



# Jus Corpus Law Journal

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## Case Comment: John Vallamattom & Anr. vs Union of India

S Ashwath<sup>a</sup>

<sup>a</sup>Bennett University, Greater Noida, India

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### INTRODUCTION

**Bench:** Chief Justice V.N. Khare, Justice S.B. Sinha, and Justice AR. Lakshmanan.

On 21.07.2003<sup>1</sup> the judgement of the said case had come out which brought huge relief to the Christians residing in India. There was a violation of Article 14 through section 118 of the Indian succession act and there was a huge struggle to get that violation to be set right. There was a discussion about how the Uniform civil code could have avoided this situation as well. One can say that it means one country one law. This instance shows that fundamental rights are not meant to be toyed around with.

### FACTS

The facts of the case state that John Vallamattom<sup>2</sup> is a Christian priest from Kerala and the other petitioner is also a Christian. They have filed a writ petition under Article 32 of the Constitution in 1997 stating that Section - 118 of the Indian Succession Act, 1925 discriminates

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<sup>1</sup> *John Vallamattom & Anr v Union of India* (2003) 6 SCC 611

<sup>2</sup> *Ibid*

the Christians because it imposes arbitrary and unreasonable restrictions on them related to the donation of their personal property for various religious or charitable purposes through a will. It stated that a Christian having a nephew/niece, or any other near relation is not eligible to bequeath the property for religious or charitable purposes unless a prescribed procedure is followed. That procedure was complicated, harsh, and rigorous. So, the petitioners sought that section 118 of the Indian Succession Act, 1925 be declared unconstitutional.

## STATUTE

- Section 118<sup>3</sup> of the Indian Succession Act states that no man can bequeath the property if he has a nephew/niece or an immediate relative for religious purposes.
- Article 44<sup>4</sup> of the Indian Constitution-Article 44 of the Directive Principles in the Constitution says the It says that State has a duty to secure a Uniform Civil Code in India for the citizens of India.
- Article 15<sup>5</sup> of the Indian Constitution- ensures that the citizens of India are not discriminated against on the basis of sex, religion, or caste.
- Article 14<sup>6</sup> of the Indian Constitution -This article ensures the citizens of India are treated as equals.
- Article 24<sup>7</sup> of the Indian Constitution -Ensures child labour is not allowed.
- Article 25<sup>8</sup> of the Indian Constitution -ensures everybody has the freedom of conscience and practice any religion they want freely.

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<sup>3</sup> Indian Succession Act 1925, s 118

<sup>4</sup> Constitution of India, art 44

<sup>5</sup> Constitution of India, art 15

<sup>6</sup> Constitution of India, art 14

<sup>7</sup> Constitution of India, art 24

<sup>8</sup> Constitution of India, art 25

- Article 26<sup>9</sup> of the Indian Constitution –It grants every religious group the right to form and operate religious and philanthropic institutions, as well as administer their affairs and properties in accordance with the law.

## ISSUES

1. Whether Section 118 of the Indian Succession Act, 1925 is constitutionally valid?
2. Whether Section 118 of the Indian Succession Act, 1925 is violating article 14?

## JUDGEMENT

This case was led by judge V.N Khare. He gave the verdict that there was a clear violation of the article, and the law should be removed immediately<sup>10</sup>. Before giving the verdict for the case he did ground-level research of the section and pointed out that this specific section dated back to the British times and rightly stated that the provisions related to them were repealed. Every section related to the British article was repealed except this one and he stated that there was no reason for this alone to stay as this did not bring in any welfare for the Christians and clearly goes against the fundamental rights.

## ANALYSIS

Seeing the facts and the issue of the case, it is important to analyze the case as well. The focus of this case was as seen above whether section 118 of the Indian succession act is constitutionally valid or invalid. Before analysing it, let us look at the things that must be analysed a bit deeper. Section 118 under the Indian succession act<sup>11</sup> is defining that “no man having a nephew or niece, or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons”. Seeing this at a high level does not seem as

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<sup>9</sup> Constitution of India, art 26

<sup>10</sup> Ishita Arora, 'John Vallamattom & Anr. vs Union of India' (*Ejusticeindia.com*, 1 November 2020) <<http://www.ejusticeindia.com/john-vallamattom-anr-vs-union-of-india/>> accessed 24 June 2021

<sup>11</sup> Indian Succession Act 1925, s 118

much of a problem it poses. Although with a bit of reading can show how much of a problem this one section manifested. Firstly, this section was applicable only to Christians and no other society in the country.

The concept of ownership of a person over property or a right although is a varying one includes the right to dispose of his property by Will. The Indian Succession Act confers such a right upon all persons irrespective of caste, creed, or religion he belongs to. Section 59 of the Act provides that every person of sound mind and who is not a minor is entitled to dispose of his property by Will. Thus, all persons who have sufficient discretion and free will are capable of disposing of their property by Will. Section 51 provides that a Will, the making of which is caused by fraud or coercion or by such opportunity which takes away the free agency of the testator is void. Section 63 deals with the execution of unprivileged Wills providing that the Will shall be signed by the testator, and it shall be attested by two or more witnesses each of whom should have seen the testator sign or affix his mark to the Will.

Not stopping there, the procedure also is really complicated. To give an idea, the person must submit a will in less than twelve months before his demise and it must be deposited within six months of his death. [must be noted nothing about this is mentioned for the Parsi.] So, basically, person A who has a nephew makes a bequest by a Will not executed and deposited as required wants to give his property to the poor section of the society or wants to use it for another charitable purpose like hospital or repairing something will simply be considered as void. This section violates mainly article 14 of the Indian constitution. Although on a lighter note it also violates Articles 15, 24, and 25 of the Indian constitution Act. Article 14 is the right to equality. Article 15 talks about the prohibition of discrimination on the grounds of race, gender, age, etc. Article 25 talks about all persons being equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality, and health and lastly, article 26 says that all denominations can manage their affairs related to religion. This gives a small idea of how much this one section violates the “ideal laws” of the constitution of India. Moving on, speaking of the violations, article 14 was

violated because of the way the section was designed. This section was applicable to only the Christians and no other race.

Another point to be remembered is that the testators of Christians and other religions are supposed to be classified under one criterion and not based on the religion. This is because they represent a homogenous group and are more of a reason they cannot be classified. A side note to this is the fact that the way article 14 was designed, comparing to this section is very contrasting. Article 14 was designed to give two concepts<sup>12</sup>. The two concepts are 'equality before law and 'equal protection of laws.' Whether the first concept is followed can be discussed in another paper but seeing this case clearly the second concept has not done its justice. In a cooperative and diverse society, it is obviously going to be hard to maintain peace but where there is illegality equality should come about. Especially in cases like these as they are extreme cases. the two concepts were explained in detail in the case of *Sri Srinivasa theatres. Govt. of Tamil Nadu*.<sup>13</sup> What not everybody knows is that article 14 when saying the right to equality, means everyone is equal and not all the unequal should be treated equally. In a country like India, it is more of a reason no matter how much of the population is covered by Christians, everybody should be treated equally. It is named the Indian succession act for a reason.

One more thing the act does not have much of a benefit for Christians separately then why only burdens for them? When it is named as Indian succession act it means that this act is for the citizens of India and not the Christians and Hindus. It also makes sense that this cannot be a burden only to one group of the society. It was still not understood on what grounds was the provisions made. The judge also could not understand why when the testator has a wife it is allowed but is not allowed when he has a nephew. Seeing this, it can also be said that the law is more personal rather than extending to a group. This was just the beginning. There were three more articles. Article 15 even though was told by the judge that is not a violation, can still be considered as a complimenting article, and it was clear as to why it was violated that basis of race was being violated. Article 25 was being violated because the testator was not

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<sup>12</sup> M P Jain, *Indian Constitutional Law* (first published 1962) 931

<sup>13</sup> *Sri Srinivasa theatre v Govt of Tamil Nadu* AIR 1992 SC 1004

freely able to practice his religion to public order and lastly article 26 was violated because they were not able to manage their religion on their own with freedom. Seeing this it can be said that article 14 was majorly violated and the remaining three articles supported article 14 of the Indian constitution.

Adding to this there was another that point that must be observed. A topic that is highly subjective for a country like India. But it must be brought up using this case law. That is none other than the uniform civil code<sup>14</sup>. Article 44 talks about how the state shall endeavour the uniform civil code into action throughout the country. The court had again stressed the importance of a uniform civil code in a country like India. To some extent, this is true because it will for sure help in certain ways like the elimination of contradictions of ideologies of different communities and help in uniting the nation.

Seeing this, it can be observed that a couple of lines above, it was mentioned that it was subjective. That is indeed true. Uniform civil code for a country like India is the most complicated form of law out there. This is because for cases like this, for sure it will truly help but on a deeper level that will not be true because there is a chance that those laws might not be fit for certain religions. In this case, there was a clear violation of the law because it was being a burden and not helping the Christian community. Hence, it could be said that like how the SC said that the Uniform civil code will help but as told before it is subjective because this was one opinion of the Judge while there are advocated who think UCC should not yet be implemented in the country as the focus should first be on granting equal rights to women<sup>15</sup>. But legally should India have UCC? A country like India will be better off with UCC as it should first be viewed as people of India and not Indian Christians, Indian Muslims, etc. That is the only way a country can successfully establish UCC. As for the answer to the question, yes! India should have already established UCC legally because The country had ratified the Convention on Elimination of discrimination against women without any reservations. They had also signed the 1966 International Covenant on Civil and Political Rights. These two

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<sup>14</sup> *Ibid*

<sup>15</sup> Raghav Ohri, 'Uniform civil code neither necessary nor desirable: Law panel' (*Economic Times*, 31 August 2018) <<https://economictimes.indiatimes.com/news/politics-and-nation/uniform-civil-code-neither-necessary-nor-desirable-law-panel/articleshow/65627227.cms?from=mdr>> accessed 25 June 2021

statutes have provisions that state the striving of establishing equality with women and establishing UCC<sup>16</sup> This is specifically spoken in Article 16 paragraph 1 of the Statute. Although this was ratified by the country the committee recognized the country has still not implemented the laws. India has always given one stance for the argument by saying that the country does not want to interfere with personal laws. But what is wrong here is that if they have ratified then the country is obligated to follow that. Following that, India has ratified the convention with no reservations which is more of a reason to strictly follow it. This is international. Coming domestically, in the constitution article 44 of the Indian constitution talks about UCC in India. However even after more than 60 years, the country has not achieved the motive of the said article.

## CONCLUSION

Reading this far, a hazy picture should have arisen about this case and why the case came about. There were a lot of subjective opinions, but this paper is not about which thoughts are right but to make the reader know that fundamental rights being violated is no simple matter. Apart from that, the paper also wants to give thoughts to the readers as well as to whether everything in this paper was justified. For example, the uniform civil code. It is one of the debating topics for India and if it had been there would have been a problem like this come about. If India is not able to follow the law that was supposed to be followed then will there be hope for citizens in the future to be at peace and gain the unity that the founders of India always dreamed of having? It is important to notice law is not a simple canvas with just black and white. It has plenty of grey areas as well. Saying this, it can be concluded that fundamental rights play the key role in a constructive constitution and if that is not getting violated then soon proper changes can be made without worrying about damaging the roots (Fundamental Rights).

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<sup>16</sup> Indian Law Institute, 'Uniform Civil Code in India: A Binding Obligation Under International And Domestic Law' 2004