
UNIFORM CIVIL CODE: A CONUNDRUM

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ABSTRACT

This essay basically deals with the nature, idea and characteristics of Uniform civil code. UCC has been a contentious topic and an ongoing debate has been going on for its implementation in the society. The article explores the historical aspect of UCC and explains about how the personal laws in country evolved with growing time and culture. This essay deals with all the legal and social dimensions of UCC and how it impacts personal law including marriage, divorce, inheritance, and other related matters. Further, this article also goes through all the drawbacks which exist in personal law and how some of them has been changed according to social structure of society. It also examines that state in our country where UCC is in force and make an understanding about how personal laws in that very state is implemented. The article argues that the execution of UCC will create a balanced law for personal matters and will enhance uniformity. Later it also provides certain suggestion on how UCC could be implemented and also promotes the idea that it is high time UCC should be the subject of serious discussion and its application.

Keywords: Personal laws, Marriage, Uniformity, Customs, Communities

INTRODUCTION

India is a secular country wherein various religion are followed such as Hinduism, Sikhism, Buddhism, Jainism, Christianity, Islam etc. The term secular was included in Constitution by 42nd Amendment 1976 which propounded the concept of secularism in India for the very first time. The word secular means that every citizen is free to follow any religion they wish to and no one will be discriminated on the basis of religion. Furthermore all these religions are governed by their own personal laws for the matters of marriage and divorce, maintenance, adoption, and succession.

Due to existence of various religions and their distinctive statutory and customary laws, there is no uniformity in personal laws and its regulations which creates situation of discrimination between different communities. In order to solve this conundrum, constitutional makers came up with the concept of UCC i.e Uniform Civil Code but due to strong objection, it could not come into application. K.M Munshi, Rajendra Prasad, Mohammad Ismail, Mahboob Ali Beg, these leaders were in the opinion that just after independence our country was not ready to accept the concept of UCC as different religions had their own rigid practices.

UCC basically refers to unifying all personal laws in a set of secular Document which could be applied to every citizen. It is a combined law for entire country, applicable to all religious communities in their personal matter. Uniform Civil Code is mentioned in article 44 of Indian Constitution which states “The state shall endeavour to secure the citizen a uniform civil code throughout the territory of India”.¹ However Article 37 of Constitution itself makes it clear that DPSP shall not be enforceable by any court². UCC was incorporated in Directive Principles of State Policy to address the discrimination of vulnerable group of society and gradually with the evolution of social structure it could come into effect as Article 44 is indispensable provision binding the government and it is obligatory upon it to give effect to its provision.

EVOLUTION OF LEGAL PROCESS OF PERSONAL LAWS

In Ancient time, personal laws were mainly based on customs and ritual which every religion used to follow. Main source of Hindus were Shrutis consist of 4 Vedas namely Rigved,

¹ Article 44, Constitution of India.

² Article 37, Constitution of India

Yajurved, Samved, Atharvaveda, Smritis among them Manusmriti, Yajnavalkya smritis were Most prominent which contains rules, regulations, customs and practices.

During the medieval period with the advent of Mughals, Muslims were governed by Shariat law (Divine Law) which was ultimately based on Quran, Hadith, Qiyas and Ijma. There was no unified legal system of Muslims personal laws. It was Kazi, Mufti and Ulema who were considered as the religious entity to adjudicate the conflicts in civil matters.

Furthermore during the modern era East India Company took over the regulation of all civil rights in 1763. In 1772 Governor General Warren Hasting came up with judicial plan wherein he introduced the system of courts but no intervention was done in family matters. Later in 1781 a Regulating act came into effect which states that each religion will be governed by their respective laws.

Subsequently many constructive Act came such as Hindu Widow Remarriage Act 1856 which legalized the remarriage of widows in all the territory and jurisdiction of East India Company. Further Indian Divorce Act 1869 was passed which deals with divorce, grounds for dissolution of marriage, custody of child, alimony, distribution of property etc. This act was applied on Christians and Parsi as well. Later Christian Marriage Act 1872 was made to Regulated the Christian marriage and also attempted to reform the various provisions. In 1873 Special Marriage Act came into effect and allowed Inter caste and Inter religion marriages in society. Another act which was Guardian and Wards Act 1890 came to adopt a uniform age for all children to appoint a guardian also provided effective rules for guardianship. In 1925 Indian Succession was propounded to provide the inheritance rights to a widow. It was applied uniformly to all religion. For Muslim sect, an act was made named Muslim personal law (Shariat) Application act 1932 which formulated Islamic law code for Indian Muslims in their personal matters as Britishers were in the opinion that Indian should be governed according to their own cultural norms. Later in 1939 The Dissolution of Muslim Marriage Act came into force and allowed Muslim Women to obtain divorce under certain conditions.

After British era, in 1941 B.N. Rao committee was given a task to codify Hindu personal laws and under Indian Congress government led by Prime Minister Jawaharlal Nehru came up with Hindu Code bill which consists of major four acts which were:

- Hindu Marriage Act 1955 establishes monogamy, sapinda marriage, uniform age of

marriage also it allowed inter caste marriage through this Act. It remove caste disabilities for a Hindu marriage.

- Hindu Succession Act 1956 deals with the ongoing dissimilarities between son and daughter in the matter of property rights. It provided the equal rights to daughters in Hindu Coparcenary property as sons.
- Hindu Minority and Guardianship Act 1956 enhances the provisions of Guardians and Wards Act 1890 and also defines the relationship of guardian with minor and parents and their respective properties.
- Adoption and Maintenance Act 1956 which deals with adoption process by Hindu adult and defines provisions to provide maintenance to various family members including wife, children, parents.

These acts were made to eliminate the discrimination of people on the basis of religion, race, caste, sex, place of birth etc and also to enhance the status of women economically, politically and socially. These acts provide rights to women which were never given to them such as rights of inheritance, Divorce rights, succession, adoption etc but at the same time these act does not serve its purpose completely and still there are various drawbacks in personal laws of each religion as still infringement of Article 14, Article 15 takes place in the society.

IMPEDIMENTS OF PERSONAL LAWS

MUSLIM – Personal laws of Islam religion has not yet been evolved completely which cannot provide gender justice and prohibit discrimination against women. After all of this evolution in society, there are still numbers of drawbacks in its provision such as:

Polygamy: It is a custom of having more than one wife at the same time. It is generally considered as a social evil in India. Polygamy is considered as a crime under section 494 IPC but this practice of limited Polygamy is allowed in Muslims as they are allow to have four wives at a same time . Even in modern time this practice quite prevalent in Muslim community which leads to violation of Right to Equality enshrined in Article 14 of Indian Constitution, Article 15(1) provides that “the state shall not discriminate against any citizen on grounds only

on religion, race, caste, sex, and place of birth or any of them.³ Generally religious orthodox people who favours the concept of polygamy takes defence of Article 25 that provide Right to freedom of profess, propagate and practice any religion. It also propounded doctrine of essentiality in which religious freedom was restricted to matters deemed 'essential' to a religion.

Divorce: The practice of divorce in Muslim is quite rigorous and inclined in favour of men completely therefore Muslim women are always being exploited as they were never given rights of dissolution of marriage because rights of divorce was always inculcated with Muslim man. The practice of Talaq-e-Biddat is about giving divorce to wife by Muslim man just by pronouncing talaq three time in one go even for no reason. In 2017 Supreme Court in Shayara Bano v. UOI⁴ declared this practice unconstitutional as it was arbitrary in nature. Another evil practice named as Nikah Halala which states that if Muslim women wants to remarry her husband after divorce then she has to marry another person and get divorce from him after consummation. This process not only harm the dignity of women but also affect freedom of choice.⁵

Maintenance: Prior to the Supreme Court decision in Md. Ahmed Khan v/s Shah Bano Begum Divorced Muslim women was not entitled to any maintenance from her husband after expiry of Iddat period. Later in Shah Bano case⁶ Supreme Court held that divorced Muslim wife is entitled to get maintenance under sec. 125 CRPC even after Iddat period.⁷ Subsequently the parliament passed an act titled The Muslim Women (Protection of Rights on divorce) Act, 1986, that annulled the judgement given in Shah Bano case. The court in the mean Time interpreted these provision in a manner that is suffice for the protection of rights. This act is challenged in Danial Latifi v/s Union of India⁸, the court declared the act unconstitutional as it Violates Art. 14, 15, and 21 of Indian Constitution. Further the court held that sec. 125 CRPC allows Muslim women to seek fair and reasonable maintenance from their husband as the Hindu women get.

Adoption: There is no provisions for adoption for Muslims under Muslim law. In Shabnam Hashmi v/s Union of India Supreme court allowed Muslim to adopt children and held that

³ Article 15, Constitution of India

⁴ Shayara Bano v/s Union of India [(2017) 9 SCC 1]

⁵ Article 21 of Indian Constitution

⁶ (1985) 2 SCC 556

⁷ Md. Ahmed Khan v/s Shah Bano Begum and Ors, AIR 1985 SC 945.

⁸ Danial Latifi v/s Union of India (2001) 7SCC 740.

adoption is fundamental right accessible to all citizens regardless of their religion⁹. Also the Juvenile Justice (Care and Protection) act ¹⁰allows the adoption for every religion, caste and community.

Courts and procedure: There is no systematic provision under Shariat law about how to approach courts and what procedure to follow. Generally all the contentions among Muslim people are dealt by Qazi and Mufti who are adjudicator by the virtue of religion and solve all issues. The problem here arises is that Qazi and Mufti are not legal entity so somewhere there is lack of legal provision in their judgment.

CHRISTIAN-

In India different communities are permitted to observe their own personal laws of marriage, inheritance, adoption, or divorce. Christians are governed by their own personal laws. Marriage in Christians is regulated by the Indian Christian Marriage Act, 1872. At the same time catholic church does not recognise divorce. Hence the dissolution of marriage between a man and a Women in Christian community is govern by Indian divorce act 1869. Also, Sec 10 of this act prescribe two years of Separation for Christian. Couples wanting divorce by mutual consent, this contention is discussed in Albert Anthony case. In Saumya Ann Thomas v/s the union of India ¹¹Kerala high court held that this separation period for two years was arbitrary and oppressive and should be read as one year. Initially this act provide adultery¹² as a ground for divorce to husband only but this provision is struck by Bombay high court in Pragati Varghese v/s Cyril George.¹³

Indian succession act 1925 that is applicable to Christians, In John Vallamattom case ¹⁴the court states that sec 118 was discriminatory as it Impose unreasonable restrictions on their donation of property for religious or charitable purpose by will.

PARSI-

In matters related to marriage and divorce Parsis are govern by their Parsi marriage and divorce

⁹ Shabnam Hashmi v/s Union of India, AIR 2014 SC 1281.

¹⁰ Act of 2000

¹¹ W.P (C) No. 20076 of 2009

¹² Section 497 IPC

¹³ Pragati Varghese v/s Cyril George 1997(4) Bombay C.R., 551.

¹⁴ John Vallamattom & Anr vs UOI

act. Indian succession act 1925 is applicable to these in the matter of succession. When Parsi man marries a Non Parsi women, their child is considered legitimate. But when Parsi women marries a Non Parsi man their child is considered as Non legitimate.

JEW-

There is no specific statute for the regulation of marriage and there is also no statute providing matrimonial relief amongst the Jews in India.

Therefore these previously discussed disparity among different personal laws lead to need for the uniform civil code in this country.

LAWS THAT ARE UNIFORM IN INDIA

GOA UNIFORM CIVIL CODE

UCC means equality with respect to all rights related to personal matters. Goa is the only state in India where UCC finds application and apply to all facet of life including equality in property rights, matrimonial rights etc. This is applicable to all irrespective of their religion.

Differences with Indian laws:

- Married couple can jointly own or acquire ownership of all assets before/after their marriage. In case of divorce, each spouse is entitled to half of the property. However, the law also allows prenuptial agreements that can provide for a different division of assets in the event of divorce.
- Parents cannot disinherit their property entirely at least half of their property should be pass on their children.
- Muslim man cannot practice limited polygamy and also there is no provision of verbal divorce.

Specific provisions for certain communities:

- When wife of a Hindu fails to deliver child by the age of 25 or if she fails to deliver male child at 30. Husband is allowed to marry another Women in presence of first wife

(in this case bigamy is allowed).

- Roman Catholics can solemnize their marriage in church after getting NOC from civil registrar.
- Inequalities between adopted and illegitimate child.

Special Marriage Act¹⁵– This act is passed by parliament to permit individuals of any religion to have a marriage. This statute promotes social harmony, individual autonomy, and equality in Indian Marriage.

CONCLUSION AND SUGGESTION

In India each community have their own personal law by which they are governed and due to this a very dramatic situation arises as sometimes this freedom provided under article 25 lead to the violation of other fundamental rights enshrined in Part 3 of the Constitution. Article 25 guarantees freedom of conscience, profession, practice, and propagate their religion to all citizens and support people to be govern by their personal law also this freedom violates equality code mentioned under Article 14 as people from each religion are regulated by different laws. In order to resolve this problem Uniform civil code should come into force in such a way that it provides equal treatment to all religion and at the same time it preserves the essential practices of their religion. Essential practices are those norms that are fundamental in nature and not performing or following them would lead to drastic change in religion itself. One of the suggestions about how UCC could be implemented is that a single code of personal laws should be made which will be applied to every religion and certain exceptions should be given to each religion so that they can follow their essential practices. This definitely will lead to enhancing the concept of equality and secularism. And with the passing time people would be able to accept the idea of Uniform Civil Code.

¹⁵ Act of 1954