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- - Note - -

This compilation has continuous footnoting. Kindly read the references to previous footnotes in all the Articles in isolation upon the particular Article only.

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UNIFORM CIVIL CODE: IN THE LIGHT OF JUDICIAL STAND ON PERSONAL LAWS

‘Where the mind is without fear

And head is held high

Where knowledge is free

And the world has not been broken up into fragments

By narrow domestic walls.’

THE AUTHOR

Lokit Khurana, Sukriti Goyal, students, College of Legal Studies, UPES, Dehradun

The spirit of the Indian Constitution is based on the pillars of democracy, sovereignty, socialist secular and republic. A distinctive feature of our nation is its unity within diversity. India is a secular state that is it is separate from religion and ranks second in population after China. It is among the fastest developing nations in the world. It has a very rich cultural and religious heritage. Religion from the times immemorial has been an integral part of the Indian society. It has played a pivotal role in shaping the culture of our nation. According to the 2011 census, 79.8% of the [population of India](#) practices Hinduism and 14.2% adheres to [Islam](#), while the remaining 6% adheres to other religions ([Christianity](#), Sikhism, Buddhism, Jainism and various indigenous ethnically-bound faiths)¹. The Indian Constitution emphasises on the concept of secularism. It means that all the religions should be treated equally by the state. The interpretation of the concept of secularism is completely different when it is used in the context of the personal laws of the citizens. There are different communities in India and each of them has different personal laws pertaining to succession, divorce, guardianship, adoption and marriage. Though the religions co-exist but there is a lot of diversity in the family laws in India.

The codified personal laws relating to marriage, divorce, property and inheritance are:

- The Indian Christian Marriage Act of 1872 (applicable to whole of India except areas of erstwhile Travancore- Cochin, Manipur and Jammu & Kashmir),
- Anand Marriage Act, 1909 (For Sikh marriages),
- Cochin Christian Civil Marriage Act of 1920 (applicable for Travancore-Cochin areas),
- Muslim Personal Law (Shariat) Application Act, 1937 (making Shariat laws applicable to Indian Muslims),
- The Parsi Marriage and Divorce Act, 1937
- Hindu Marriage Act, 1955 (applicable to not merely Hindus, Buddhists and Jains but also to any person who is not a Muslim, Christian, Parsi or Jew, and who is not governed by any other law)²

¹ https://en.wikipedia.org/wiki/Religion_in_India

² Gajendragadkar P.B. (1971), Secularism and the Constitution of India, Bombay, Bombay University Press

‘Two roads diverged into yellow woods I took the one less travelled by and that has made all the difference.’

Uniform Civil Code is that part of law which deals with family affairs of an individual person and denotes Uniform law for all the citizens of the country irrespective of his/her religion, tribe or caste. There exists a need for Uniform Civil Code which is inscribed in the Article 44 of the Constitution of India. When we talk about the directive principles, they cannot be enforced in the court of law and are therefore considered as non-judicial rights. These principles are necessary for the governance of the country and therefore the Constitution empowers the state to apply these in the law making. Article 44, which deals with the Uniform Civil Code states: “The State shall endeavour to secure for the citizens, a Uniform Civil Code throughout the territory of India”. The objective of the above mentioned article is to effect an integration of India by bringing all communities into a common platform which is presently governed by personal laws which do not form the essence of any religion.³

‘Life is not about the footsteps you take it is about the footprints you leave behind.’

In a country like India the main cause of communal conflict among people are the personal laws. Since there is an absence of Uniform Civil Code’s applicability throughout the country it goes against the very spirit of equality which is one of the important pillars of our Indian Constitution. We are undermining the credibility of the secular ethos of India by having different personal law for different religions. We need Uniform Civil Code to simplify the cumbersome legal processes involved with the matters governed by personal laws. It will play a pivotal role in promoting the causes of secularism, equality and national integration. It is worth considering that the personal laws change from time to time. Like every coin has two sides one is the jovial side and other is the darker side. It is imperative to look into the other side also and it is believed that the time is not suitable for the implementation of Uniform Civil Code. In our country there is polarization in the society along religious lines. India has not yet achieved a level of a stable secular democracy this can be inferred from the fact that destruction of mosques and temples and communal riots still persist in our society. Moreover religion is indispensable part of an individual’s life. Therefore the implementation of it should be well planned and be properly executed.

‘Be the change which you wish to see in the world.’

There could not be consensus to the idea of Uniform Civil Code post 1947 and so the personal laws had to be retained governing the separate communities and this very thing leads to contradictions within the Constitution itself as on one hand it supports the continuance of personal laws whereas on the other hand it talks about having a Uniform Civil Code under Article 44 and guarantees equal rights under Articles 14 to 19. The Indian Judiciary also plays a major role in the implementation of a Uniform Civil Code as it interprets the various personal laws in a streamlined manner so that it leads to a Uniform Civil Code.

³Basu D.D. (2008, 20th edition) Introduction to the Constitution of India, New Delhi, Universal Law Publishing Company, p.24

If we look at the current scenario then the debate over Uniform Civil Code was in a cooling off phase until the Supreme Court asked the government to file a copy of the committee report inquiring into the personal laws relating to marriage, divorce and custody which revived the debate. But before we look into the current situation let us see how the debate in the very start of it was initiated. The first instance being that of the Shah Bano case⁴ in the year 1985 which created a lot of hue and cry among Muslim women. The Supreme Court held that a common Civil Code will help in the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.

When the debate was reopened as to whether personal laws can be brought under the ambit of Article 13 (laws inconsistent with or in derogation of the fundamental rights) of the Constitution it paved way for a possibility that if the Supreme Court agreed that personal laws are to be included in the definition of laws under Article 13, the door would be opened wide for an aggrieved person to challenge in court a particular personal law of a religion as violative of the fundamental rights. In case the challenge succeeds in court, the personal law, to the extent of its inconsistency, shall become void. However in *State of Bombay v. Narasu Appa Mali*⁵ the Bombay High Court held that personal law is not 'law' under Article 13.

After 1985, the Supreme Court asserted the need for Uniform Civil Code in 2015 through a number of instances. At one instance the court favored the implementation of a Uniform Civil Code by asserting that religion and law should be kept at a distance in a secular country like India where Uniform Civil Code is enshrined in the Constitution itself. While questioning the government on the implementation of Uniform Civil Code, a bench consisting of Justice Vikramjit Sen and Justice Shiva Kirti Singh said, "*There is total confusion... we should work on the Uniform Civil Code. What happened to it? If you (government) want to do it, then you should do it. Why don't you frame and implement it.*"⁶

Soon after the release of these directives, the Supreme Court suo motu ordered the registration of a PIL asking the Chief Justice to consider the discrimination faced by Muslim women and proposed to set up a Special Bench to help the Muslim women suffering discrimination owing to personal laws. Then in February 2016 the Supreme Court again reminded the government of Uniform Civil Code when a petition was being heard claiming the Muslim personal laws to be interfering with the fundamental rights of women.

The doctrine of judicial review comes into picture when the Courts perform their constitutional duty of interpreting the law and declaring the law unconstitutional if it is found to be contrary to any constitutional provision. The doctrine of judicial review has always been surrounded by the constitutional objective of Uniform Civil Code when it comes to Personal laws. Whenever the courts deal with the constitutional validity of personal laws there is always a concern for Uniform Civil Code and the judiciary works to strike a balance between the personal laws which are primarily based on religion and the fairness of law concerning gender justice.

⁴ Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945

⁵ (1951) ILR Bom 775

⁶ *How the Judiciary nudged Centre over Uniform Civil Code in India*, Times Now, 10/10/2016 at 19:36 hours

The courts have time and again recommended including Uniform Civil Code as a part of the Indian legal system without indulging into the constitutional validity of these personal laws however there have been cases where personal law legislations have been challenged. A significant judgment relating to personal laws their constitutional validity and UCC was *Sarla Mudgal v. Union of India*⁷ where the issue under discussion was primarily that of Uniform Civil Code and the court followed the approach of the famous family law authority Flavia Agnes⁸. The case of *Ahmedabad Women's Action Group (AWAG) v. Union of India*⁹ is a classic example of exercise of judicial restraint while dealing with sensitive questions related to personal laws and Uniform Civil Code and the validity with respect to Part III of the Constitution. In this case the validity of triple talaq was challenged as being violative of fundamental right to equality and the court in this case clearly conveyed that the remedy in such cases lies with the Parliament and it is on the Parliament to take reformatory steps in this regard.

The role played by the judiciary needs to be appreciated in not exceeding their function under judicial activism or review keeping in view the limitations imposed on them by the Constitution. In the present modern contemporary and civilised era after the study of personal laws it can be questioned that is it viable to be governed by community based personal laws or religion? Religion governs the inner conscience of the individual and should not control the external conduct. In the present situation more importance should be given to reasoning that religion is dictating the legislations. In such a controversial state of affairs, the only way out is the implementation of a uniform civil code. India still lags behind when it comes to gender parity and a lot needs to be done in this area.

The subject of uniform civil code from times immemorial has been a subject of debate. The major controversy revolving around uniform civil code is regarding the principles enumerated in the constitution of secularism and the right to religion. There are certain people who are in favour of its implantation and there are certain others who firmly oppose its implementation. The uniform civil code has a religious, moral, social and a political aspect. It would indeed carve out a balance between religious dogmas and the fundamental rights of the citizens mentioned under the Indian constitution. It should be a code without any biasness and favourism and should be according to a man of ordinary prudence.

The constitution of India assures its citizens gender equality and will end religious conflicts. It promotes the feeling of fraternity, national unity and togetherness of the society.

The uniform civil code would indeed help and accelerate national integration process. It will abolish the unambiguous provisions of the law. It will create a feeling of oneness.

Uniform civil code is a progressive law, it provides for equal division of property between husband and wife and also between children, it condemns discrimination in any form. It provides for compulsory registration of death, marriage and every birth. It establishes a rule of monogamy. In case of divorce it provides for equal distribution of property among the spouses.

⁷ (1995) 2 SCC 635

⁸ Flavia Agnes, 'Hindu Men, Monogamy and Uniform Civil Code' (1995) *Economic and Politically Weekly*

⁹ AIR 1997 SC 3610

According to a former Chief Justice Mr Y.V. Chandrachud, “awaken the rest of bigoted India and inspire it to emulate Goa”. He further said that: “It is heartening to find that the dream of a uniform civil code in the country finds its realisation in the Union Territory of Goa.”

‘Our mind is like a garden it could either be cultivated intelligently or be allowed to grow wild.’
