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UNIFORM CIVIL CODE

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When Uniform is made compulsory for school children, why there is no Uniform Civil Code for citizens?

ABSTRACT

India is a nation with various religions and languages. Here, people are not defined by their status, they are defined by their customs, culture and personal laws. Though, India is a secular nation but still people are governed by their personal laws. Due to these laws and codes in different community Judiciary face difficulty to distribute justice, therefore an important step was taken to implement Uniform Civil Code which was firstly discussed in Constituent Assembly, 1947. UCC means one country one rule. It is mentioned in Directive Principles of State Policy and not in Fundamental Rights. In the Constituent Assembly of 1948 many members such as Pocker Saheb, Dr.B.R.Ambedkar, K.M.Munshiji. Alladi Krishna Iyyer and G.S.Iyengar shared their views regarding enactment of UCC. Supreme Court has also suggested legislature to enact UCC. In Shah Bano case, the need to implement UCC is highlighted. Goa is the only state which introduced UCC. Gender issues in India will only be solved when UCC is introduced. If it is implemented than it would bring a balance between religious principles and fundamental rights. But due to Personal laws the Constitution expects to implement UCC later on but this later on stage has not come yet.

Key Words: Secular, Gender Justice, Constitution, Judiciary, Personal Laws

INTRODUCTION

India is the world's largest Democratic country, it has a cultural influence over everything, a strong military system and fastest growing economy. It has federal political system where power is given to citizens and is shared between central and state. It is highly diverse with many religious identities, linguistic and cultural values. For people, religion is a way of life.

And India is also a secular nation, which means that it does not follow any particular religion and customs and neither people will be discriminated on the basis of religion they follow. State is not dependant on any particular religion or religious institution to take decision. It means that neither

State will interfere in the matter of religion nor religious matters will interfere in the performance of State¹.

Since everything is according to the things mentioned in constitution but the problem arise in the fact that there are differences within the personal laws. India being a diverse nation with n numbers of people having their own culture, traditions, customs and religion are governed by their personal laws. Every community is supported by their personal laws. For example, Hindu is governed by their personal laws like Hindu Guardianship Act, Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Succession Act for different matters like adoption, maintenance, guardianship and marriage. And Muslims and Christians are governed by their personal laws. There is no uniformity in the personal laws. Due to these laws, every community has their separate customs, practices and belief that result into contradiction with the other community. It is also known that Personal laws face problems when the question comes in relation with succession, marriage, divorce, inheritance, adoption, maintenance and guardianship. It becomes very difficult for judge to do justice because of presence of different codes and personal laws. Thus, an important decision Uniform Civil Code was first discussed in the Constituent Assembly, 1947. It was discussed for national consolidation.

In India we have Criminal law, Civil law and Evidence Act that is equally applicable to every individual irrespective of their caste, religion, sex and domicile. However, for the cases of divorce and succession a similar code doesn't exist especially and the cases are still governed by the personal laws, these laws vary in their sources, philosophy and application. Thus, while bringing people governed by different religions and caste under one roof, major restrictions arise.

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DEFINITION

In the Constitution of India, Uniform Civil Code is mentioned in Article 44, which covers every aspect of law except matrimonial laws. The Uniform Civil Code means one country one rule. Civil Code means the code which covers the entire body of laws governing rights relating to property and otherwise in personal matters marriage, divorce, maintenance, adoption and inheritance. Uniform Civil Code generally means combining all these personal laws to have one set of personal laws dealing with all these aspects that will apply to all the citizens of India irrespective of the religions they follow. This has been anticipated by makers of our constitution under Article 44 but it has been strongly opposed because it violate the Article 25 of the Constitution.

Article 44 of the Indian constitution declares that State shall endeavor to secure for the citizens a uniform civil code throughout the territory is an ambiguous mandate under Article 44 (Article 35 in the Draft Constitution). It is very interesting to know that the Provision of Uniform Civil Code is not in the Fundamental Rights. It is mentioned among the Directive Principles of the State Policy. Directive Principles means that it cannot be enforced by any court and hence these are non judicial rights. This particular provision has remained a dead letter, while more than 6 decades

have passed since the enactment of the constitution. Successive government have taken little or no efforts to guarantee uniform personal laws for all the citizens.

It is the part of law which deals with family affairs of an individual. It indicate uniform law for every citizen irrespective their religion, race and caste etc.

Dr. B.R. Ambedkar was supporting uniform civil code but due to opposition from opponent parties, Uniform Civil Code get status of directive principle only. In the era of 80s there was an important issue regarding Secularism in India but then also Uniform Civil Code due to the Shah Bano case in 1985 became one of the most controversial issue in contemporary politics. Personal laws were generally made for Hindu and Muslim citizens. It was made during the British control and some of the Britishers felt opposition from community leaders. In the beginning of 20th century women activists with the objective of women's rights, equality and secularism put forward the demand of Uniform Civil Code. Till independence in 1947, to improve the condition of women especially Hindu widows, a few law reforms were passed. In 1956, Hindu Code Bill was passed by Indian parliament. Though Prime Minister along with his supporters and women activists demanded for Uniform Civil Code but because of heavy opposition they had to finally accept the settlement of it being added to the Directive Principle of the State Policy.

UCC and Constituent Assembly

Since the time India has attained Independence in 1947, the objection on introduction of the Uniform Civil Code has been debated upon and Indian Parliament was debating on it since 1948. The Muslim fundamentalist like Pocker Saheb and members from other religions were showing strong opposition towards it. Though it get support from Father of our Constitution Dr. B.R. Ambedkar and the Chairman of the Draft Committee along with some well-known generalist like K.M. Munshiji, Alladi Krishna Swamy Iyer and G.S. Iyengar. However, Muslim community were promised by Congress that they would allow them to practice Islamic laws but there was a fear among Muslims and that was of possible interference with the Muslim personal laws and they said that if Uniform Civil Code was to be introduced than India would not be the same again. As an agreement, the Uniform Civil Code was included under the head Directive Principles of State Policy in Article 44 by the makers of Indian Constitution. Few famous members showed their dissatisfaction and said that the existence of religion based personal laws were hampering the path towards Nationhood. Given below are the views of some members of Constituent Assembly.

Earlier UCC was enclosed in Article 35 of the Draft Constitution. There was a demand to add provision in Article 35 which would enact UCC whenever needed and personal laws would be kept out of it. The provision was, Any section, community or group of people shall not be require to give up its personal laws unless it has such law. UCC was considered as problem to religious freedom provided by the Constitution. However, there were many reasons given by people I favor of UCC. K.M.Munshi gave very rigid view that oppose the claim of majority over minority. He states: It is not correct to say that such act is autocracy of majority. If we look into the country like Europe which have a civil code, everyone including minority who go there has submit to the Civil

code. From this it is not felt that minority are suppressed. With us point is that whether are we going to unify our personal laws in such way that our country for a time become unified and secular. We want to remove religion from personal laws which may be called social relations.

Munshi wanted that for once the way of life shall be the way of life for all. However, this is the most controversial view as it may muffle the diversity. The another reason that support the enactment of UCC was the issue of women empowerment. A common civil governing the personal laws would bring all women under one law irrespective of their religion and race.

Shri Alladi Krishnaswamy Ayyar gave a much more realistic reason to support UCC by stating that in India there is interaction between different communities which leads to quarrels between personal laws. He also said that having personal laws that are separately governed by the religion has many interpretations by the followers.

B.R.Ambedkar was also the supporter of UCC and he denied that a common civil code in India would be impossible. He stated that only marriage and succession don't have uniform otherwise all areas of law such as contract, criminal law, the Negotiable Instrument Act, sales of good act and many more has uniformity in them. In the Constituent Assembly he denied the claims of UCC being an autocracy of majority. He considered the western model of law and social relations that would bring social reforms.

Earlier it was favored to guarantee the Uniform Civil Code to the Indian within 5-10 years. More than 70 years have been passed and we are still evaluating on such possibilities.

UNIFORM CIVIL CODE AND GENDER JUSTICE

As we all know that "gender injustice is inbuilt" in the personal laws of all community this is due to socio economic conditions in which they have evolved. That is why there is need to bring UCC and reform all the personal laws so as to bring gender justice and equality between men and women. Women undergo and experience many difficulties in matters related to their inheritance, marriage and divorce. Desertion, Cruelty, Polygamy and Triple Talaq are few example that shows harassment of a woman. Women are formally granted equality in political rights by Constitution. But to difference in their personal laws they experience violence, deprivation and inequality. Not only in outer world, their position is ignorable in the family also. The question of rights of women is completely ignored by the society. The personal laws are made to keep women under control of men. Under personal laws women experience many difficulties and undergo severe trauma relating to inheritance, marriage and divorce. Desertion, Polygamy, Cruelty and Triple Talak are some of the examples to show harassment towards women. However, Constitution tries to give equality to women in legal, social and political areas but still they are not effective to provide equality to women. In few cases the Supreme Court has shown the real sense of equality by suggesting legislation to enact UCC. It is said so in Sarla Mudgal case, Shah Bano case and Vallamattam case. A critical look at the judicial decisions, legislative enactments and constitutional debate indicate that women experiences injustice and there is no seriousness given to this issue. Gender issue need

to be discussed seriously by everyone. To the issue of gender justice UCC will only help to overcome it. If UCC is implemented UCC will build the foundation for women to overcome many social evils like harassment, dowry, bigamy and many more that degrade the women in the society.

UNIFORM CIVIL CODE AND PERSONAL LAWS

India is a patriarchal society since the ancient times and women have been always considered inferior to the position of men according to provision of personal laws. Women are also considered inferior when it comes to discussion on the topic of the succession or the matrimony, inheritance or even the adoption.

Till the year 1955, the Hindu women did not enjoy equal rights as equal to Hindu men, be it anything under Hindu law. Before 1955 polygamy was common among the Hindus. Except in the case of Stridhan the Hindu women cannot be the absolute owner of any property by holding it. If she has estate than that is also limited which was passed to her legal last full heirs on her death. A women do not have the right to adopt a child on her own when it comes to adoption. During the life of her husband she cannot be natural guardian of her children.

When it comes to Muslim law, the women enjoyed a secondary status in the Pre Islamic Arabia. When it comes to the decline of the Muslim women and the escalation of their problems the emergence of Islam has contributed much to it. The Holy Quran gives equal rights to women and men and places women in a respectable position. However, the position of women especially in the case of wives insecurity and inferiority, are rendered by the aspects of Islam. In Islam, a woman cannot marry 4 times and if she do so she is treated as impure whereas a men is allowed to marry 4 times. Women are not given the rights to divorce their husbands, by particularly the method of divorcing the wife by the husband by pronouncing triple Talak is highly discriminatory. Allahabad High Court in its recent case held this void and unlawful. In succession, a woman is discriminated against the assertion of certain Muslim scholars that the Islam in this regard is more progressive and liberal. In maintenance, the Muslim wife is not required to be maintained beyond the Iddat period. Under Criminal Procedure, man has to maintain his wife including divorced wife unstill she is able to maintain herself but there is dispute regarding this in Muslim man.

SECULARISM AND UNIFORM CIVIL CODE

The preamble of the Indian Constitution states that India is a secular country. This means that no one can be discriminated on the basis of their religion by the secular state. Justice Jeevan Reddy in the case of *S.R. Bommai v. Union of India*², said that the religion is the matter of individual faith and belief and cannot be mixed with secular activities and can be regulated by the State by enacting a law. There is existence of Positive Secularism in India i.e. there is a wall between State and religion. Positive Secularism means that spiritualism is separated with individual faith.

When we discuss about a country like India where the way of life of people is defined by religion. People find it difficult to accept or adapt to certain changes so they try to connect themselves with their religion instead of understanding that human being are not made by religion, it's the religion

which is made by human beings. Though some people still believe in burning so this thought find itself in the graveyard. There needs to be a Uniform Civil Code law which governs and regulate the behavior of people of all the religions and not any particular section of the society.

The Preamble of the Indian Constitution resolves to constitute a “Secular, Democratic and Republic”. Article 25 and 26 of the Constitution guarantees freedom of religion and freedom to manage religious affairs and at the same time, Article 44 which is not enforceable in court of law states that the state shall endeavor to secure a Uniform Civil Code in India. The Uniform Civil Code should bring such laws that provide a balance between religious principles of different communities and fundamental rights of everyone because the personal laws of each religion consist of separate provisions and their unification will **not only** bring dissatisfaction but also enmity in the public towards each other. Issues such as divorce, marriage and maintenance can be matters of secular nature and they can be regulated by law. Uniform Civil Code is all about that there is no necessary connection between Personal laws and Religion in the civilized society.

UCC AND GOA

IN India Goa is the only state that has enacted Uniform Civil Code irrespective of religion, caste and culture of people. It has uniformity in Family law. In Goa every community i.e. Hindu, Muslim, Christianity is bound with the same law related to inheritance, divorce, marriage and succession. In 1961 when Goa became the part of Union Territory through Goa Daman and Diu Administration Act, 1962 the Parliament authorized Portuguese a civil code of 1867 to Goa which shall be amended and repealed by the competent legislature.

UCC is a progressive law that allows equal division property and income irrespective of gender between husband and wife and even children. Every birth, marriage and death has to be registered before Civil Registrar.

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Marriage in Goa is like a contract between two different people with the aim of living together and constitute a legitimate family which has to be registered before Civil Registrar. After marriage, all the wealth and property acquired by each spouse is commonly held by the couple. For divorce, Muslim cannot give divorce to their wife by pronouncing ‘Talak’ three times. After divorce each spouse is entitled to get half share of the property.

NEED FOR UNIFORM CIVIL CODE

India is a land of multiple languages and multiple religions. There are oldest Indian legal system which is governing the Hindu and the Muslims. The majority of population is consist of Hindus and to deal with their marriage related matters The Hindu Marriage Act, 1955 came into existence. This act codified and amended the laws related to marriage in Hindus. The essential under this act is Ceremonial marriage and registration of marriage is made compulsory for everyone. This act takes care of both maintenance and divorce. To amend and codified the laws related to succession among Hindus, The Hindu Succession Act, 1956 came into existence. The Hindu Minority and Guardianship Act, 1956 made laws related to guardianship and minority. The Hindu Adoptions and Maintenance Act, 1956 made the laws that deals with how a Hindu adult should adopt a child through legal process.

Except Hindu Marriage Act, 1955, the Indian Parliament also enacted Special Marriage Act, 1954. This act allowed Inter-religion marriage i.e. people of different religion can marry each other by registration. This act of performing marriage by registration is done by foreigners, non-Hindus and Hindus who don't want to have ceremonial marriage according to their personal laws. Registration of marriage is mandatory in this act. The couple can also apply for Divorce in this Act.

To deal with the matters of marriage and divorce among Parsis, The Parsi Marriage and Divorce Act, 1936 came into existence which was amended in 1988. To integrate and make the laws relating to performance of marriage among Christians, The Christian Marriage Act, 1872, was enacted and to deal with the matter of divorce and matrimonial problem among Christians, the Divorce Act, 1869 came and was amended in 2001. For Muslim Community several act is also introduced such as The Dissolution of Muslim Marriage Act, 1939, The Muslim Personal Law (Shariat) Application Act, 1937 and The Muslim Women (Protection of Rights on Divorce) Act, 1986.

The problem that arise in the Hindu Law, is with the registration of marriages which leads to the inability of declaring child marriages as void. In India child marriages is accepted by all religious communities as practice practically all religious communities in India have accepted practices and so they cannot be registered due to non-fulfillment of the minimum age of marriage. The Supreme Court of India in *Seema v. Ashwani Kumar*³ has directed that all states in India to enact rules for compulsory registration of marriages irrespective of religion, in a time bound period.

This reform has stuck a progressive blow to check child marriages, prevent marriages without the consent of parties, check bigamy/polygamy, enable women's rights of maintenance, inheritance, and residence, deter men from deserting women, and for checking the selling of young girls under the guise of marriage. The consequences of non-registration of marriages have created a large number of abandoned spouses in India deserted by non-resident Indians who habitually reside abroad. However, implementation of the same is still undermined.

When it comes to Muslim law it is the additional courts that create the problem. The Supreme Court of India on *Vishwa Lochan Madan v. Union of India*⁴ and others issued notices to the Central government, State government, All India Muslim Personal Law Board and Darul Uloom, an Islamic seminary, in the matter of the existence of parallel Islamic and Shariat Courts in the country, which is posing a challenge to the Indian Judicial System.

Muslim law provides Mehr. Mehr is an amount which fixed at the time of marriage itself and it is used as consideration for the performance of the marriage. This is because the marriage under Muslim law is a contract and the condition for registration is fulfilled in the Nikah-Nama itself. However, wife doesn't get maintenance under the muslim law. The Mehr amount which is taken

at the time of marriage is supposed to take care of this aspect. Men cannot waive or reduce Mehr. Only, the wife is allowed. In this way the interest of women in the Mehr is protected. But, other provisions of Muslim law discriminate women. Polygamy is allowed but not polyandry. Muta marriages can be undertaken by the husband, the triple pronouncement of the word “talaq” is enough for a man to give divorce. The woman has to undergo an arduous procedure for the same. This is not the case in Hindu law. Hindu law under Hindu Marriage Act itself provides for maintenance for the wife. Also, the groups and procedure for divorce are the same for both husband and both.

Personal laws show a contradiction. On one hand, the constitution recognize the continued existence of personal law, which is why Article 44 expects that at some later date will have a uniform civil code. On the other hand, several articles exist such as Articles 14-19 which guarantee equal rights. For example, divorce in Muslim law is entitled to different things than in Hindu law and this is due to personal laws. Therefore, Article 15 would make personal law unconstitutional. Furthermore, Article 15 also meant non-discrimination based on “sex” whereas Muslim personal law favors the man in many cases, especially in the issue of divorce and in the issue of polygamy. These issues remained unresolved in the constitution. Personal laws are inconsistent with the morality and human rights as well.

UNIFORM CIVIL CODE – JUDICIAL APPROACH

Article 44 of the Indian Constitution makes it obligatory on the part of state to secure for all its citizens a Uniform Civil Code throughout the territory of India. The judiciary has always tried to narrow the gap between the general provision of law and the personal law. The Supreme Court has always supported UCC. A leading case *Mohd. Ahmed Khan v. Shah Bano* also called Shah Bano case brought the issue of UCC once again. In this case the Supreme Court brought a divorced Muslim woman in the ambit of section 125 of Code of Criminal Procedure, 1973 and held that she was entitled to maintenance even after the expiry of her Iddat period.

The Supreme Court stated that: Section 125 was enacted to provide a quick remedy to group of people who are unable to maintain themselves. The person who are unable to maintain themselves and the person who has sufficient means to maintain themselves were the criteria to determine the applicability of section 125. This section impose a liability on an individual to maintain their relatives who are unable to maintain themselves so as to prevent destitution and vagrancy.

Shah Bano case highlight the need of UCC and state that the core of any gender based law should be the suffering of women. The law should deal with the issue that husband refuses to give maintenance to his wife after giving her divorce rather than dealing with what religion the woman belongs.

In the case of *State of Bombay v. Narasu Appa Mali*⁵ the High Court of Bombay has to determine the constitutional validity of Prevention of Hindu Bigamous Marriage Act, 1946. There were two

contentions that it violate Article 14 and 15. Since in Hindus bigamy is prohibited while in Muslims there is full liberty to marry twice or thrice and this discrimination was based on religion. These questions has aroused due to absence of common civil code. M.C. Chagla J. held the validity of act by stating that it does not violate any Fundamental Rights since such prohibition should not be viewed through religious discrimination. He also argued that Hindus and Muslims not only differ from each other on the basis of religion but also in historical background and culture towards life.

In the case of *Srinivasa Ayyar v. Saraswati Ammal*⁶, the Madras High Court held the validity of Madras Prohibition of Bigamy Act on the same ground.

In the case of *Sarla Mudgal v. Union of India*⁷, the Supreme Court highlighted the need of UCC in the matter of inheritance, succession, marriage etc. In this case the husband was converted into Muslim by adopting Islam and then married another wife. The court held that the first marriage subsists and the husband commits an offence of bigamy. The court observed that bigamy under Muslim Personal Laws is contrary to the laws governing other communities and should be governed by UCC.

In the case of *Makku Rawther's Children v. Manapara Charayil*⁸, Justice Krishna Iyer said that the provisions of personal laws should be according to the provisions of Constitution. Judiciary holds the right to construe the words of personal laws with the passage of time.

In the case of *Lily Thomas v. Union of India*⁹, the apex court held that there is no doubt on the desirability of UCC but it can only be expressed when social climate is built by the society. Leaders instead of making and gaining personal benefits should rise and accept the change.

CONCLUSION

India is a vast nation be in religion, geographical diversity and language, culture and traditions, the framers of Constitution never tried to bring complete uniformity of law so they keep Uniform Civil Code under Directive Principles of State Policy and not Fundamental Rights. The issue of Uniform Civil Code is very sensitive because the laws in relation to inheritance, maintenance, divorce, guardianship, marriage and succession governing the different community (Hindu, Muslim, Christians) are different and vary from religion to religion.

According to Article 25 and 26 of Constitution every citizen has freedom of conscience and free profession, practice and propagation of religion and they have freedom to manage religious affairs. Article 44 of Constitution does not say that Uniform Civil Code shall be imposed on every citizen by repealing their personal laws. What it want is people should voluntarily declare that they shall be governed by such Uniform Civil Code when implemented and not imposed on law.

For its implementation not much progress has been done. Only one step is done which is the codification and secularization of Hindu law. The codification and secularization of Muslim law and other community law still remains to be done. But there are many problem which arise with the implementation of Uniform Civil Code. One is that some of the people don't have knowledge regarding their rights whereas some of them have knowledge and have fear of losing their rights. The other problem is that with the implementation of Uniform Civil Code it is presumed that Hindu will have majority of power and other communities will have less power which may lead to communal dispute. The another problem is that the political parties will have problem in gaining power by using debatable topics going on in the country.

With the enactment of Special Marriage Act, 1954 and Indian Succession Act, 1925 the object of Article 44 has been achieved. Those who have problems with their personal laws regarding marriage can marry and register their marriage under Special Marriage Act and succession of property is governed by Indian Succession Act. These two act is applicable on majority of Indians.

The enactment of Uniform Civil Code might lead to regional dispute. It would be better if certain amendments in personal laws are brought slowly and gradually as per the modern times. It is important to separate law from religion and make people aware about the idea of implementation of Uniform Civil Code. With the implementation of Uniform Civil Code, India will emerge as integrated nation because the difference between various religious groups in terms of their personal laws will disappear.

