religion). Meanwhile, on the other hand, Article 44, advocating a Uniform Civil Code, is put under the Directive Principles of State Policy. In order to truly make India a secular united nation, Dr Ambedkar believed that Article 44 ought to have been a fundamental right.

To conclude, I strongly support the crusade for the implementation of the Uniform Civil Code and the homogenisation of personal laws. The unity of India will be at stake if religion is allowed to tighten its grip over society. Our country believes in the Rule of Law and that can only be established through a Common Civil Code. It is the panacea for all our ills.

Is There a Need for a Uniform Civil Code in India?



Mr Kush Kalra, Assistant Professor (Law)

Article 44 of the Constitution of India does not define the expression, 'Uniform Civil Code'. 'Uniform' means not varying, the same in all parts and at all times. In legal terminology, a 'Code' means a collection or compendium of various laws, relating to a particular subject, for example, the Indian Penal Code or the Civil Procedure Code enacted in India. The use of 'Civil' indicates that branch of private law which deals with civil rights and obligations of individuals. Thus Uniform Civil Code means the same law applicable to all individuals.

A Uniform Civil Code would necessarily call for the exclusion of certain personal laws that are not in conformity with the mainstream societal outlook and this might very well result in the violation of Articles 25 and 26 of our Constitution. India is a country of multiple beliefs, the clash of which spawns ideological conflict. To avoid this conflict, uniformity is required at some level. As long as this uniformity does not violate the beliefs of any particular religion, it will not be violative of laws which are fundamental to the governance of the country. Existing common belief states that Muslims are opposed to such uniformity. Even in the Constitution Assembly Debates it was pointed out that a majority of Hindus were in favour of a Uniform Civil Code. There is a need to regulate secular activities associated with religion; they must be evolved as per the requirements of these modern times, thereby helping to strengthen relations.

No government since Independence has passed legislation for a Uniform Civil Code. However, the same exists in the coastal state of Goa and is accepted by all communities - Hindus, Muslims, and Christians - residing within its territory. Goa has been following its Uniform Civil Code for five decades now, being the only Indian state which has divorced religion from civil law. The Goa Civil Code is hailed as a beacon of justice by various women's rights activists because it guarantees the right of the wife against ill treatment by her husband, as she has an equal claim to the property owned by the husband. Meanwhile, persons of different faiths in the rest of India are governed by their specific personal laws, causing a disparity in the rights and duties of spouses, parents, children, and even neighbours.

Though the provisions contained in Part IV of the Constitution are non-enforceable, they are nevertheless fundamental to the governance of the country and it is the duty of the state to implement these principles. However, the Indian Government has failed to achieve a Uniform Civil Code throughout the territories of India. What can be seen is that not only has the Hindu personal law been codified, but subject matters like maintenance, wills, and adoption no longer have close affinity with religion; rather, they lie within the domain of civil laws that are comparable to Western democracies. A Uniform Civil Code cannot be achieved in a day, but it can definitely be achieved over time and only through the consistent efforts of the Indian Government, bolstered by unflagging support from various communities. Secular India has upheld the freedom of religion at the cost of national unity. No significant step has been taken by the Government towards attaining a Uniform Civil Code. The introduction of a Uniform Civil Code should be willed by the citizens and the Legislature alike. In order to achieve this worthy goal, it will be desirable that the Legislature leaves it open to public scrutiny for the purpose of enacting it. The implementation of the Code will affect the religious sentiments of every community and it is imperative that the Government drafts legislations to which the general public, as a whole, is not opposed. The people of India who are of the opinion that a Uniform Civil Code may disintegrate their religious coherence should be enlightened about the positive changes that the Code will bring to society at large. For example, it will help enhance and promote gender equality, unity, and harmony. A Uniform Civil Code can be achieved only if there is a collective effort on the part of the citizens as well as the Government of India.

Seven Last-Minute Revision Hacks

It is that time of the year again, the dreaded end-term examinations. With summer vacations around the corner, the last thing any student wishes to do is hunker down and study, so we have our readers covered. Here is how you can get the most out of your revision with these simple tricks.

1. Create a Schedule: A harried last-minute cramming session is hardly conducive to getting good marks. Remember to create at least a basic timetable of the modules you want to cover on specific days. Remember to set reasonable targets and also factor in little breaks.

2. Go on a Social Media Cleanse: Facebook and Instagram are easy sites to lose yourself into, and before you know it, it has been many hours and the Constitution of India still lies ignored and unread. Either give yourself a complete break from social media sites, or set alarms to remind you to log off.

3. Coordinate with Friends: Even if you revise best when alone, keeping friends informed of how much you have studied – honestly – will be key to helping inspire each other to study more. If the concept is tough, you can even distribute the syllabus amongst a study group and have each member explain their portion of the syllabus to the entire group.

4. Peruse and Practise on Old Exam Papers: Past years' papers are an excellent source for both understanding

what the important topics in any given subject are, and for helping you understand the question paper pattern. Practising on these tests will also help examinees avoid the eternal problems of bad handwriting and poor time management.

5. Make Notes: Research shows that students are more capable of remembering things they have written down versus things they have merely committed to oral memory. As you're studying, make small 'cheat sheets' with the salient points. They will be excellent refreshers the night before the exam. Just remember to not take them into the exam hall with you!

6. Chew Gum: This is another 'scientific' tip. Researchers claim that if you chew a piece of gum while studying a subject, and then chew the same flavoured gum in the exam hall, you will be able to jog your memory better.

7. Take Care of Your Health: This one goes without saying, but many students completely ignore this crucial aspect when in full revision mode. Remember that your brain is linked inextricably with your body, and unhealthy food, dehydration, and a lack of sleep will cause it to function less than ideally. Snack on 'brain foods' (such as walnuts), drink lots of water, and ensure you get enough sleep every night to fully utilise your brain's potential.

Now, What You 'Like' on Social Media Can Land You in Trouble

Since the dawn of the Internet, forms of communication and exchange of information amongst people have proliferated by way of social media websites. At the forefront of these belongs Facebook, boasting nearly two billion active users globally. A powerful tool, it can be used to propagate silly memes amongst the students of a high school or help raise awareness in autocratic regimes. However, with great power comes great responsibility, as Spiderman's Uncle Ben liked to say. Everything that is posted – every status update – is memorialised for posterity. And while there have been cases where people were sued for publishing defamatory content on social media, a recent case in Switzerland really pushed the envelope and punished the defendant for merely liking defamatory content.

The Zurich court convicted the man on multiple counts of defamation, finding that by liking several third-party posts accusing a prominent animal rights activist of racism, fascism, and anti-Semitism, the man had indirectly endorsed and further distributed those libelous comments. The onus of proving the reasonability and truthfulness of the facts fell upon the defendant, and because he was unable to discharge it, he was fined with 4000 Swiss francs (over 2.6 lakh rupees).

As far as we can tell, this is the first case of a Facebook 'like' inviting harsh penalty.

LEGAL HUMOUR

