

UNIFORM CIVIL CODE: PROFUSION OF PERSONAL LAWS AND ACKNOWLEDGEMENT OF SECULARISM IN INDIA

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INTRODUCTION :

Koenraad Elst said that “In the west, secularism implies pinpricking religious fraud and arrogance, but in India, secularists are the most eloquent defenders of myth and theocracy. Western dictionaries defines secularism as absence of religions, there interpretation of this term is quite contradicting from Indian perspective. In India secularism does not mean irreligiousness, it means plenitude of religions. The western interpretation of ‘secularism’ cannot prevail in a pluralist society like India. Secularism is accommodative and pluralist⁷⁸ . Secularizing India has to begin with a uniform civil code that ensures equal rights to all citizens without exceptions. “Religion impinges on every human rights in the civil law whether its birth, death, marriage, divorce, the religions have laws on all of these,” and so making India secular necessarily means demarcating religion out of our social institutions⁷⁹ .

Uniform civil code or UCC, these three words are enough to break the nation into overwrought exultation and agitated wailing. This civil code creates an atmosphere which divides the nation politically, socially, religiously. There can be many interpretations of this code but being a law student I would like to consider the legal implications of UCC. I strongly support the crusade for the implementation of UCC not because of any bias, but because it is the need of an hour. It is high time that India have a uniform law dealing with divorce, marriage, succession, inheritance and maintenance. The very first initiative taken by the supreme court of India concerning UCC was in the year 1985, where S.C in the case of Mohammad Ahmed Khan v. Shah Bano Begum⁸⁰ directed the parliament to bring UCC from the shadows where it was buried since its initiation in 1950. The issue was that whether a Muslim Woman is entitled to claim maintenance under Sec. 125 Cr.P.C⁸¹. It was held that Muslim women are entitled to claim to maintenance under section in 125 Cr.P.C. This is a secular provision and the benefit is available to every citizen irrespective of their caste or religion etc. It was further held that although the Muslim

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⁷⁸ MARC GALANTER, LAW AND SOCIETY IN MODERN INDIA 249 (1992)

⁷⁹ Romila Thapar ,lecture on Indian Society and Secularism at K. C. College in Mumbai.

⁸⁰ Mohd.Ahmed Khan Vs. Shah Bano Begum (1985)2 SCC 556

⁸¹ Section 125 in The Code Of Criminal Procedure, 1973, Order for maintenance of wives, children and parents.

law limits the husband's liability to provide for maintenance of divorced wife to the period of Iddat, it does not contemplate the situation envisaged by section 125 of the code of criminal procedure. The court held that it would be incorrect and unjust to extend the above principle of Muslim law to case in which the divorced wife is unable to maintain herself. The then chief justice 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."

Shah Bano case created havoc in the Indian society and after the judgment there was some unrest in the Muslim community. So, in consequence of that the Muslim women (protection of rights on divorce) act, 1986 was passed which states that the husband is liable to pay maintenance to the wife during iddat. But this unrest was resolved by the Hon'ble Supreme Court in Daniel Latifi & other Vs. Union of India⁸². Justice Kuldeep Singh in the landmark judgment of Sarla Mudgal v. Union of India⁸³ also opined "that article 44 has to be retrieved from the cold storage where it is lying since 1949". The controversy revolving around UCC has been secularism and freedom of religion enumerated in the constitution of India. In S.R Bommai v. union of India, as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the state by enacting a law.⁸⁴

Article 25⁸⁵ and 26⁸⁶ of Indian constitution guarantees right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of part iii of the constitution. It is argued by many that UCC if brought into action could jeopardize the secular status in this country. The prima facie objective of UCC is not to oppose secularism or violate article 25 and 26, it is based on a very simple concept that there is no necessary connection between religion and personal law in a civilized society. The UCC will not and shall not result in interference of one's religious beliefs relating mainly to maintenance, succession and inheritance. In the case of Daniel latifi & others Vs. Union of India "It was held that clause (1-a) of section 3 of the divorce act, 1969 does not limit the duty of the husband to pay maintenance only for the period of Iddat rather the duty is to make the necessary arrangements within the Iddat period but the arrangements has to be made for the entire life of the

⁸² Daniel latifi & others Vs Union of India 2001 Sc.

⁸³ Sarla Mudgal v. Union of India, 1995 AIR 1531, 1995 SCC (3) 635

⁸⁴ S. R. Bommai v. Union of India ([1994] 2 SCR 644 : AIR 1994 SC 1918

⁸⁵ "(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law - a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice; b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

⁸⁶ "Subject to public order, morality and health, every religious denomination or any section thereof shall have a right- a) to establish and maintain institutions for religious and charitable purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law

wife until she gets remarried. Clause (I-a) requires the Husband to make necessary provisions for the wife which means provisions like her shelter and the similar means whereas it also requires the payment of Maintenance Which Implies payment of Money. There are two interpretations one in which the payment etc. shall be made only for the Iddat period. This will render the provisions unconstitutional as it will violate Article 14 and 21. So the arrangements have to be made within the Iddat period but for the entire period till she gets remarried. This will serve the purpose of Act better and will bring it in line with the Cr.P.C. This Interpretation shall be followed that would render the statute Constitutional. In this Case it was also emphasized that the Act of 1986 is only available to the divorced woman and therefore a woman who is still having a subsisting marriage cannot file an application under the Act. She has to file it either under the personal law or the Cr.P.C.⁸⁷. It was held in *Iqbal Bano Vs. state of U.P.*⁸⁸ and another “That the direct a petition under section 125 can be filed by a non-divorced Muslim wife. Even if a petition has will filed under section 125 by a divorced Muslim wife the Magistrate is free to treat such petition as a petition under 1986 Act.”⁸⁹

UCC : EMPIRICAL STANCE IN THE MODERN INDIA :

India has multiplicity of family laws. The Christians have their Christian marriage act 1872, the Indian divorce act, 1869 and the Indian succession act, 1925. The Jews have their uncodified customary marriage law and their succession matters they are governed by the succession act of 1925. The Parsis have their own Parsi marriage and divorce act, 1936, and their own separate law of inheritance contained in the succession act which is somewhat different from the rest of the succession act. Hindus and Muslims have their own separate personal laws. Hindu law had by and large been secularized and modernized by statutory enactments. on the other hand Muslim law is primarily unmodified and traditional its content and approach . This diversity in personal laws also creates a state of non-uniformity. The present-day family law is thus a maze. There is no *lex locus* in India in matters of marriage, succession and family relations. Thus is very confusing and very complicated for a layman to understand the basic idea behind these laws. With a view to achieve a uniformity of law , its secularization and making it equitable and non-discriminatory , the constitution contains Art.44 of the directive principles of state policy which runs as follows “the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”⁹⁰ The main objective of this uniform code is to bring stability in the socialistic and political pattern of living, inter alia .It will integrate our nation as it favor all irrespective of any social discrimination like religion, caste or

⁸⁸ In *Iqbal Bano Vs. state of U.P.* and another 2007 SC

⁸⁹ Alka Bharati ,Uniform Civil Code in India –still a distant dream , American International Journal of Research in Humanities, Arts and Social Sciences

⁹⁰ Art 44 , constitution of India, 1950

gender. This uniform code will help in integrating India more than it has ever been since independence. A lot of the animosity is caused by preferential treatment by the law of certain religious communities and this can be avoided by a uniform civil code. It will help in bringing every Indian, despite his caste, religion or tribe, under one national civil code of conduct. Most predominately it will focus on women empowerment. Everyone will be treated equal and it promotes the true nature of secularism. If we look to the countries in Europe which have a civil code, everyone who goes there from any part of the world and every minority has to the civil code. It is not felt to be tyrannical to the minority which is quite a challenge in India.

Our first problem and the most important problem is to produce national unity in this country. We might think that we have got national unity, but there are many important factors which still offer serious dangers to our national consolidation.⁹¹The most general and frequently contended question is that how authentic will be the UCC? Not many know that UCC exists in the small state of Goa accepted by all communities. The Goa civil code collectively called family laws, was framed and enforced by the Portuguese colonial rulers through various legislations in 19th and 20th centuries. After the liberation of Goa in 1961, the Indian state scrapped all the colonial laws and extended the central laws to Goa but made the exception of retaining the family laws because all the communities in Goa wanted it. The main ideology behind the Portuguese civil code was to strengthen the family as the backbone of society by inculcating a spirit of tolerance between husband and wife and providing for inbuilt safeguard injustice but one spouse against the other.

The UCC in order to prevail should carve a balance between protection of fundamental rights and religious dogmas of individuals. It should be a code which is appreciated by all and which is just and proper according to a man or ordinary prudence, without any bias with regards to religious or political considerations. Here is an overview of the essentials of the UCC:

MARRIAGE AND DIVORCE:

The personal laws of each religion contain different essentials of a valid marriage. The new code should have the basic essentials of valid marriage. The new code should impose monogamy banning multiple marriages under any religion. Polygamy discriminates against women and violates their basic human rights. Thus, monogamy should be imposed, not because it is the Hindu law, but because it adheres to article 21 of the Indian constitution⁹²

⁹¹ Aariz nizam ansari , welmun'15 , a brief prepared for the simulation of the all India party meet.

⁹² Article 21 of The Constitution of India 1949: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

and basic human values. The next issue which will be taken into consideration will be the age limit in order to curb child marriages. The minimum age limit for a male should be 21 years and for a female should be 18 years. Punishment should be prescribed for any person violating this provision. Also, punishment for other persons involved in such an act, like the relatives, should be prescribed which would have a deterrent effect on the society. Another issue which requires due attention is the registration of marriage should be made compulsory. A valid marriage will be said to have solemnized when the man and the woman sign their declaration of eligibility before registrar and consent of both the parties must be taken irrespective of any discrimination. This will help to resolve and eradicate the confusion regarding validity of marriage. The grounds and procedure of divorce should be laid down specifically. The grounds enumerated in the code should be reasonable and procedure prescribed should be according to the principle of natural justice. There should be a provision for divorce by mutual consent.

SUCCESSION AND INHERITANCE:

This area is one of the most important areas in personal law which is clouded by intractable problems and disputes. There is no distinction between joint family property and self-acquired property in Muslim law but it exists in Hindu law. The Hindu undivided family (huf) formed under Hindu law, run business and own agricultural lands. Under the UCC, this institution of huf, peculiar to the Hindus, has to be abolished. There are many provisions which should be considered. Equal shares to son and daughter from the property of the father, whether self-acquired or joint family property. There should be no discrimination based on sex in the matters of inheritance. The provisions of the Hindu succession (Maharashtra amendment) act, 1994 can be taken as guiding principles wherein the daughter of a coparcener shall by birth become the coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive the right to claim by survivorship and shall be subject to same liabilities as the son. Provisions for inheritance of the property of mother, which she has self-acquired or acquired through her father or relatives must be enumerated. The provision relating to will should be in consonance with the principles of equity. There should be no limitations imposed on the extent to which the property can be bequeathed, the persons to whom such property by will for religious and charitable purpose.

MAINTENANCE:

Maintenance laws are different for different religions. Apart from personal laws, a non-Muslim woman can claim

maintenance under section 125 of code of criminal procedure⁹³. apart from maintenance of wife, there are also provisions for maintenance of mother, father, son and unmarried daughter under various personal laws. The UCC must be quite flexible in this category, a husband should maintain the wife during the marriage and also after they have divorced till the wife remarries. The amount of alimony should be decided on the basis of the income of the husband, the status and the lifestyle of the wife. The son and daughter should be equally responsible to maintain the parents. The reason for this being is that if she claims equal share of the property of her parents, she should share the duty to maintain her parents equally.

Thus based on these fundamental principles, an unbiased and fair UCC can be framed which will be in consonance with the Constitution.

CHALLENGES CLOUDING UCC:

The biggest obstacle in implementing UCC, apart from obtaining a consensus, is the drafting of this civil code. Should UCC be a blend of all personal laws or should it be a new law adhering to the constitutional mandate? It was objected by many people that UCC will be nothing but merely a repackaged Hindu law. The section of the nation against the implementation of UCC contends that in ideal times, in an ideal state, a UCC would be an ideal safeguard of citizens' rights. But India has moved much further from ideal than when the constitution was drafted 65 years ago. UCC not only promises integrity of the nation but also eradicates all sorts of social disparities. the vote bank politics which is like a plague to our Indian political system, it will be cured and India could breathe in the air of much developed, much wiser and much successful nation. If all Indians have same laws governing them, then the politicians will have nothing to offer to any community in exchange of their votes. The Supreme Court has time and again reiterated the importance of enacting a Uniform Civil Code. The Directive Principles of state policy under the Constitution of India also state that the State shall pass a Uniform Civil Code. Every modern nation which has truly embraced 'Secularism' has a Uniform Civil Code. It is time we have it too. Hence article 44 provides a uniform code which is imperative, both, for protection of the oppressed and for promotion of national unity and solidarity.

While explaining the reason for including Article 44 in the Directives Principles, it was observed, "When you want to consolidate a community, you have to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in Europe, which have a Civil Code, everyone who goes there forms a part of the world and every minority has to submit to that Civil Code. It is not

felt to be tyrannical to the minorities."⁹⁴ Many legal scholars have argued that in order to introduce or implement any progressive law a suitable ambience has to be created where all sections feel secure to sit and discuss the basic foundation and cull out the most progressive of their personal laws.

CONCLUSION:

Article 44 clearly lays emphasis on secularism as it establishes no connection between religion and personal laws. The philosophers and theorists who gave contradicting views on this civil code failed to acknowledge the fact that article 25 guarantees religious freedom whereas article 44 seeks to divest religion from social relations and personal laws. Religious practices which are violative of human rights & dignity are not autonomy but oppression. These practices create an apprehension in the mind of the general mass that this uniform civil code would hamper their rights and would be biased towards their religion. This unified code is imperative both for protection of the oppressed & promotion of national unity & solidarity. In the Indian republic there was to be only one nation-Indian nation-and no community could claim to remain a separate entity on the basis of religion⁹⁵. The dissenting view which states that that uniform civil code would be detrimental to the Muslim community as it clearly favors Hindu community is nothing but a havoc created by various political parties in order to support their vote bank policy. If we focus on the logical status and lay emphasis on legal perspective of this unified code than it would be noteworthy to see the stand of our judiciary on this issue, in the case of *Mudgal v. Union of India* the apex court gave an eye opening judgment by stating the fact that there is no justification to ignore Art. 44 in order to protect Muslim sentiments in particular.

It further opines that –

“Art. 44 is based on the concept that there is no necessary connection between religion & personal law in a civilized society. Article 25 guarantees religious freedom whereas Art. 44 seek to divest religion from social relations and personal law. Religious practices violative of human rights & dignity and sacerdotal suffocation of essentially civil & material freedoms are not autonomy but oppression. A unified code is imperative both for protection of the oppressed & promotion of national unity & solidarity. In the Indian Republic there was to be only one Nation-Indian Nation-and no community could claim to remain a separate entity on the basis of religion”. Article 25 of the constitution, which prescribes secularism, clearly highlights the fact that all religion shall be equal in the eye of the and that the followers of every religion shall have the same rights to profess and practice

⁹⁴ Constitutional Assembly Debates Volume VII pg. 547

⁹⁵ Uniform Civil Code – A Legal Perspective, **Amit Abhyankar**

their respective religions. Hence by stating that uniform civil code should only be applied to majority of the population and not to any particular religion is not secularism, but naked communalism. Thus the whole nation needs to get out of this wrong hypothecation that the uniform civil code is biased or could demolish the very existence of their particular as this system is need of the hour. If we claim to be one great nation which in true sense we are, we need to stand against such discrepancies and honor the very notion of secularism then there is no alternative to uniform civil code. Since every big step requires time and systematic planning and India being the most diversified nation cannot accept such system at once, an alternative remedy can be considered. Law commission can draft a comprehensive code with the consultation with the minorities' commission. Such code must appreciate the modern day concept of human rights of women and social justice. The statement of Hassan Imam, a member of Constituent Assembly, would be a perfect concluding statement.

“Talk of making India strong; ...it is all right and a very desirable thing to have a uniform law. It is a must thing because otherwise we would be guilty of making a nation within a nation, a community within a community”.



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