Discovery of fact :

Section 27 of the Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the police before disclosure statement of the accused is recorded is admissible in the evidence. (*Mehboob Ali and another v. State of Rajasthan*, 2016 (14) SCC 640)

Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of conformation by subsequent events. The doctrine is founded on the principle, that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information obtained from a prisoner is true. The information might be confessional or non inculpatory in nature, but it is results in discovery of a fact it becomes a reliable information. (*Pawan Kumar @ Monu Mittal v. State of Uttar Pradesh and another*, 2015 (7) SCC 148)

In view of the above legal principles enunciated by the Courts would clearly indicate the distinction between Admission Vs. Confession.

UNIFORM CIVIL CODE TO AN UN-UNIFORM BAND – THE LEGAL JUGGERNAUT

By

–DOKKA MANIKYA VARA PRASADA RAO*

The last step in making India a 'Secular State' will be making a Uniform Civil Code (UCC). When the divergent factors have been becoming stronger dividing the citizens, the arguments for and against UCC are coming to the fore, making UCC more and more intriguing. The recent referral[1] of the Union Government of "matters in relation to Uniform Civil Code" to Law Commission of India and the Law Commission's opinion[2] that UCC "is neither necessary nor desirable at this stage" and proposing a "series of amendments to personal laws of all religions and further codification of certain other laws", appear to have put a temporary full stop to the debate on UCC. But, the constitutional mandate in the form of the directive under Article 44 of the Constitution and concept of 'one nation and one law' on one hand and the un-uniform bands and their constitutional rights on the other hand keep the debate on UCC ever lively and relevant making the UCC a legal juggernaut, tempting a crack.

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1. Letter dated 17th June, 2016 of Union Ministry of Law and Justice addressed to Law Commission of India wherein the Commission was asked to examine matters in relation to uniform civil code.

2. expressed in the Law Commission of India's Consultation Paper on Reform of Family Law dated 31 August 2018

Article 44 of the Constitution of India requires the State to endeavour for the citizens a Uniform Civil Code throughout the territory of India. The phrase 'Uniform Civil Code' has no single meaning and has many connotations. Rudolph and Rudolph[3] identify five possible meanings for the uniform civil code: first, the colonial State's attempts to standardize and modernize law as an implicit move towards a common civil code; second for the modernist nationalists, a uniform civil code was a means to promote national integration; third, for civil rights activists, a uniform civil code signified the empowerment of marginalized categories, especially women and minorities; fourth, for religious minorities, the uniform civil code was a direct attack on their personal laws and their cultural identity; and finally, for Hindu nationalists, a uniform civil code was a way to eliminate cultural differences. For the Supreme Court UCC means to unify the nation to showcase it as a way to grant relief to women governed by oppressive personal laws.

Between 1985 and 1994 the Supreme Court gave divergent judgments[4] on UCC. In *Mohd. Ahmed Khan v. Shah Bano Begum and others*, AIR 1985 SC 945, the Five Judge Bench of the Supreme Court headed by Chief Justice YV Chandrachud expressed, in an *obitur,* its agony on the Uniform Civil Code stating that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter". Justice *O. Chinnappa Reddy* in *Ms. Jordan Diengdeh v. SS Chopra*, AIR 1985 SC 935, emphasised the importance of Uniform Civil Code holding that the present case is yet another which focuses attention on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case". The Court further identified the areas in which UCC has to be made: "It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste". The Court further held that "We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have find themselves in. We direct that a copy of this order may be forwarded to the Ministry of Law and Justice for such action as they may deem fit to take".

In the abovementioned two Cases as *obiter* the Court observed in favour of UCC. But, when a Writ Petition under Article 32 was filed with a specific prayer to issue a Writ of Mandamus for enacting of UCC, the court summarily dismissed it. In *Maharshi Avadhesh v. Union of India*, 1994 SCC Suppl (1) 713, Justice *K. Jayachandra Reddy* held "This is a petition by a party in person under Article 32 of the Constitution. The prayers are two-fold. The first prayer is to issue a writ of *mandamus* to the respondents to consider the question of enacting a Common Civil Code for all citizens of India. The second prayer is ..... These are all matters for legislature. The Court cannot legislate in these matters. The writ petition is dismissed".

Even after 75 years of the Constitution no sincere attempt has been made in securing the Uniform Civil Code. In *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635,

3. "Living with Difference in India" at page 55 as referred to by Ronojoy Sen in "Articles of Faith" at page 145

4. In two cases, *Shah Bano* and *Jorden Diengdeh*, the judges made *suo moto* observations and commented on the continuing inaction of the government on UCC. Whereas, in *Maharshi Awadesh* when the Petitioner prayed for a direction to the government to enact UCC, the Court dismissed the Petition.

the Supreme Court expressed the same view stating that since 1950 a number of Governments had come and gone but they had failed to make any efforts towards implementing the constitutional mandate under Article 44 of the Constitution. *Kuldip Singh,* J., held that Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are of a secular nature and therefore, they can be regulated by law. The Court in the case directed the Government to take immediate steps for implementing the mandate of Art.44 of the Constitution.

It is submitted that the decision of the Court in *Sarla Mudgal* is an *obiter dictum* only and cannot be considered as a direction. Later in, *AWAG 1997* and *Lily Thomas 2000* the Court clarified the same.

In *Ahmedabad Women Action Group v. Union of India*, AIR 1997 SC 3614, a Division Bench of the Supreme Court had widened the meaning of UCC by holding that "Article 44 itself recognises separate and distinctive personal laws because it lays down as a directive to be achieved that within a measurable time India should enjoy the privilege of a common uniform Civil Code applicable to all its citizens irrespective of race or religion". In *Lily Thomas v. Union of India*, (2000) 6 SCC 224, also the Supreme Court clarified on *Sarla Mudgal* stating that "*Kuldeep Singh*, J., in his judgment only requested the Government to have a fresh look at Article 44 of the Constitution in the light of words used in that Article". In making such a direction in *Sarla Mudgal* the Supreme Court has ignored the fears of minority communities.

However, the Court diluted its own verdicts on personal law reform in *Danial Latifi v. Union of India,* 2001 (7) SCC 740, by holding that "in interpreting the provisions where matrimonial relationship is involved, we have to consider the social conditions prevalent in our society".[5] The judgment in *Danial Latifi* was a deviation of the Court's stand on UCC. It is to be taken as an exception. As a whole it can be gathered that in cases dealing with personal law, the courts distant themselves from religion and sought to uphold a uniform law. By subordinating religious laws to the goal of a common civil code, the courts have not only tried to marginalize religion in the public sphere, but also eliminate minority rights based on religious identity.[6]

In *John Vallamatton v. Union of India*, AIR 2003 SC 2902, a Division Bench of the Supreme Court, through Chief Justice *V.N. Khare* had once again expressed regret for not enacting the Uniform Civil Code. However, regarding the application of tribal laws the Supreme Court had taken a different stand. In *Madhu Kishwar v. State of Bihar*, AIR 1996 SC 1864, where the Court had to decide whether there should be parity between male and female tribals in intestate succession, the majority judgment ruled in favour of maintaining tribal laws. However, Justice Ramaswamy dissented. The Court preferred to put on hold social reform and gender equality in deference to the sensibilities of the tribals, while it was unwilling to do so for Muslims.[7]

The first step taken by the Supreme Court towards framing Uniform Civil Code is the direction relating to compulsory registration of all marriages irrespective of religion. In *Seema v. Ashwani Kumar*, AIR 2006 SC 1158, the Court held that all marriages, irrespective of their religion be compulsorily registered.

5. Para 20 ibid
6. Article of Faith by Ronojoy Sen at page 149
7. Article of Faith Religion, Secularism, and the Indian Supreme Court by Ronojoy Sen, Oxford University Press 2010 at page145

The debate on Uniform Civil Code depicts the rift between two important Constitutional guarantees – one that of equality and non-discrimination as enshrined in Articles 14 and 15 and the other the religious freedom and cultural plurality under Articles 25 to 28 of the Constitution. The mandate under Article 44 for a Uniform Civil Code is a mere Directive Principle of State Policy whereas the freedom of religion guaranteed under Article 25 is a fundamental right. Whether there is a real conflict between the two. The Supreme Court in the above stated cases felt that there was no conflict. Whereas a real conflict ensures on the face. It is felt that as long as freedom of religion is guaranteed and people are religious no Uniform or Common Civil Code can be made.

How the State has been dodging the Uniform Civil Code? In spite of the Directive in the Constitution and the directions of the Supreme Court in the above-stated cases why the State has been delaying the Uniform Civil Code, are the intriguing questions. Whether a Uniform Civil Code can be made at all is another intriguing question.

As stated above as long as the people are religious no Uniform Civil Code is possible. In the matters relating to marriage, succession and such other things the religious philosophies and beliefs are diametrically opposite to each other. For example, in case of Law relating to Succession, for a Hindu Ancestral or Joint or Coparcenary property is very important and for a Muslim or a Christian it is nothing. When people have the right to believe in their religious principles how a compromise can be brought about and how a uniform law can be made? The question goes unanswered. It is submitted that a uniform law of Succession cannot be made at all, as long as people struck to their religions. Same is true even with marriage and other matters. For that, no UCC can be made as long as people struck to the religion.

The fallacy is, in fact State never opted for a UCC. The Constitution came into force in 1950 and the directive under Article 44 has been the directive for a UCC since 1950. But, in 1955 in the name Hindu Marriage Act and in 1956 in three other names religious laws[8] are made by Parliament. Subsequently also many other religious laws are enacted by the legislatures. Social and political reasons may be prominent for such actions. But, anyhow, State has been constantly acting contrary to the directive under Article 44 of the Constitution.

The one-sided politically motivated move towards a Uniform Civil Code may not be a realistic one. The traditional Indian value was diversity and flexibility. Uniform Civil Code imposed by majority on minority may not serve the purpose. Instead the reform within the religion, both majority and minority, may facilitate uniformity. In *Sarla Mudgal* in his separate judgment *R.M. Sahai*, J. had held: "The desirability of Uniform Civil Code can be hardly doubted. But it can concretise only when social climate is properly built by the elite of the society, statesmen among leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change." Justice K. Ramaswami Judge of Supreme Court of India in *Pannalal Basilal Pitti & others v. State of Andhra Pradesh & another*, AIR 1996 SC 1023: 1996 SCC (2) 498, had cautioned the nation against going for a UCC in one go. He held "In a pluralist society like India in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their off-shoots, the founding fathers, while making the Constitution, were confronted

8. Hindu Succession Act, 1956; Hindu Adoptions and Maintenance Act, 1956; Hindu Minority and Guardianship Act, 1956

with problems to unify and integrate people of India professing different religious faiths, born in different castes, sex or sub-sections in the society speaking different Languages and dialects in different regions and provided secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualise diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages". The word caution given by the great judge cannot be ignored. UCC should not be hurried.

Article 44 means a thing. It portrays a great objective and a goal to be attained.

A CRITICAL STUDY OF MULTIPLE IMPORTANCE SECTION 4 OF THE NEGOTIABLE INSTRUMENT ACT, *VIS-À-VIS* SECTION 12(3) OF THE STAMP ACT

By

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Whether it is mandatory the promissory note should contain two signatures of the maker or borrower one as a maker or borrower and the other towards cancellation of the adhesive stamps and omission of any of either of the two would lead to the instrument being void and inadmissible in evidence?

As a prefatory caveat in order to get hang over the centripode issue that eminates for consideration, it is desirable and profitable to extract the relevant provisions of the Negotiable Instrument Act and Stamp Act.

Section 4 of the Negotiable Instrument Act defines a promissory note as follows :

> "A" Promissory note is an instrument in writing (not being a bank note or currency note) containing an unconditional undertaking signed by the maker to pay certain sum of money only to or to the order of a certain person, or to bearer of the instrument".

It is thus evident the instrument *inter alia*, must be signed by the maker of the instrument.

Section 12 Indian Stamp Act

Cancellation of adhesive stamps

1(a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall while affixing such stamp cancel the same so that it cannot be used again.

(b) Whoever executes any instrument on any paper bearing adhesive stamp shall, at the time of execution, unless such stamp has already been cancelled in manner aforesaid cancel the same so that it cannot be used again.