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UNIFORM CIVIL CODE

‘I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field.’

~Dr. B.R. Ambedkar,

THE AUTHOR

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CONTENTS

- I. Introduction to Uniform Civil Code
- II. History of Uniform Civil Code
- III. Role of Judiciary
- IV. Gender Inequality in Religious Personal Laws in India
- V. Hindu Law
- VI. Muslim Law
- VII. Need for Uniform Civil Code
- VIII. Conclusion

I. INTRODUCTION TO UNIFORM CIVIL CODE

India is a secular nation with diversity of culture, ethnic populations (world’s second-most populous country with over 1.2 billion people), range of religious faiths, legal frames, economic and political forces. It is a sovereign state with the world’s largest democracy as well. Religion is an integral part of the country and a way of life for the citizens.¹Majority of Indians, (over 93%) associate themselves with a religion, according to the 2001 census 80.5% of the population of India practice Hinduism, Islam (13.4%), Christianity (2.3%), Sikhism (1.9%), Buddhism (0.8%) and Jainism (0.4%) are the other major religions followed by the people of India.²In the sphere of Uniform Legislation, India has achieved a uniform code for Constitutional, Contractual, and Criminal etc. except laws relating to family and matrimony. The diversity of religions often leads to problems of unification and governance over the masses. However, different personal laws governing their specific communities and religions are derived by their respective customs, traditions and usages. Thus, to remove a major constraint in this diverse context we need to analyze the necessity of Uniform Civil Code.

The Uniform Civil Code has three distinct words; the word ‘*Uniform*’ which means ‘*same in all cases*’; ‘*Civil*’ (derived from Latin word ‘*Civilis*’) which means ‘*citizens*’; and ‘*Code*’ which means ‘*codified laws*’. The main idea behind Uniform Civil code is to effect an integration of India by bringing all the communities together on the common platform on the matters which are

¹Hindu Law and the Constitution, A.M Bhattacharjee, Eastern Law House, 2 nd Ed, pg 24.

² UNIFORM CIVIL CODE: Prospects and Constraints by Nithya N.R

at present governed by their respective personal laws. The Constitution of India has recapitulated certain principles known as Directive Principles of State Policy with a view to achieve reformation of the socio-economic condition of the common masses. The makers of our Indian Constitution envisaged these principles to play a central role in the governance of the country, though Directive Principles of State Policy are non-justiciable. In order to achieve economic democracy these principles acts as an effective tool for a welfare state to function.³One such Directive Principle enumerated in Part IV of the Indian Constitution is Uniform Civil Code. Article 44 states that *“The state shall endeavor to secure citizens a Uniform Civil Code throughout the territory of India.”*The mandate of Article 44 is addressed to state. The word “state” is defined in Article 12 of the Indian Constitution which includes the Government, Parliament of India, the Legislature of each state and all the local authorities under the control of Government of India.

The spine of controversy revolving around the Uniform Civil Code is from the time of the enactment of the Indian Constitution and is continued in the present scenario as well. The ongoing debates on the implementation of Uniform Civil Code revolve around secularism, the freedom of religion and basic structure doctrine enumerated in the Constitution of India. The Preamble states that India is a “SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC” country. Secularism means separation of the religion from the state which itself means that the state shall not interfere with the mundane life of an individual. Moreover, Indian Constitution has Articles (Article 14 and 15 of the Indian Constitution) which has provisions for equality for everyone irrespective of caste, sex, creed or place of birth. Women under Muslim, Hindu and Christian religion continues to suffer in terms of Marriage, Divorce, Succession and Inheritance. As per the provision of International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 which ensures gender equality; India having ratifying it, is bound to enforce the relevant provisions. Hence, the Uniform Civil Code is required not only to ensure

- (a) Uniformity of laws between communities, but also;
- (b) Uniformity of laws within communities ensuring equalities between the rights of men and women.⁴

However, the Indian Judiciary has also made attempts from time to time by giving directions to the government for the implementation of Uniform Civil Code, but unfortunately these works are often criticized and termed as ‘Judicial over-reach’ which means actions that exceeds established judicial limits.

II. HISTORY OF UNIFORM CIVIL CODE

The British Government adopted a policy of neutrality and made different personal laws for different communities. The Second Law Commission of India, 1833 formed under Master of

³Constitutional Assembly Debates, Vol. VII,(1949)page553.

⁴ F. Agnes, “Hindu Men Monogamy and Uniform Civil Code” XXX (50) Economic and Political Weekly 32 (1995); B. Karat, “Uniformity v. Equality” Frontline 17 Nov, 1995.

Rolls observed that "it is our opinion that no portion either of the Mohammedan law or of Hindu law ought to be enacted as such in any form by a British legislation...The Hindu law and Mohammedan law derived their authority respectively from Hindu and Mohammedan religion. It follows that, as a British legislature cannot make Mohammedan or religion, so neither can it make Mohammedan or Hindu law".⁵ The Lex Loci Report of October 1840, stressed on the codification of Indian Laws related to crimes, contract, evidences etc., but personal laws of community remained untouched so that the religious sentiments of the people do not hurt. The formal declaration of the policy was done by Warren Hastings in Administration of Justice Regulation, 1780, so the Criminal Laws were codified in a secular manner.

However at the time of the drafting of Indian Constitution, the drafters of Indian Constitution had extensive debates regarding the personal laws. They tried formulating a plan to help in constructing an Indian national identity by removing the loopholes in the personal laws. The law minister Dr. B.R Ambedkar wanted to include reforms in the Hindu code bill (a set of common laws governing personal matters for all Hindus), for which he had to face criticism and protests by a large segment of Hindu population. The provisions which faced criticism were monogamy, divorce, abolition of coparcenary's (women inheriting a shared title) and inheritance to daughters of Hindu code bill. However, the Bill was passed by the parliament in mid-1950, in four different acts such as the Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act. Subsequently, the provision of Uniform Civil Code was added in the directive principles of state policy, Article 44.

III. ROLE OF JUDICIARY

In the post-colonial India, Judiciary has played a very important role in trying to implement Uniform Civil Code throughout the territory of India. It was the judiciary who interpreted the Uniform Civil Code which is mentioned in Article 44 of Constitution of India.

The first major case to focus on Uniform Civil Code is *Mohd. Ahamad Khan v. Shah Bano Begum*⁶ the petitioner Shah Bano had sought maintenance from her husband Mohammad Ahmad Khan, who divorced her after 40 years of their marriage by 'triple Talaq' and denied her regular maintenance. The Supreme Court held that Section 125 of CrPC is secular in nature irrespective of religion and therefore it is the duty of the husband to maintain his divorced wife. The Chief Justice of India, Y.V. Chandrachud, favored Uniform Civil Code and observed that, "A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies." After this case the Muslim community formulated the provision for the maintenance of Muslim divorced women which was later enacted by government in Muslim Women (Protection on Divorce) Act, 1986.

⁵Report of Second Law Commission of India, 1833 as quoted in M.P Jain supra p. 640.

⁶AIR 1985 SC 945

In the case of *Ms. Jordan Deigndeh v. S.S Chopra*⁷ the court referred to observation of Justice Chandrachud, in Shah Bano Case and concluded that these events focus on immediate and compulsive need for a uniform civil code.

About a decade later, in the case of *Sarla Mudgal vs. Union of India*⁸ the Hon'ble court reconsidered the matter again. The issue of a Hindu man who embraced Islam only for the purpose of contracting a bigamous marriage was raised. It was held that the first marriage would have to be dissolved under the Hindu Marriage Act, 1955, if not then the second marriage will be considered void under Section 494 of Indian Penal Code. The division bench comprising Justice Kuldeep Singh and Justice R.M Sahai observed that, *"The Rulers of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The Governments – which have come and gone – have so far failed to make any effort towards "unified personal law for all Indians". They went on to note that, "When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India."*

A similar case of conversion of religion came into light, in *Lily Thomas v. Union of India and others*⁹; it was held that there is a need for Uniform Civil Code which can only be concretized when social structure is stable and properly built up.

In *John Vallamattom v. Union of India*¹⁰, the Court expressed its opinion on the matter of Uniform Civil Code. In this case a Christian priest challenged the constitutional validity of Section 118 of the Indian Succession Act, 1925, claiming that it was unfairly discriminatory against Christians for placing unreasonable restrictions upon them from bequeathing property for religious and charitable purposes. The Chief Justice V.N. Khare, Justices A.R. Lakshmanan and S.B. Sinha, struck down the provision as being in violation of Article 14 of the Constitution. Chief Justice Khare observed: *"We would like to State that Article 44 provides that the State shall endeavor 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."* This case was also mentioned in the 209th Law Commission Report on the Proposal for the Omission of Section 213 of the Indian Succession Act, 1925.

In *Agnes alias Kunjamol v. Regeena Thomas*¹¹, the Court of Kerala comes up with a much awaited issue of enactment of Uniform Civil Code. It is the Constitutional mandate by Part – IV of the Supreme law of the land and no court can impellent it by itself. The Justice P. Bhavadasan remarked that Uniform Civil Code is necessary for the purpose of gender equality and this would definitely be an eye opener for the parliamentarians to come forward for a plan. It can be said that this time is ripened for the legislature to enact a law for a Uniform Civil Code

⁷1985 SCC (3) 62

⁸AIR 1995 SC 1531

⁹(2000) 6 SCC 224

¹⁰AIR 2003 SC 2902

¹¹Agnes alias Kunjamol v. Regeena Thomas (RSA. No.703 & 958 of 2009)

In *S.R. Bommai v. Union of India*¹², it was observed that “*religion is a matter of faith and cannot be mixed with secular activities*”. However, the government can regulate secular structures by enacting a uniform code for all its masses. In the present scenario uniform code has been miscalculated as an assault on personal laws. The Uniform Civil Code aims at secular reform of property relations in respect of which all religious traditions have grossly discriminated against women. It is a matter of gender equality. The male dominated society has joined with religious conservatism to forge an unholy alliance to perpetuate a major source of gender discrimination thereby impeding the modernization of social relations and national integration. A Uniform Civil Code will focus on equal rights, national consolidation leaving the rituals and customary practice embodied in personal law.

The constitutional validity of Section 3 (clause-1-a) of Muslim Women (Protection on Divorce) Act, 1986 was questioned in the case *Daniel Latifi & other v. Union of India*¹³. It was held that (clause 1-a) of Section 3 does not limit the duty of the husband to pay maintenance only for the period of ‘iddat’ (*period of three lunar months after divorce*), rather the duty is to make the necessary arrangements within the ‘iddat’ period but the arrangements has to be made for the entire life of the wife until she gets remarried. It was also observed that clause (1-a) requires the husband to make basic necessities for the divorced women such as shelter. In this Case it was also emphasized that the provision is only available to the divorced woman, a woman who is still having a subsisting marriage cannot file an application under the Act. The aggrieved Muslim women can claim maintenance either by Section 125 of CrPc or by Muslim Women (Protection on Divorce) Act, 1986. In order to remove these differences our country needs a uniform code to bring everyone under ‘one umbrella’.

There is no evidence of official activity for framing of Uniform Civil Code throughout the territory of India. The judiciary has asked many times from Muslim community to take a lead in the matter of reforms of their personal laws, to formulate a common civil code which will help the cause of National Integration by removing differences in their personal laws which generally leads to conflict.

IV. GENDER INEQUALITY IN RELIGIOUS PERSONAL LAWS IN INDIA

“Half of the Indian populations too are woman. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities indignities, inequality and discrimination” As said by Justice Ramaswamy the women in India are subjected to various discriminations some of which are due to their Personal laws.

The portion of law which constitutes all matters based on factors such as Marriages, Blood, and Affinity is known as Personal laws. Personal Laws governs and regulates Marriage, adoption, Divorce, Maintenance, Succession etc. There are various religions in India like Hindu, Muslim, Sikh, Christian, Parsi, Buddhist, Jews, Jains. Different religion has different norms for the

¹²1994 (3) SCC1

¹³2001 (7) SCC 741

procedure of marriage, divorce and maintenance, with the passage of time these norms are given statutory recognition. The Hindu Marriage Act, 1955, The Hindu Succession Amendment Act, 2005, The Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956 are statutory provisions which govern Hindus, Sikh, Buddhist and Jains in India. There are few norms which are not yet given a statutory recognition such as Muslim Personal Laws. From these different laws we get to know about the non-uniformity of laws related to civil and personal matters in India.

According to the Committee on the Status of Women in India, "*The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens equality of status, and is against the spirit of natural integration*". The Committee recommended expeditious implementation of the constitutional directive in Article 44 by adopting a Uniform Civil Code.¹⁴ Gender Inequality refers to unjust or unfair treatment of an individual in the society. In the contemporary multicultural society of India women are subjected to various '*inequalities*'. According to the different surveys conducted it is quite obvious that women have been conferred on subordinate status in all the personal laws as compared to men.

V. HINDU LAW

The Hindu families are considered to be patriarchal in nature. In the Hindu mythologies and Scriptures there is a glimpse of male being the absolute ruler of the family. Before codification of Hindu Law in 1955 and 1956 the Hindu Women did not enjoy equal rights along with the Hindu men. Till 1955 polygamy was also prevalent which allowed Hindu men to keep as much wife as they wanted. The Hindu women were not allowed to hold any property except in the case of Stridhana. She had only limited estate which was ultimately passed on to the heirs of the last full male owner called reversionary on her death. A woman does not have right to adopt a child in the matter of adoption as well. She is not considered the natural guardian of her children during the life of her husband. In *Ammini E.J. v. U.O.*¹⁵ it was held that Section 10 of Indian Divorce Act violates the fundamental rights and gender equality because the women were not allowed to file a petition for the dissolution of her marriage.

After the codification of Hindu law there still exist certain discriminatory provisions even today. In these examples a Hindu woman is not a coparcener in Hindu coparceners except in a few states like Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu. Consequently she is not entitled to claim a share in the coparcenary. Similarly she has no right to claim partition of a house even though she is a legal heir. Thus by these above examples we can observe that irrespective of the codification of the Hindu personal laws, it had not succeeded completely in eradicating the gender inequality.

¹⁴ Towards equality: Report of the Committee on the status of Women in India (New Delhi: Government of India, Ministry of Social and Educational Welfare, Department of Social Welfare, 1974).

¹⁵ AIR 1995 Ker 252.

VI. MUSLIM LAW

Till the advent of Islam, the rights which were given to women were secondary as compared to men. The Islamic law tried to bridge the gulf between the two sects. The Holy Quran gives equal status in all the spheres, but unfortunately it has been misinterpreted by the masses. A Muslim male is permitted conditionally to marry as many as four wives at a time.¹⁶ The practice of Polygamy among Muslim men is permitted only under certain conditions. The Shia Muslim male can contract '*Muta marriages*' (*Marriage contract in which the duration of marriage and the mahr amount is fixed in advance*) for an agreed period of time, there is no ceiling on the number of muta marriages that may be contracted by a Muslim male. The method of divorcing the wife by the husband by pronouncing '*triple talaq*' is highly discriminatory. The position of women is inferior in the matters of Divorce as well. In spite of the clear message of Holy Quran the masses misuse these provisions for their personal benefit.

The British regime passed the Shariat Application act, 1937 which is believed to be divine and permanent. It is assumed to form the legal system of Muslim personal Laws prevailing in India. However, The Sharia Act 1937 allows Muslim to follow their customary practices in the number of fields such as, inheritance, marriage, dissolution of marriage through *talaq, ila, zihar, lian, khula or mubaraat, maintenance, mehr, guardianship, gifts, trust and wakfs* etc. The Allahabad High Court recently has held that the practice of the '*triple talaqs*' is unlawful and void. Subsequently, the provisions of Islamic laws are discriminatory among citizens.

The Constitution of India is made up by very significant code of justice, liberty, equality, and fraternity for all the citizens of India. These practices done by different Personal Laws in the society violates the Basic Structure Doctrine of the Constitution.

VII. NEED FOR UNIFORM CIVIL CODE

The need for uniform civil code has been felt for more than a century. India has already suffered a lot in the absence of a Uniform Civil Code. People belonging to different races, innumerable castes and religious beliefs showing no similarity whatsoever live in the subcontinent of India. A common civil code has been suggested as one of the steps to achieve national integration. The code should apply to all irrespective of any differences in race, religion or caste.¹⁷

Article 44 of the Constitution directs the state should aim to secure a Uniform Civil Code. The provisions in Article 44 are not justiciable, nevertheless Article 37 provides that "*they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws*". Though 70 years have been passed after attainment of independence no positive efforts in the form of drafting of Uniform Civil Code has been made by the state for securing uniform civil code.

The founding fathers of the Constitution sought to create a secular state. However, the special safeguards of the minorities in Articles 29 and 30 are provided for securing equality between the

¹⁶The Holy Quran, Chapter IV, versus 3.

¹⁷ Article 15 of The Constitution of India.

majority and the minority groups,¹⁸ to remove any sense of insecurity on the part of the minorities, and to unite in the mainstream without maintaining their differences, so as to help the process of national integration There is a Need of Common Civil Laws.

India is a country of different colours and spices where the unity lies in its diversity. The personal laws of different religion are patriarch in nature creating unfavorable differences between men and women. The existing provisions relating to the Muslim wife in Muslim Personal Law (Shariat) Application Act, 1937 is discriminatory and in violation of Articles 14 and 15. Replacing the Muslim personal law by a common civil code under Article 25(2) is necessary to provide Gender Justice to the Muslim women. Almost all the traditional Muslim countries such as Turkey, Egypt, Syria, Morocco, Tunisia, Algeria, Iran, Iraq, Indonesia and Pakistan have effected changes in Quranic law and abolished polygamy and restricted the right of unilateral divorce granted to the Muslim husband.¹⁹ Yet India continues the evil practices of polygamy and divorce at will of the husband (*Triple Talaq*).

A Uniform Civil Code will not be violating the religious freedom. It is necessary to define religion, as one connected with faith and spiritual relationship of a person with God which cannot be mingled with the Secular activities. India can regulate the secular activities by adopting the Uniform Civil Code which is justified under Article 25 (2)²⁰. Moreover, it will promote social growth which will ultimately take India towards its goal of becoming a developed nation.

VIII. CONCLUSION

Article 44 of Constitution of India is the true essence for the attainment of true equality and egalitarianism in the form of Uniform Civil Code. It will help in National solidarity and consolidation by treating every one with dignity. Implementation of Uniform Civil Code cannot be a knee-jerk step but as India is a unique blend and mixture of codified personal laws of different which creates unnecessary burden on the legal system.

Uniform Civil code will reduce all the loopholes present in different personal laws such as triple talaq and polygamy practices, which will create gender justice especially for Muslim women. The judiciary in India has given numerous judgments in the matters of personal laws which are related to injustice done to the women.

The Preamble of Indian constitution consists of golden goals such as "Socialist Secular Democratic Republic" which is impossible to achieve without the Implementation of Uniform Civil Code. In the recent times, Indian economic growth has been the highest in the world but at the same time social growth has not been progressed. The Government of India should take this into account and should take initiatives for the drafting of Uniform Civil Code. The Law Commission of India, National Human Right Commission, and National Commission for Women, Former Attorney Generals, Solicitor Generals and Judges of the Supreme Court should

¹⁸ Article 29 guarantees the conservation of any language, script or culture of any minority whereas Article 30 guarantees the right of religious and linguistic minorities to establish and administer educational institutions established by them

¹⁹ K. B. Agarwal "Uniform Law on Indian Marriage - A Suggestion", in N. V. Paranjape (Ed.), at pp. 68-69.

²⁰ Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law.

be included in the drafting procedure. In a recent judgment the Supreme Court has held that all marriages irrespective of the religion, be compulsorily registered which is a first step toward Uniform Civil Code in India.²¹ Every modern nation should consider the concept of “*One Nation One Law*” for better governance. It is more important in the context of India as the makers of our Constitution had a grand vision which was envisioned at the time of framing our constitution.

²¹The Times of India, Feb 15, 2006.