

UNIFORM CIVIL CODE: NEED OF AN HOUR

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ABSTRACT

India, a marvellous nation having the unity with so much diversity makes the world and people to think of it. This is an amazing spirit that with having so much culture, religions and customs we all going ahead with the single identity of Indian. Our Constitution also enshrined this principle and provides state guidance through its Articles, Preamble and Principles enshrined therein. The directive Principle of State policies is there in the Constitution which provide the guidelines which states have to follow and Uniform Civil Code is one of the Principle of it and it is a prime political agenda of India. Since Independence several decade has gone but still the position of the Uniform Civil Code is tumultuous in our Country. Some group even judiciary reiterated for uniform Civil Code several time while other group denied it, the 21st Law Commission Report is also based on this. This is controversial topic which needed a decisive solution because it also serves as a way forward to achieve our Constitutional Mandate.

INTRODUCTION

It is peculiar and incredible for the world that India along with so much diversities and the diversities having different sides survived in a Union which nobody thinks after Independence in 1947. There is something which can only be describes as an Indian Spirit. India survived because of its Constitution and its principle, Culture, tradition, its Political sagacity, its stalwart's leaders and at last with its veneration towards our civilization. To stiffen the Indian Union, we require Uniform Civil Code. The uniform civil code is a pervasive topic having several paradoxes to be clear which is also required by our country for achieving its constitutional goal.

The Constitution of India in Article 44 talks about the Uniform Civil Code as—the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

Thus enactment of the Uniform Civil Code is a task that has to pass through the different stages for its successful implementation like Religious Freedom, Secularism, Plurality and Uniformity. But Recently the Law Commission Report (21st Law Commission Report) of 2018 under the leadership of Honourable Justice B.S. Chauhan Reported the situation in very lucid manner with a thematic approach. Justice Chauhan through the Report quoted that Uniform Civil Code is neither necessary nor desirable at this stage.

MEANING OF UNIFORM CIVIL CODE

The Uniform Civil Code means the Civil Code which we can uniformly apply on the all the citizens of India irrespective of their religion.

PRESENT SCENERIO-:

The Civil law has different sides which included the Law of Property, Contract Law, Civil Procedural Law, Revenue Codes, Evidence Law, Family law etc.

The whole dispute of the Uniform Civil Code is only in respect of the Family law which comprises the Law for Marriage, Divorce, Adoption, Maintenance, Guardianship, Ward ship, Succession, Inheritance etc. And it is Family law or Personal Law only because of which we are not able to enact and enforce the Uniform Civil Code even after the reiterating of the Supreme Court in this issue through different Judgements. And it is the Family Code because of that only we require the Uniform Civil Code and the whole dispute is only with regard to the Family Code.

From the colonial time we are codifying¹ and endeavouring to bring Uniformity in the law. And we have succeeded up to large extent, thus we now have large number of Civil Code that are uniform and Progressive, For example-: Code of Civil Procedure 1908, Indian Oath Act, Indian Evidence Act, 1872, Transfer of Property Act 1963, Limitation Act 1963, Specific Relief Act 1963, and the Whole Penal law are unified and codified. The Family law is also codified in large proportion. The difference is only in respect of the privileges which we granting to one religion, certain Gender inequality issues, and the upholding of the custom and usages beyond the perspective of the Fundamental Rights. The whole issue and desire of Uniform Civil Code runs on this dual issue of gender inequality and privileges taken or granted to one religion over

other. And thus the whole debate and our want for the Uniform Civil Code rest itself in family law.

FAMILY LAW

HINDU LAW

Hindu personal law covers the large proportions of population of India that is 80% of the Population of India and The term Hindu comprises of the Hindu itself along with the Jain, Buddha, Sikhs, Arya Samaj, Brahm Samaj, Lingayat, Prarthana Samaj, Virshaiv and other Hindusⁱⁱ

Before Independence, the English Legislature itself initiated the task of codifying the Hindu law and after Independence in first decade we got success in codifying the almost whole Hindu Law with certain exceptions.

Thus the Hindu law comprises of:- Hindu Marriage Act, 1955, Hindu succession Act 1956, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956.

The Legislature through Amendments made the law progressive, the curb the evils of the society, took the pervasive approaching in removing the paradoxes and the Supreme Court through its judgements and the Judicial Activism also made the law progressive and helping it to achieve its object and scope. Hence, this is the present scenario regarding Hindus and we have codified the law to large proportion and also it is constitutionally valid, it is thoroughly reformed and upheld the principle of the Constitution.

MUSLIM LAW

Muslim Law is largely depended on their customs and personal law of religion. Parts of the Muslim law are codified in 1937 as the Muslim Personal Law (Shariat) application Act 1937. Certain other laws are codified or made as the Dissolution of Muslim Marriage Act 1939. This all lead to progress in Muslim Law. However, the large part of Muslim family law including marriage and succession are governed through their custom and usages.

CHRISTIAN LAW

Christian Personal Law is also largely codified and reformed as per the social concern with approach to achieve the Constitutional goal.

Thus Christian Law comprises of -: The Christian Marriage Act 1892, Indian Divorce Act 1869, Indian Succession Act 1925, Guardian and Wards Act 1890.

But still there are certain lacunas in the law which should be fulfilled either by Judicial Activism or Legislative methods and we are somehow succeed in it.

PARSI LAW

Parsi which constituted the very limited population of India, even there law has also been codified by the legislature and their laws are-: Parsi Marriage and Divorce Act 1936, Indian Succession Act, 1925, Guardian and Wards Act 1890.

JEWS

Jews also have their Matter govern through Indian Succession Act, 1925, Guardianship and Wards Act, 1890. And other matters are deals accordingly their custom and usages.

SECULAR LAW/ UNIFORM LAW

All this are the law which is according to the personal religion. But their also certain secular law has been prevailing in India which included-: Special Marriage Act, 1925, The Guardian and Wards Act, 1890, The Juvenile Justice Act, Code Of Criminal Procedure 1973.

WAY FORWARD

Contemplating the situation as mentioned above and current scenario as well as the demand of the nation we have reached a point where we have three options to deal with the conflagrated topic of Uniform Civil Code and that are-:

1. Not to completely repeal the present family law or customs but have legislative reform to make it progressive with respect to the Fundamental Right and Constitutional Principles.

If we focuses on this point that not to repeal the personal law and to make it progressive through the legislative and judicial reform than we find that we are from 1950 that after independence

itself we are moving in this path. Because both the legislature and Judiciary is working in this principle and this can be seen through the legislative enactment along with the Amendment like- The Hindu Succession Amendment Act 2005, The Muslim women Protection Rights on Divorce Act, 1986, Indian Divorce Amendment Act 2001, etc. and by establishing of the Law Commission to prepare report on this issue also like-: The first law commission report after independence try to focus on the reform of the marriage and divorce law. Law Commissions 242th Report on prevention of interference with the freedom of matrimonial alliance in a suggested legal framework should be taken on mind. Even the recent 21st Law Commission report of 2018 is also based on the Personal law which shows that the Uniform Civil Code is not desirable now.

Judiciary is also alike through its decisions and by establishing precedents making the law progressive and bringing the uniformity. There are several decisions are in this respect for example the decision abolishing tripal talak, decision upholding adoption, providing equal inheritance to women, maintenance, equal rights over marriage and divorce.

We also have to provide the attention to the tribal areas and their culture. For example Keral Nayar Samaj, Khasi Janjati. Etc. The tribal people are secured through the Constitutional Provisions which provided them special privileges because of their cultural heritage.ⁱⁱⁱ

There are several legislative reforms has been brought through the legislative Act, some of them are-----: Sati Regulation Act of 1829.Caste Disability Removal Act of 1850.The Hindu's Widow Remarriage Act, 1856.Indian Majority Act 1875.The Married Women's Property Act, 1882, The Hindu Inheritance (Removal of Disabilities Act) Act, 1928, The Child marriage Restraint Act, 1929.A Hindu woman's right to property Act, 1937. Special Marriage Act 1954.The Protection of Civil Rights Act, 1955, The Dowry prohibition Act, The Muslim Women (Protection of Rights on Divorce) Act, 1986 The Muslim Women (Protection of Rights on Marriage) Act, 2019, The Juvenile Justice Act, 2000 (As Amended in 2006).

This are the Legislative enactments along with the other enactment already enact and enforce with respect to the several other personal law reform and Civil Acts.

JUDICIAL ACTIVISM

There are several decisions of the Supreme Court which also made the law progressive and restrict the regressive practices and uphold them according to the Fundamental Rights and Constitutional Principles. Some of them are:-

Pragati Varghese v. Cyril George Varghese^{iv}, in this Case Petitioner challenged the provision of Indian Divorce Act 1869, on the ground of gender inequality and The Bombay High court recognise and upheld their plea. Remove the defect from the Act.

John Vallamattom v. Union of India.^v, This is the case of challenging the Constitutional validity of personal law under Article 32 of the Indian Constitution. It challenges Section 118 of Indian Succession Act, 1925 which violets' part III of Indian Constitution. The full Bench of Supreme Court of India has declare that rituals and ceremonies are integral part are only protected by Art. 25. It has been made clear that marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Art. 25 and 26.

In Some cases The Supreme Court applied Article 13 (1) to the Personal Law. It has considered Individual Fundamental Right are very important than unjust community rights. When an Individual will come against community injustice then it is duty of the court to treat those people as a citizen of India and their rights should be protected.

Danial Latifi v. Union of India^{vi}, This case clears the position of Muslim law over the Maintenance Act. And make the precedent for the reasonable maintenance for respective persons. "A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period by terms of Muslim women (Protection of Rights on Divorce) Act, 1986."

Shah Bano Case^{vii}, This case provided some more rights to women of Muslim Community which are already available to the women of other religion.

Mary Roy case^{viii} is important for bringing certain progressive reforms in the Christian law over succession issues. Albert Antony vs Union of India^{ix} is also pending in Supreme Court regarding the issue of the Family law. Naomi Sam Irani vs Union of India,^x is pending in Supreme Court to resolve the issues of family law. In the case of Shayara Bano v. Union of India, the Court deal with the issue of tripal talaq. In the Case of Shabnam Hashmi v. Union of

India^{xi} Court deals with the law of Adoption in respect of the Juvenile Justice Act by declaring it as enabling Act for the purpose of Adoption. Smt. Seema v. Ashwant Kumar^{xii} The Judgement shows the importance of compulsory registration of marriage is social life. Thus this judgement is very important in the development of the Uniform Civil Code. The state should follow it religiously and people also give positive response to the law.

Several Amendment of the Family is useful to be quoted here which also bring large progressive changes in the family law and other Civil law that are like- Hindu Succession (Amendment) Act of 2005 which removes the gender inequality from the Act. In 2001 reform of the Act of 1869, Juvenile Justice Act amendment of 2006. Thus from above reformative method is very much helpful in achieving the objective of the Uniform Civil Code and this way of maintaining the status quo and making it progressive through the legislature, precedents and social awareness is a good way, and this is the way on which are moving before independence and more strictly after the independence.

2. To Have the Uniform Civil Code with the exception of diversities regarding ceremonies, veneration and certain religious customs and usages which should confirm with our Fundamental Right.

This is the way which focuses on the uniformity of law through uniform code but through maintaining of nice conflicting balance between the religious and secular perspective and giving the way of religious freedom as enshrined in Article 25-30 and by maintaining the diversity and pluralism of the Country.

In present context there are several law which are based on this point that are-: Special Marriage Act 1954 which provides ground for the inter-caste and inter-relation marriage and Divorce, Indian Succession Act, 1925, The code of Criminal Procedure 1973 (providing the maintenance irrespective of the religion), The Guardian and Wards Act, 1890, The Domestic Violence Act, The dowry Prohibition Act 1961, the Juvenile Justice Act all this are the example of the Uniform Code. Secondly along with this we can also have the Uniform Civil Code for the civil matter but that should have the space for the religious freedom and the cultural diversities.

Indian Succession Act 1925 provides the provision of succession for different religion in specific way. The Code of Criminal Procedure 1973 (Section 125) provides for the maintenance irrespective of religion. The Provision contained in Section 125 to 128 are

applicable to all persons belonging to all religions and have no relationship with the personal law of the parties. (Nanak Chandra v.Chandra Kishore Agrawal,^{xiii};. Also see-: Khatoon Nisa v. State of U.P^{xiv} .,

Adoption is only recognised by the Hindu Law and for them there is specific law known Hindu Adoption and Maintenance Act, 1956, but the Christian, Islam and other personal law do not recognise the Adoption. The Amendment of 2006 in Juvenile Justice Act brings a enabling provisions and reform in the Act for its implementation. Even Judiciary also take a strong progressive view in the case of -: In Shabnam Hashmi v. Union of India^{xv}, the Supreme Court of India observed that the Juvenile Justice Act 2000, as amended in 2006, is an enabling legislation that gives a prospective parent, the option of adopting an eligible child by following the procedure prescribed by the Act, Rules and the Central Adoption Resource Agency guidelines, as notified under the Act. The Act is a small step in reaching the goal enshrined by Art.44 of the Constitution.

This way is also helpful but if we have to go ahead in this path than we have to bring vast changes in the law and this is very lengthy and time consuming process, but it is really quite helpful in achieving our objective.

3. To repeal all the Family law or personal law and to have Uniform Civil Code Absolutely.

This is the third point on which all crucial debates of the Uniform Civil Code rests. Peoples or citizen or all of us only talk about this point that all the personal law should abolish and to have a common uniform code for us. Even the Judiciary reiterated for this.

To consider the Uniform Civil Code thoroughly we can also study the civil law of Goa because Goa has the Uniform Civil code from very long time. But it has also certain lacunas that it has also the problem of gender inequality in succession, but it has been reformed by the legislature in 2015-16 by bringing the new succession Act.

Judiciary quoted several time for this “to have a complete Uniform civil Code for the Country and it is also embodied in Article 44.^{xvi}

In the case of Shabnam Hashmi vs Union of India^{xvii} the Court upheld the Adoption and also said that The court further observed that the legislature which is better equipped to comprehend

the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the J.J. Act, 2000 and the same must receive due respect. Conflicting viewpoints prevailing between different communities, as on date, on the subject makes the vision contemplated by Art. 44 i.e., a Uniform Civil Code yet to be full reached.

The Supreme Court in the case of John Vallamattom v. Union of India,^{xviii} quoted that A Common Civil Code will help the cause of national integration by removing the contradictions' based on ideologies. Marriage, Succession and like matter of secular character cannot be brought within the guarantee enshrined under Article 25 and 26.

While focusing on this point we also have to maintain the pluralism and the religious freedom of the Country which is a very difficult task. Thus this is also one method on which the largely the people who favour for Uniform Civil Code depends.

CONCLUSION

If we elaborate on all three points one by one we find that all three issues in its way leads to the single object of achieving the equality among every single citizen irrespective of the gender and religion.

As from it is clear that the uniform Civil Code is a controversial topic at the present stage but also proved to be a way for the betterment of tomorrow. Freedom of religion and Secularism is the dual concept which has to be managed regarding the question of Uniform Civil Code. Our Constitution recognises the Secularism as one of the core principle of our governance on the other side it also guarantee to practice, profess and propagate the religion but this has to be done under certain restriction as embodied in the Constitution itself^{xix}. We also have to look for the tribal areas and maintaining their sanctity as it is important to very large extent. Even Government also provide them certain privileges regarding the enforcement of the law over them.

There are certain situations which required to be rectified for example the precedent of the Narasu appa mali case^{xx} the High Court held that "personal law" is not included in the expression "laws in force" used in Article 13(1) of the Constitution. In the sabrimala case the Supreme Court in its Judgement by Justice Chandrachud quoted that the reasoning of the

Narassu Appa mali requires reconsideration and detailed discussion. And in this case the Court examines the freedom of religion and other fundamental right in a lucid and elaborative manner.

A Unified nation does not necessarily need to have uniformity. But the efforts have to be made to reconcile our diversity with undisputed argument. The Object of the Uniform Civil Code should see in the light of the Basic Structure and the Preamble of the Constitution itself.

After pursuing the Law Commission Report and Present Situation we can say that we have situation in which we first to have to define the Uniform Civil Code and secondly how much uniformity in law has been achieved and thirdly how much we have to achieve in upcoming days?

The reforms has been regularly brought by both Legislature and judiciary to reform and curb the customary and religious orthodox conservative practices which are regressive in the way of social justice and social growth of society. Along with Fundamental Rights regarding religion and culture we should also have to pay attention towards the principle enshrined in Article 14, 15, 21 and the objective of the Directive Principle of the state policies.

If we have to make or draft the legislation of so called the Uniform civil code in future than it should be done with at most care so that it should have the space for the religious freedom along with the freedom from tribal society their culture and usages. It should not be against the Pluralism and the heterogeneity of the society. In the traditional societies religion presumes to hold a vast, expansive jurisdictions to cover whole life. But in Modern democracy this licence has to be curtailed in order to reform social system but only with respect to achieve the goals which is beneficial for the society with the safeguard to prevent the religious and cultural rights. Cultural Diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territory integrity of the nation.

In the heterogeneous societies the uniformity of the law has difficulties. Hence better way forward is to have the heterogeneous or plural family law with regards to the religion and the law should be made uniform in its attainment of the object and scope and should be progressive for the attainment of the Constitutional Goals.

REFERENCES

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- ⁱ Charter Act 1833- Section 53.
- ⁱⁱ Section 2 Hindu Marriage Act, 1955, Section 2, Hindu Succession Act, 1956, Section 3, Hindu Minority and Guardianship Act, 1956. Section 2 Hindu Adoption and Maintenance Act, 1956.
- ⁱⁱⁱ Article 371 A, Article 371 F, Article 244, Schedule VI All this deals with the Privileges and prerogative rights given to tribal Areas. Even certain Criminal Law not applied directly to tribal area (Section 2 Code of Criminal Procedure). For Example in 2001 reforming of the Act of 1869 took place and Nagaland with the exception, the Amendment are not applicable their as owing to the Naga Accord of 1961.
- ^{iv} AIR 1997 Bom 349.
- ^v AIR 2003 SC 2902.
- ^{vi} (2001) 7 SCC 740.
- ^{vii} AIR 1985 SC 945.
- ^{viii} AIR 1986.
- ^{ix} Writ petition (s) (Civil) No. S. 1127/2015.
- ^x 10. Writ petition of 2017
- ^{xi} A.I.R. 2014 SC 1281.
- ^{xii} AIR 2006 SC 1158
- ^{xiii} (1969) 3 SCC 802.
- ^{xiv} Civil appeal No. 4789 of 1994, decided on 14-08-2002 (SC).
- ^{xv} A.I.R. 2014 SC 1281.
- ^{xvi} Sarla Mudgal v. Union of India (1995) 3 SCC 635
- ^{xvii} A.I.R. 2014 SC 1281.
- ^{xviii} AIR 2003 SC 2902
- ^{xix} See Article 25 to 30 of Indian Constitution.
- ^{xx} A.I.R. 1952, Bom. 84.