

UNIFORM CIVIL CODE - IN RETROSPECT AND PROSPECTS

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Abstract

The question as to whether after 70 years of the “Indian Constitution” is ripe enough to have a uniform set of civil law has been raised yet again. The Uniform Civil Code (UCC) has always been claimed as an effective tool to harmonize the personal law and therefore harmonizes our differences as a society. It is further seen as a mode to empower Indian women in our patriarchal society and will also help in uplifting their status in the social institutions such as family and marriage. This paper would discuss the entire dialogue around the UCC, the historical aspect, progress or steps taken towards achieving UCC, Judicial Approach and the arguments on its necessity and constraints in implementing the Uniform Civil Code. This paper also evaluate the world practices on uniform civil code and tries to evaluate the condition that is required for the implementation of UCC in India and if whether India has achieved the prerequisite or not.

Keywords: *Adultery, Decriminalisation, Gender Discrimination, Gender Neutrality, Individualism, Aggrieved, Cognizance*

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INTRODUCTION

Our uniqueness as country is known to the world not only in terms of its geography but also in term of social scenario, we are the bunch of different culture needle in the same thread by our constitution. The geography of any country defines a lot of thing about the people and their habits and we find all kind of topography in one country¹. India is a land of diverse culture, diverse people, different languages, art and architect and of course a country of so many religions. History tell us that we are not only the birth place of so many religion like, Hindu, Buddhist, Jains, Sikhs, Ajivikas etc. but has also given equal respect to the religion of people who have come to India be it Muslims, Christain, Parsis, Jews etc.² All who have come to India and made India their homes be it Aryans, Afghans, Kushans, Mughals etc. India is a society which believes in Anekantwad and rational thinking that is why we were able to derive so many concept of religion. History also taught us one important lesson so many kings have come and go, all followed different religion but nobody tries to force their civil laws on the people of other community. Also the concept of marriage and divorce are different for different community. In Hindu religion marriage is considered as a sacred thing were as in Islam marriage is a contract therefore when you go back to history the concept of divorce came to India with Afghans and Turk who used to follow Islam because marriage is a contract in Islam it can be revoked but in cases of Hinduism there was no concept of divorce. But as time passes by we realized the importance of an option to call off bad marriage and thus evolved the concept of divorce in Indian society. So now arises a question that in the country so diverse, and where the concept of family law is so different from religion to religion is it possible to have uniformity? The Indian culture has emphasized the spirit of

¹ Manorama Yearbook (India – The Country). Malayala Manorama. 2006. p. 515. ISSN 0542-5778

² Gill, Mehar Singh, Politics of Population Census Data in India, Economic and Political Weekly, 42 (3), pp. 241-249,2007

unity in diversity but, unfortunately, this spirit of cultural unity has not helped to bring political unity in India. Our history suggests that Indian Territory was divided into small sovereign entity which ultimately brought foreign subjection for a long period of time. Our culture was so unique and blends at the same time that no ruler ever tries to make uniform policy in case of civil law whereas in 1860³, it is the criminal law for entire British India was codified under Indian Penal Code. Diverse practices, rituals, ways of life etc. continues to exist even after Independence.

“On 26th November 1949, we the people of India through our Constituent Assembly solemnly resolve to secure to all its citizens ‘Justice, Liberty, Equality and Fraternity’”.

To achieve these goals the framers have introduced the concept of Basic human rights and directives to the state in the constitution of India. The fundamental rights were given immediate importance, by giving right to constitutional remedies under chapter III of the constitution and the ideas for which our society and resources were not developed that time, those were kept in chapter IV and termed as Directive Principle of State Policy (hereinafter referred as DPSP) as the future goals for the India.

Before discussing what our founding fathers think about Uniform Civil Code (hereinafter referred as UCC), let's go into the meaning of this term. The word civil code actually covers the entire system of laws that governs the rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance⁴. Therefore the demand for a UCC would mean, unifying all the personal laws which would be applicable to all citizens of India irrespective of the religion in the matters mentioned above⁵. The founding

³ B.M.Gandhi. Indian Penal Code, EBC, pp. 1–796, 2018

⁴ Anonymous, What's a uniform civil code?, Jul 28, 2003, Available at: <https://economictimes.indiatimes.com/whats-a-uniform-civil-code/articleshow/98057.cms>

⁵ Anubhuti Rastogi, Uniform Civil Code, Law times Journal, Jan 24, 2019, Available at:

fathers saw a UCC as an important means to achieve national integration. In the beginning, the efforts were made to include in under chapter III but it was finally kept under DPSP because no consensus could be reached in between the framers of the Constitution.

The experts suggest that a homogeneous personal law can curb all the atrocities of our existing personal laws. Further time and again it is claimed as a miraculous cure for all the social problems of Indian women. The Indian Supreme Court has been continuously reminding the government of the glorious promise of our founding fathers UCC. The case of *Shayara Bano*⁶ again ignites the discussion on UCC. This led to the question that whether UCC will prove to be magic wand and all such oppressive and anti-women evil in existing in all the religion will be wipe off?

Relevance of UCC has been questioned time and again. These was not only raised in constituent assembly debates but were also discussed during early to mid-1950s when the Hindu personal laws were reformed. The demands were raised reform all personal. In 1970's the debates were again ignited on UCC when attempts were made to introduce an Indian Adoption Bill. Further the Supreme Court has brought the question of UCC in discussion in many of its decisions like *Shah Bano*⁷, *Sarla Mudgal*⁸, *Ahemdabad Women Action Group*⁹ etc.

When most of the directive principles have become the part of fundamental right or has got a constitutional recognition in these 70 years, UCC has still not the priority of the our time rather the process of enactment of UCC has becomee more difficult in comparison to 1950s.

<https://lawtimesjournal.in/uniform-civil-code/>

⁶ AIR 2017 SC 609

⁷ AIR 1985 SC 945

⁸ AIR 1995 SC 153

⁹ AIR 1997 SC 3614

Today, our society is actually less prepared for it as nobody is ready to forfeit their vested interests. In order to remove the fear and distrust relating to UCC there is general need to educate and aware people. Further we need to harmonize the debate of secularism and UCC so that it can be acceptable by people. Our country is the lands where people are very close to the religion and cultural practices; seldom anybody actually questioned the exploitative religious practices. Therefore if we want to achieve a UCC for entire country scientific temperament is needed to be developed in the people.

The UCC is seen as a crucial tool to achieve secular, progressive and non-discriminatory personal law in India by the liberal thinkers and women's movement. The personal laws are seen as a source for exploitation of women by the feminist thinker. So, they have highlighted the need of a UCC to achieve gender justice. But is it actually the reality. The paper gives a clear prospective on the historical angle of UCC, its idea as a whole discussed by the drafting committee during the formation of our constitution, international prospective and the reality as to whether it has actually helped in addressing woman issues, judicial view on this, law commission recent reports and its view regarding UCC and the most recent judgement on triple talaq and the law related to it.

UNIFORM CIVIL CODE AND HISTORICAL ASPECT

Codification of laws is not a new process. It actually dates back to the Colonial Period. The Britishers have played a major role in giving shape to our legislative literature. The Lex Loci Report of October 1840 which emphasized on the codification of Indian law relating to crimes, evidences, contract and commercial transaction etc., had also recommended that personal law of the different communities should not be codified. The Colonial masters have codified the law of crimes in 1860, further drafted a Indian Contract Act to guide commercial transaction in 1872 both on secular grounds but very few attempts were made to codify

personal.

After 1947, the framers of the constitution were convinced that a certain amount of scientific temperament and education is the prerequisite for the imposition of UCC on citizens belonging to different religions. The issue of UCC was very sensitive and might have been seen as the encroachment by the state on the religious and cultural practices of our citizen. Considering that our independence was given by our colonial master only at the cost of division and communal riots and hatred, bringing an issue regarding religious laws would not have been a wise decision.

Uniform civil code and constituent assembly debates

Originally UCC was a part of Article 35 of the Draft Constitution. A demand was raised by the members of Constituent Assembly to add a proviso in Article 35 which would make the UCC non obligatory in nature and personal laws be kept out of its purview. The proviso read as, "Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."¹⁰

Observation and Arguments

UCC was considered to be a threat to the religious freedoms envisaged by the Constitution. However, there were many reasons given in favour of a common civil code. K.M. Munshi took a very rigid view in negating the claims of majoritarian over sweep over the minorities. He states, it is not therefore correct to say that such an act is tyranny of the majority.¹¹ If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be

¹⁰ Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

¹¹ Ibid

tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand? Munshi presented the unifying force of secularism, that one way of life shall be the way of life for all. However, this view is the most controversial of all since it seems to muffle the voice of diversity. The other reason backing the UCC was the issue of empowerment of women. Since right to equality was already acknowledged to one of the most coveted rights, the unequal footing of genders through the word of law could no longer be validated. Thus, the practices which undermined a woman's right to equality would necessarily be done away with. A common civil law governing the personal matters would bring all the women under one single umbrella and irrespective of race and religion the discriminatory practices would be put to an end. Shri Alladi Krishnaswamy Ayyar¹² gives a much more realistic reason to aim for a UCC and bases his argument on the fallacy of having strict water tight existence of the communities. He states that in a country like India there is much interaction between the various different communities which leads to the altercations between specific personal laws. Not only altercations but one legal system gets influenced by other legal system. He states: In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of

¹² Ibid

India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue. He questions the very core of the dialogue of excessive cultural relativity and the cons of it. Having separate personal laws governed entirely by religion, which has as many interpretations as its followers, would limit the scope for reform. He took the dialogue of K. M. Munshi to another level by treating uniformity not as a necessary evil unlike Munshi who gave examples of other Islamic countries where forceful application of the majoritarian law was considered to be justified by him as long as it brought reform. B. R. Ambedkar was also a staunch supporter of the UCC. He denied the claims that a common civil code in a vast country, like India, would be impossibility. He stated that the only sphere which did not have a uniform law was that of marriage and succession; rest all areas of civil law, such as transfer of property, contract, the Negotiable Instrument Act, easement act, sale of goods etc. were uniform in nature¹³. Let us not forget that Ambedkar was a man who believed in reform along the western line. He differed from Mahatma Gandhi in this respect and considered the western model of law and social relations to be an apt reference point to bring social reforms in Indian setup. He did not wish to add the proviso to the already unenforceable Article 35 but was open to the slow inclusion of the communities with their voluntary consents once the legislature fulfils its promise to have a UCC. He stated, *I quite realise their feelings in the matter, but I think they have read rather too much into Article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country.*¹⁴ It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a

¹³ Ibid

¹⁴ Ibid

beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. (*Emphasis Supplied*). It is a well-known fact that Ambedkar has always been a great critic of the dominant Hindu religion. In 1936 he had already underlined one of the many dogmas that infested Hinduism, *i.e.*, casteism and untouchability to the extent that he went on to denounce himself as a Hindu.¹⁵ Yet in the Constituent Assembly he denied the claims of UCC being a mouthpiece of the majority, or the tyranny of the majority. He stated that the manner in which the Shariat Act, 1936 was made applicable to all the Muslims in India was nothing but an example of how convenient uniformity in laws is and was welcomed by the Muslim brethren. The Muslims which were being governed by the Hindu laws in certain specific areas were all collectively and uniformly brought under the purview of this uniform law, for their own benefit. Similarly, if certain principles of the majoritarian religion, *i.e.* Hinduism would be incorporated in the UCC, it would be not by virtue of them belonging to Hinduism, but because they were suitable to the progressive society. This should not be qualified as a tyranny of the majority. He stated¹⁶: Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindus law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by Article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim

¹⁵ Dr. B.R. Ambedkar, *The Annihilation of Caste: The Annotated Edition*, 11 (Navayana Publication, New Delhi, 2014)

¹⁶ *Supra* note 10

community.¹⁷

This statement made by Ambedkar speaks loudly for itself and his commitment towards having a UCC to bring about the much necessary changes in the personal dimensions of an Indian irrespective of her religion and community. Post-independence his tooth and nail fight to pass the Hindu Code Bills, which also lead to his resignation from the cabinet, is yet again a proof of his drive to bring UCC. Although the proposed amendment to Article 35 was not passed, yet there was no clear-cut majority on the issue of the UCC, some of the reservations echo even in the debates of 2016.

THE COMMON CIVIL CODE: CONSTITUTIONAL AND STATUTORY ASPECT

The Constitution of India requires “*the State to strive to secure for its citizens a Common Civil Code throughout India*”¹⁸ The Constitutional expert many a times gives two reasons for not implementing UCC in our country firstly, as UCC would be contrary to Article 25 of the constitution and thus infringe the fundamental right of freedom of religion and secondly, it would amount to a tyranny to the minority. The Experts who are in support of the UCC gives a counter to the first objection and states that this objection is misconceived. According to them a common civil code would not violate Article 25 as secular activity associated with religious is exempted from this guarantee. So they argue, since personal laws pertain to secular activities fall within the purview of the regulatory power of the state. Regarding the second point, it was argued that there are many Muslim countries in the world who has reformed their laws and further there are countries around the world who has the personal law of each minority been recognized as so sacrosanct as to prevent the enactment of a civil code. Further European countries have a common civil code and these were explored by all the

¹⁷ B. Shiva Rao, The Framing of India's Constitution Vol. 2 (1st Ed., Universal Law Publishing Co. Pvt. Ltd. 2012)

¹⁸ Article 44, The Constitution of India, P.M. Bakshi (6th Ed., Universal Law Publishing Co. Pvt. Ltd., 2016)

people around the world. Religious minority also never felt tyrannical about it.¹⁹

India is a unique country with more than 100s of culture, 1000s of language, and dozens of religions. But still it not true that we don't have a uniform laws. We have a uniform age of marriage and female of any religion cannot get married before the age of 18 and male of any religion cannot get married before the age of 21. Also the is an Act called Special Marriage Act under which person of any religion can registered their marriage and this will apply to all irrespective of religion. Indian Succession Act is also there which governs intestate succession irrespective of religion. Maternity Benefit Act has been enacted to give benefits to all working lady in organized and unorganized sector irrespective of religion. Guardianship and Adoption Act also does not discriminate between religions. The list is still going on.

Goa Civil Code

The Goa civil code is largely based on the Portuguese Civil Code (Código Civil Português) of 1867, which was introduced in Goa in 1870. Later, the code saw some modifications, based on:²⁰

- 1) the Portuguese Gentile Hindu Usages Decrees of 1880 (Código de usos e costumes dos hindus gentios de Goa);
- 2) the Portuguese Decrees on Marriage and Divorce of 1910 (Lei do Divórcio: Decreto de 3 de Novembro de 1910). After the establishment of the First Portuguese Republic, the civil code was liberalized to give women more freedom and
- 3) the Portuguese Decrees on Canonical Marriages of 1946 (Decreto 35.461: regula o casamento nas colónias portuguesas)

¹⁹ Official Journal of the European Communities, 1989, N. C 158/400

²⁰ Vivek Jain & Shraddha Gupta "Uniform and civil", The Statesman (2014-05-15)

When Goa was merged in India in 1961 the civil code was retained in Goa. The original Code was replaced by the new Portuguese Civil Code of 1966. In 1981, the Government of India tried to evaluate if the personal laws can be extended to Goa and therefore appointed a Personal Law Committee. The move of the union was supported by the Goa Muslim Shariah Organization, but it was met with stiff resistance from the Muslim Youth Welfare Association and the Goa Muslim Women's Associations.²¹

INTERNATIONAL PROSPECTIVE

Though we consider our culture to be unique in it even though let's compare the international scenario in this regard. We will be discussing European civil code and law of Indonesia which is an Islamic country.

Family Laws in Europe

Though in 1984 European Union wants to have a European civil code but the matter of family law was kept out of it. The commission realizes that family law is related to culture so each of the country is free to make their family laws according to their culture and EU will not interfere in it. So European Civil Code has actually harmonies all other civil law in Europe except the personal laws.

European Civil code is not an old concept. It has come into picture to harmonies the private law in whole of European Union. Its main aim is to make a comprehensive law that will govern the core private law like the family law, the law of inheritance, property law and the Law of Obligations.

Let's see what is the structure of family law in United Kingdom does they have different laws

²¹ Partha S. Ghosh (23 May 2012). *The Politics of Personal Law in South Asia: Identity, Nationalism and the Uniform Civil Code*. Routledge pp. 19-22

for different community or they just have same law applicable for all irrespective of their culture and religion. Following are the laws that govern the personal relations in UK:²²

1. For Marriage and civil partnership

- Civil Partnerships Act 2004
- Marriage (Same Sex Couples) Act 2013

2. For Divorce and dissolution

- Matrimonial Causes Act 1973
- Children Act 1989
- Child Support Act 1990

3. For Domestic violence

- Family Law Act 1996
- Protection from Harassment Act 1997
- Children Act 1989

Personal Law in Indonesia

Indonesia has Islam as its official religion. But it does not force its law on its entire citizen irrespective of religion. The Indonesian legal system is based on Roman-Dutch law, modified by custom and Islamic law. People of different religion are allowed to follow their law in case of marriage and divorce. Out of the court divorces are not allowed in Indonesia unlike other Islamic countries. Even in the case of maintenance it secures the rights of both the

²² Available at: <https://iclg.com/practice-areas/family-laws-and-regulations/england-and-wales>

party. Law specifies that both spouses are equal and both are responsible for maintaining home and caring for children. Thus even after being an Islamic country Indonesia not only respects the rights of people of different religion but also it is very successful in implementing customized principle of Islam which is not discriminatory to one gender.²³

International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

The International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 are the two international conferences which was ratified by India. Under these conventions bounds India to enact a law with regard to gender equality. However, women in India continue to suffer under personal law. They are facing discrimination and inequalities as far as marriage, succession, divorce and inheritance²⁴. So, legal luminaries suggested enacting UCC irrespective of religion which would bring us a step closer to the ideals of the Indian Constitution and the provisions of the International law.

But can only uniform civil code solve these issues or there is any other method? Can't we just replace the discriminatory provisions like we have done in case of Inheritance law and made a room for a girl child in father's property or what we have done in case of tripple-talaq rather than changing the whole map of personal law we can just make the law little more accommodative for all the gender to secure the equality irrespective of gender and religion. These acts are same for all the community irrespective of all religion and culture in England.

²³ Available at: <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/indonesia-republic-of/>

²⁴ United Nations , Report of the Committee on the Elimination of All Forms of Discrimination Against Women, 8, Supp. No. 38, A/55/38, 22nd Session 17 Jan-4 Feb 2000 and 23rd Session 12-30 June, General Assembly Official Records, New York, 2000

APPROACH OF THE JUDICIARY

The Supreme Court for the first time, directed the Parliament to frame a UCC in the year 1985 in the case of *Mohammad Ahmed Khan v. Shah Bano Begum*, popularly known as the Shah Bano case²⁵. In this case, a penurious Muslim woman claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq from him. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India Y. V. Chandrachud 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 decision, nationwide discussions, meetings, and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the UCC; not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

In *Mary Roy v. State of Kerala*²⁶, the question argued before the Supreme Court was that certain provisions of the Travancore Christian Succession Act, 1916, were unconstitutional under Article 14. Under these provisions, on the death of an intestate, his widow was entitled to have only a life interest terminable at her death or remarriage and his daughter. It was also argued that the Travancore Act had been superseded by the Indian Succession Act, 1925. The

²⁵ AIR 1985 SC 945

²⁶ AIR 1986 SC 1011

Supreme Court avoided examining the question whether gender inequality in matters of succession and inheritance violated Article 14, but nevertheless ruled that the Travancore Act had been superseded by the Indian Succession Act. Mary Roy has been characterized 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*²⁷ to 'endeavour' framing a Uniform Civil Code and report to it by August 1996 the steps taken. The Supreme Court opined that: "Those who preferred to remain in India after the partition fully knew that the Indian leaders did not believe in two- nation or three "nation theory and that in the Indian Republic there was to be only one nation- and no community could claim to remain a separate entity on the basis of religion."

It is, however, to be noted what the Supreme Court expressed in *Lily Thomas case*²⁸. The Court said that the directives as detailed in Part IV of the Constitution are not enforceable in courts as they do not create any justiciable rights in favour of any person. The Supreme Court has no power to give directions for enforcement of the Directive Principles. Therefore, to allay all apprehensions, it is reiterated that the Supreme Court had not issued any directions for the codification of a Common Civil Code.

The Supreme Court's latest reminder to the government of its Constitutional obligations to enact a UCC came in July 2003 in *John Vallamattom v. Union of India*²⁹, when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The priest from Kerala, John Vallamattom filed a writ petition in the year 1997 stating the Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious

²⁷ AIR 1995 SC 153

²⁸ (2000) 6 SCC 224

²⁹ AIR 2003 SC 2902

or charitable purpose by will. The bench comprising of Chief justice of India V. N. Khare, Justice S. B. Sinha and Justice A. R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief justice Khare stated that, *“We would like to State that Article44 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 regrets that Article44 of the Constitution has 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.”* Thus, as seen above, the apex court has on several instances directed the government of realize the Directive Principle enshrined in our Constitution and the urgency to do so can be inferred from the same.

IMPLEMENTATION OF UCC IN INDIA

The constitutional provision makes UCC as part of DPSP as non-justiciable. The reasons behind the whole idea of DPSP and the compulsion of the founding fathers to put UCC in the DPSP was feared that nothing can be done if the state fails to achieve the DPSP. In response to such fears Dr. Ambedkar said: that in a democracy the voters would assess the performance of the government at the time of election and teach a lesson if the government fails to achieve the objectives stated in the DPSP. In free India the successive governments have enacted various statutes to govern the family relations irrespective of the religion of the parties. These includes,

- Special Marriage Act, 1954
- Hindu Code of 1955-56
- Dowry Prohibition Act, 1961
- MTPA, 1971
- Indian Adoption Bill, 1976

- 125 of CRPC
- Protection of Women from Domestic Violence Act, 2005
- Prohibition of Child Marriage Act, 2006
- Maintenance and Welfare of Parents and senior citizen Act, 2007
- Section 112 of Indian Evidence Act, 1972
- Compulsory Registration of Marriage
- Juvenile Justice Act, 2015

LAW COMMISSION REPORT

The Government of India through Ministry of law and justice has made a reference to the Law Commission in 17th June 2016 and gave it the task of addressing the issues concerning a UCC. The Commission appreciated this opportunity and address the ambiguity around the questions of personal law and UCC in India. In this paper the commission has tried to explain, acknowledge and finally suggest potential legislative actions which would address the inherent discrimination under all family laws. While analyzing the issue the Commission has attempted to best protect and preserve diversity and plurality of our cultural and social fabric of the nation.

The commission in its report stated that “*it is discrimination and not difference which lies at the root of inequality*”. While addressing these inequalities, a series of amendments were suggested by the commission to the existing family laws. Further the commission insisted that to limit the ambiguity in the interpretation and implementation of the existing law the codification of certain aspects of personal laws is necessary.

The question as to whether or not personal law are laws under Article 13 of the Constitution

of India has been raised in dozens of cases but the most notable one is *Narasu Appa Mali*.³⁰ Since no consensus can be reached on a UCC the Commission suggested that the best way forward is to preserve the diversity of personal laws but at the same time ensure that it do not contradict the fundamental rights guaranteed under the Constitution of India. In order to achieve this, it is desirable that all personal laws relating to matters of family must first be codified to the greatest extent possible, and the inequalities that have crept into codified law, these should be remedied by amendment.

The recent Supreme Court judgment *Shayara Bano v. Union of India*³¹ outlawing the practice of triple talaq has taken a first step towards ending personal law practices that are discriminatory towards women but largely on the premise that triple talaq is also not an essential practice of Islam suggesting that bad in theology cannot be good in law. The court has not delved on the supremacy of fundamental rights in case of a conflict between the personal law and fundamental rights and the premise of *Narasu Appa Mali* has not been overturned.

CONCLUSIONS

Article 44 of the Constitution of India requires the state to secure for the citizens of India a Uniform Civil Code throughout the territory of India. As has been noticed above, India is a unique blend and merger of codified personal laws of Hindus, Muslims, Christians, Parsis. Further it's not that every aspect of personal law is governed by personal law. There are certain personal laws that are applicable irrespective of religion and gender. However, there exists no uniform in the matter of marriage and divorce. In a country as diverse as it's very difficult to make single law personal law as the concept of marriage and divorce remains

³⁰ *State of Bombay v. Narasu Appa Mali* AIR 1952 Bom 84

³¹ AIR 2017 SC 609

different as we see different religion. As far as women empowerment and gender equality is concern it's better to remove inequality from each law rather than making uniform law. We have so many minorities living together in a close net. Unless and until their sentiments are respected there will be no mistrust but as we try to force uniformity on them it might led to protest. So the author will suggest that we should leave UCC on time and rather than focusing and wasting our energy convincing people we should scoop out the discriminatory practices in all the religion. Like, we have done in case of child marriage, widow remarriage, triple talaq, securing property right to Hindu women etc.

He has achieved it in the past we can do it in the future when every religion will believe in equality then no uniformity would be needed. Diversity in unity is the essence of India. We should respect that to keep the soul of India alive.

Times have changed, societies have changed and it is high time that laws should accommodate these changes. Education, economic prosperity, agricultural improvements, crosses border migration and western influence has spread its hand over every nook and corner of Urban India. On the flip side, rural settlements are still struggling with adherence to customary and superstitious beliefs in family matters. A uniform civil code will not only change the entire perception of how families are governed but also affect the psyci of many. Minority might feel insecure, villagers might feel take it as an attack on their culture. If we follow the way of removing the bad practices from each personal law book we will not require any UCC in India. Law commission itself in a constitutional paper has stated that A uniform civil code *"is neither necessary nor desirable at this stage"* in the country, the Law Commission of India.³²

³² Available at: <https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article24833363.ece>

SUGGESTIONS

1. In order to promote the spirit of unity in the country government rather than enacting the UCC and forcing them on people should make people aware about special marriage act as under this Act if a marriage is registered it will be governed irrespective of the religion of the people solemnizing the marriage. This will help in accomplishing the objectives enshrined in Article 44 of the Constitution.
2. UCC is not important rather the object of UCC is so rather than separating people from their customs and practices government can bring positive changes in the religious laws so that the objective of women empowerment can be achieved.
3. The Uniform Civil Code might sound good to eliminate discrimination but it's still not the right time to introduce UCC and force them on minority as there is lots of mistrust and bias. So government has to look out for the ways which can remove the discriminatory practices of every religion rather than wasting energy on UCC.
4. A committee of eminent jurists should be considered to evaluate the discriminatory practices and accordingly the government can bring legislation.