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Uniform Civil Code: A Myth or a Reality

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ABSTRACT

India is a secular country having various cultures and traditions, yet having no religion of its own. It is a country with mixed culture, tradition, practices, yet there is no uniformity as such. Under the Constitutional provisions of Article 44 which basically talks about uniform civil code which will bring uniformity in all matters relating to personal laws of our country. During 18th century Warren Hasting provided that all Hindus and Muslims were to be governed by their respective personal laws in matters of inheritance, marriage, divorce and other religious usages. During the British era, the Britishers identified that ruling India was a difficult task due to the fact that India is a country with diverse communities having separate sets of beliefs and morals. Britishers tried to make a uniform Code for criminal matters and under the hand of Lord Macaulay Indian Penal Code was enacted in the year 1860, but however a common code for civil matters was not possible. Goa being under the colonial system of Portuguese adopted Goa Civil Code and became the first and the only Indian state to have Uniform Civil Code.

As the proverb goes “A Journey of thousand miles begins with a single step”- A small initiative has been taken to bring all personal laws under one roof.

The Legislators time immemorial has tried to frame a uniform civil Code but has ultimately failed. Is it only the religious factors or it's just that Art 44 of the Indian Constitution is embodied as a human being with no hands or legs?

Through this article, the Author have tried to find out the main reasons for failure of uniform civil code and have tried to show that the dreamland of making India fall under the ambit of UCC is actually a reality or simply a myth?. Hence the author will try to elaborate the present scenario of UCC and the future consequences of bringing UCC into our Indian society.

Keywords: *Secularism, Religion, Constitution, Uniform civil Code, personal law.*

I. INTRODUCTION

Majority of the legislations in India are religious neutral like our own Indian Penal Code 1860, Criminal procedure Code 1973, Indian Evidence Act 1872, Civil Procedure Code 1908 etc but some legislation like Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Succession Act 1956, The dissolution of Muslim Marriages Act 1939, The Muslim

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Women (protection of rights on marriages Act, 2019, Indian Divorce Act 1869, The Parsi Marriage and Divorce Act 1936 etc are religious specific which means person belonging to such religion can only use this legislations.

Uniform civil code is embodied under Article 44 (which comes under Directive principles of state policy) of the Indian Constitution which says- *‘The State shall Endeavour to secure for the citizens a uniform civil code’* (UCC).

Tracing back to the history of UCC, the Portuguese brought in the Goa uniform civil code to bring uniformity in all matters related to religious. The main aim of bringing such law was not to disrespect any particular set of religion/ religions but to stop discrimination against women which is still a burning issue in India. Under the British regime the British government submitted its report in 1835 focusing on the need to have codification in matters of evidence, contract and to keep this in view, not to include the Hindus or Muslims under this codification. B.N Rau committee was formed to codify the Hindu law in 1941 and the main task of such committee was to frame a common Hindu law and thus with the efforts of the committee report it included under Sec 2 of 1955 Act Hindus, Sikhs, Buddhists, and Jains under one name i.e. “Hindus”.

(A) What is uniform civil code?

Uniform civil code is a code which attempt to bring uniformity in all matters related to civil nature i.e. marriage, divorce, maintaince, succession etc. In other words UCC is implemented to eliminate discrimination and to eliminate all types of exploitation against women in matters relating to religion as well as personal laws. To solve all such problems there have been innumerable debates and arguments to implement the Uniform civil code in India at its earliest.

(B) What notable features are included in the Portuguese Civil Code, 1867?

In 1961, Goa became a part of India by the implementation of Goa Daman and Diu administration Act, 1962. The Portugal Civil Code commonly known as Portuguese Civil Code, 1867 came into force with the support and signature of the Indian Parliament.

The Goa Civil Code commonly known as Goa family Law is a civil law only applicable for the residents of Goa.

The features of Goa Civil Code can be summarized as follows:

- i. All marriages have to be registered under the statutory law and if no marriage is registered, the marriage will be declared void.

- ii. Secondly as soon as any two heterogeneous people marry the wife automatically gets half of the share in the property. This concept is known as communion of assets.
- iii. Thirdly the concept of equal division of property prevails among sons and daughters.
- iv. Fourthly the guardians are not allowed to disown their heirs from the property which they are entitled to.
- v. Fifthly Polygamy and bigamy is strictly prohibited
- vi. Sixthly the concept of mutual divorce with reason can be filed before the Court.

II. ACTUAL REALITY OF UCC

Although it seems like a picture perfect system of implementing the UCC, but the dark side of it remains a burning issue till date.

In the case of *Mohammad Ahmed Khan v. Shah Bano Begum*² 1985 the Apex Court held that there is an urgent need to implement a uniform code and further held that it is a matter of regret that Art 44 of Indian Constitution has remained a dead letter in the book. On the same year in the case of *Jorden Diengdeh v. S.S. Chopra*³ where in the Court held that a legislative intervention was warranted in order to provide for a uniform Civil Code relating to marriage and divorce.

10 years later in the Landmark case of *Sarla Mudgal v. Union of India*⁴ insisted an urgent need for UCC and held that fundamental rights relating to religion of members of any community would not be affected thereby. In this case the Court directed the then Prime Minister Narsimha Rao to take fresh look at Art 44 of the Constitution.

Recently in 2003 in the judgment of *John Vallamattom v. Union of India*⁵ again insisted on forming a UCC which would ultimately help in eradication of contradictions based on various ideologies.

In 2006 the Honourable Supreme Court of India in the matter of *Seema v. Ashwani Kumar*⁶ held that all marriages irrespective of any religion, caste, and creed shall have to be registered compulsorily. Furthermore in this case the Honourable Justice Arijit Pasayat and S.H. Kapadia directed the Centre and State to make laws for compulsory registration along with the consequences for disobeying such rules shall be framed. While this case became one of the

² (1985) 2 SCC 556

³ (1985) 3 SCC 62

⁴ 1955 SCC (3) 635

⁵ (2003) 6 SCC 611

⁶ AIR 2006 SC 1158

landmark cases in solving a large number of problems which Indian women had to face in day to day lives, like preventing child marriage, Stopping bigamy, helping the women to get right in property, maintenance, custody of children, and enabling widow to claim inheritance in property of husband

In 1954, the Special Marriage Act gave the citizens the right to have civil marriage among inter-caste and inter-religion without any discrimination. Furthermore, The Indian Succession Act, 1925 also came into force, which is again a sign that slowly we are moving towards a uniform civil code.

Followed by the recent landmark case of *Shayara Bano v. Union of India*⁷ popularly known as the Triple Talaq case where the Supreme Court struck down the old custom of talaq which was followed under Muslim law and criminalized it under a new legislation known as The Muslim women (protection of rights on marriage) Act, 2019.

The Supreme Court reiterated in the case of *T.M.A Pai foundation v. State of Karnataka*⁸ that secularism in India is preserved and recognized by several types of person of different sets of belief and faith and hence bringing uniform civil code will not be of such an easy task as Indian stay with different belief and faith which ultimately is their proud and identity.

III. FAILURE OF UNIFORM CIVIL CODE

The main failure of UCC is that it is clashing with the concept of Secularism which is embodied under the preamble of the Indian Constitution. During the framing of the Constitution, the people of this nation as well as migrants from Pakistan and Bangladesh were in a constant fear that their religion would be affected; the Constituent framer promised that their religion will not be affected in any way even after the partition of Bengal followed by Independence of India. Furthermore one of the features of Indian Constitution is secularism. The term Secularism was added to the preamble of the Indian Constitution by the 42nd Constitutional Amendment Act, 1976. Under a Secular state, there is no state religion and the state is completely detached from religious dogmas. It also implies that citizens are free to profess, practice and propagate any religion of their choice which can be traced under Art 25 of the Indian Constitution. In the case of *S.R. Bommai v. Union of India*⁹ the apex Court held that “Secularism is a basic feature of the Constitution”. Religion is an individual faith and belief which cannot be mixed with secular activities.

⁷ (2017) 9 SCC 1

⁸ (2002) 8 SCC 481

⁹ AIR 1994 SC 1918

While UCC focuses on following the concept of “one nation one code”, the secularism focuses on practice or professing any religion of our faith. Hence it becomes one of the drawbacks of not implementing the UCC in Indian Territory.

On other hand, UCC promotes Gender Justice by eliminating discrimination between a man and a women and giving equal status to both man and women in respect of property, inheritance etc. Under the Mitakshara School of Hindu Law there is a gross discrimination as girl has no right over their ancestral property and the rights are only conferred to them after marriage, i.e. to husbands’ property. Although after 2005 amendment, daughters have the equal right to that of son in the property of the parents, yet the question of daughter-in-law getting any share in the property of her in-laws remains a question till date.

Muslim laws are not any exception, the male members gets double the property than women under the same degree of relationship of the deceased through inheritance. Further under Muslim law, the father is the sole guardian of the person and the property of his minor child. Looking into the Christianity, the husband could easily file for divorce under the charge of wife being adulterous¹⁰ but the wife cannot file divorce solely on ground of adultery, it needs to be coupled with either cruelty, bigamy, or any such grounds¹¹. Hence this type of discrimination and exploitation exists against women from all sector of religion.

IV. CONCLUSION AND SUGGESTIONS

In the concluding remark I would like to say that till today UCC has been a failure in major aspects due to its improper implementation in our Indian society. The law commission of India further stated in 2018 that uniform civil code is “neither necessary nor desirable at this stage” in the country. It is true that religion is a sentimental issue in every individual’s life but we need to keep this in mind that accumulating all religion under one head is equally important. Thus the Commission further added that secularism cannot contradict the plurality prevalent in our country.

It is the need of the hour to bring all personal laws under one head and to curb all sought of violation and discrimination and to create a gender neutral country.

The present time has already ripen to implement the uniform civil code in India, although it is nowhere to be denied that religion have its place in life but it cannot overlook the benefits of public at large by its implementation.

¹⁰ Sec 75 of Christian Marriage and divorce Act, 1957

¹¹ Sec 76 of Christian Marriage and divorce Act, 1957

Now the question arises, which one shall prevail? The endeavor of the state to constitute a uniform civil code or the general will of the people considering their religious sentiments.

Only time will show how much the legislators, Executives, Judiciary had tried to endeavor to make India a Uniform civil society.
