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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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UNIFORM CIVIL CODE: A UNIFIED TAKE ON FAMILY LAWS

AUTHORED BY - SHREYA GUPTA*

I. Introduction

India is a country rich in religious and cultural diversity where all religions have their personal laws derived from their respective religious customs. In a way, it can be said that our personal laws are fragmented in nature and there is no common law to monitor the interpersonal relationships applicable in our country yet. Since many years now there have been debates around the need for a common law that would address all matters regardless of the religion under the same framework. It is pertinent to note that Goa is the only state in India that has adopted its own Uniform Civil Code. Through this paper, the author aims to critically examine whether there is a need of adopting a uniform civil code throughout India.

A uniform civil code refers to a single law, applicable to all citizens of India in their personal matters such as marriage, divorce, adoption, custody and inheritance. It is intended to replace the current system of fragmented personal laws, which is currently within different religious communities. At present, Hindu personal law is codified into four parts: the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act. The term 'Hindu' also includes Sikhs, Jains and Buddhists for the purposes of these laws.¹ Muslim personal law is not codified per se, and is based on its religious texts, though certain aspects of these are expressly recognized in India in acts such as the Shariat Application Act and Dissolution of Muslim Marriages Act. Christian marriages and divorces are governed by the Indian Christian Marriages Act and the Indian Divorce Act respectively while Zoroastrians are subject to the Parsi Marriage and Divorce Act. Then, there are more 'secular' laws, which disregard religion altogether, such as the Special Marriage Act, under which inter-religion marriages take place, and the Guardians and Wards Act, which establishes the rights and duties of guardians.

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¹ Section 2, The Hindu Marriage Act, 1955

This paper will examine the need of a Uniform Civil Code by setting out the background of the debate which started during the framing of the Indian Constitution in Section II. The paper then goes on to lay out landmark judgements passed by the judiciary that suggest the need of a UCC in section III. In section VI, possible advantages and disadvantages are discussed at length. Section VII explains the political agenda around a UCC in the country and how political parties are reacting to it. This paper finally concludes with section VII with the author's final observations and comments

II. Background on UCC

The debate around a uniform civil code dates back to the British-Colonial era. In 1840, the Lex Loci report had suggested the need for uniformity in the codification of various Indian Laws relating to crimes, contracts and evidence. It was however recommended that personal laws should be kept outside codification due to vast diversity of religions in India. In addition to this, the Queen's Proclamation of 1859 promised absolute non-interference in the religious matters. So, while criminal laws were codified and became common for the whole country, personal laws continue to be governed by separate codes for different communities. In 1941, the government was compelled to organize the B N Rau Committee to codify Hindu law due to an increase in legislation after the end of British rule. The Hindu Law Committee was charged with examining the requirement of common Hindu laws. In line with the scriptures, the group suggested codifying Hindu law to provide women equal rights. The 1937 Act was examined, and the committee proposed a Hindu marriage and succession civil code.²

Post-independence, this debate continued with the drafting of the Indian Constitution. It was finally settled by the means of vote. By a 5:4 majority, the fundamental rights sub-committee headed by Sardar Vallabhbhai concluded that the inclusion of UCC in Part IV of the constitution was outside the scope of Fundamental Rights. Presently, the provision is given under Article 44 of the Indian Constitution which states that "*the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.*" It is listed as one of the DPSPs in the Constitution which means that it cannot be enforced in a court of law like the fundamental rights. Furthermore, it is a prerogative of the state to introduce UCC. The whole issue of UCC boils down to the apparent contradiction between two sets of rights that are individual rights and collective rights. Essentially UCC is about giving primacy of individual rights over group. As envisioned

² Business Standard, *What is Uniform Civil Code*, <https://www.business-standard.com/about/what-is-uniform-civil-code>

by Ambedkar, the UCC seeks to safeguard disadvantaged groups, including women and religious minorities, while simultaneously fostering patriotic fervor via togetherness. When passed, the code would streamline rules that are now separated based on religious views, such as the Hindu code bill, Sharia law, and others. The code will unify and simplify the complicated regulations surrounding marriage ceremonies, inheritance, succession, and adoptions. Then, the same civil law will apply to all people, regardless of their religion.

III. UCC and the Indian Judiciary

The disagreement between secular and religious authorities over a uniform civil code eventually settled until the *Shah Bano Case*³ in 1985. Bano, a 73-year-old woman, wanted maintenance from her husband, Muhammad Ahmad Khan. After 40 years of marriage, he divorced her by triple Talaq and refused her regular maintenance; this type of unilateral divorce was authorized under Muslim Personal Law. The case went up to the Supreme Court of India and proved to be a landmark case for the future of rights of Muslim women in India. The judgement passed by the Supreme court in this case prompted the then ruling party headed by Rajiv Gandhi to adopt the Muslim Women (Protection of Rights on Divorce) Act, 1986, which modified the Supreme Court's secular ruling and effectively denied even the most impoverished Muslim divorcees the right to alimony from their former spouses. The court also deliberated on the need for a Uniform Civil Code in India and called Article 44 of the Constitution a dead letter (para 35). The court further stated that:

“A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so.” (Para 35)

The discussions around UCC started to take rounds again with the case *Sarla Mudgal, President, Kalyani & Ors v. Union of India & Ors*⁴. In this case, 4 petitions were combined by the Supreme Court. The question was whether a Hindu husband who had been married under Hindu law may marry again if he converted to Islam. The Hindu marriage solemnized under Hindu law can only be dissolved on one of the grounds mentioned in the Hindu Marriage Act 1955, according to the court. Converting to Islam and remarrying would not automatically invalidate the Hindu marriage

³ *Mohd. Ahmed Khan v. Shah Bano Begum* 1985 AIR 945.

⁴ AIR 1995 SC 1531

under the act, therefore a second marriage solemnized after converting to Islam would be illegal under section 494 of the Indian Penal Code. The court argued that the Uniform Civil Code is required in the Indian legal system to prevent Indians from infringing on one another's personal law. The court also ordered the Government of India, through the Secretary of the Ministry of Law and Justice, to produce an affidavit detailing the actions it has done to secure a UCC for Indian nationals (paras 34,35 and 36). Even after this judgement not much was done to bring in UCC and the deliberations went in vain.

Even in 2019, the Supreme Court in *Juso Paulo Coutinho v. Maria Luiza Valentina Pereira & Anr*⁵ observed that:

“It is interesting to note that whereas the Founders of the Constitution in Article 44 in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard. Though Hindu laws were codified in the year 1956, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country despite exhortations of this Court in Mohd. Ahmed Khan v. Shah Ban Begum, (1985) 2 SCC 556: 1985 SCC (Cri) 245 and Sarla Mudgal v. Union of India” (Para 24).

Recently in 2021 the controversy around having a common law in family matters emerged again. In *Satprakash Meena v. Alka Meena*⁶, the Delhi High Court observed that the Indian society is becoming more homogeneous, youth of India belonging to various tribes, castes and religions should not be forced to grapple with issues due to conflict of personal laws. These observations came as a challenge to the Family Court's order holding that the provisions of the Hindu Marriage Act, 1955 would not be applicable to the members of the “Meena” community as it is notified Scheduled Tribe. It was further argued that if courts hold that the Scheduled Tribe “Meena” is not governed under HMA, it would lead to enormous difficulties for women as bigamy would be recognized and could lead to desertion of women. On the other hand, the respondent submitted that judgments from various courts, including Supreme Court, clearly stated that even Hindu customs are being followed, it would not automatically mean that the provisions of the HMA are applicable in the case if members of a notified Scheduled Tribe. After deliberation on facts and precedent, the Delhi High Court found that in the case of divorce proceedings, if proper tribal customs are not established or the parties admit to following Hindu customs and rites, there is no

⁵ CIVIL APPEAL NO. 7378 OF 2010

⁶ C. R. P. 1/2021 CM APPLN. 332/2021

reason to hold that the provisions of the HMA are not applicable. Elaborating on the issues of conflicts arising out of personal laws, the court recalled the judgement in Shah Bano case in which it was held that “*A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies*” (Para 50). The court also discussed the observations made in *Ms Jordon Diengdeh v. S.S Chopra*⁷, amongst other things stated that “surely the time has now come for a complete reform of law of marriage and make a uniform law applicable to all people irrespective of religion or caste” (Para 51). The court also noted that despite three decades being passed, no clear steps have been taken in this regard. Therefore, the court directed the present judgement to be placed before the Law Ministry for appropriate action (para 57).

In 2021, the then CJI S.A. Bobde lauded Goa’s civil law system, stating that the state adhered to the kind of Uniform Civil Code envisioned by the framers of the Indian Constitution. He said that “*Goa has what the constitutional framers envisaged for India- a Uniform Civil Code, and I have had the great privilege of administering justice under that code. It applies in marriage and successions, governing all Goans, irrespective of religious affiliation. I would request all those intellectuals to simply come here and watch the administration of justice to know what it turns out to be.*”⁸

The above instances clearly suggest that the Indian judiciary system has time and again stated the need of a UCC in dealing with matters related to matrimony, adoption, succession etc., and they have tried to reinitiate their stance through various landmark judgements.

IV. Prospects and Problems

The Uniform Civil Code will encourage justice, equity, and national integration, as well as gender equality and women’s welfare in India. In the absence of a unified civil code, judges interpret laws based on their preconceptions and beliefs. The introduction of the UCC will eliminate this interference and promote consistent provisions for women’s welfare. A UCC would help in addressing the violation of women’s rights found in personal laws of most of the religions as these laws are very patriarchal in nature. The Consultation Paper by the Law Commission also mentions that “*Various aspects of prevailing personal laws deprive women.*” [1] Only through

⁷ 1985 AIR 935, 1985 SCR Supl. (1) 704

⁸ Aneasha Mathur, India Today, *CJI hails Goa’s Uniform Civil Code, says intellectuals should see how justice system works in state* (March 29, 2021), <https://www.indiatoday.in/india/story/cji-hails-go-ucc-says-intellectuals-should-see-state-justice-system-1784698-2021-03-29>

enforcing Article 44 will the fundamental aim of India's unity and integrity, as stated in the preamble, be realized.

In addition to this, the UCC will give all people the same status, regardless of whatever group they belong to. It will promote national consolidation as different communities are subject to different set of laws, it amounts to discrimination based on religion. This discrimination will be done away with once there is a uniform civil code. Various faiths have significantly diverse personal laws, and there is no uniformity in how problems such as marriage, succession, and adoption are handled for persons from different groups, violating the very basis of the right guaranteed under Article 14 of the Constitution. [2]

However, on the other hand, the concept of a UCC contrasts with the right to religious freedom, despite the fact that it strengthens equality before the law (Article 25 and Article 26 of the Constitution). Separate personal laws are one method that people have exercised their freedom to practice their own religion, which is especially significant for minorities. The UCC has the potential to undermine this right, marginalize minorities.

Professor SP Sathe, a well-known legal luminary also commented on the debate around the introduction of a Uniform Civil Code. He said that the assumption that uniformity in laws will bring integrity and harmony needs to be questioned itself. He then goes on and gives the example of how there were disputes between various linguistic groups such as the 'dalits' and the 'savarnas.' He also explained the difference in usage of the words "common" and "uniform." He added that the word used in Article 44 is "uniform" and uniform laws doesn't necessarily mean common laws. He further explained that *"the usage of word "uniform" means that all communities must be governed by uniform principles of gender justice and human justice. A uniform law would mean different personal laws based on uniform principles of equality of sexes and liberty of the individual."* [3]

Furthermore, the Law Commission of India released a 185 pages consultation paper on Reform of Family Law in 2018. The Commission suggested that *"cultural diversity cannot be compromised to the extent that our urge for uniformity becomes a reason for threat to the territorial integrity of the nation."* [4] Moreover, the commission suggested that a uniform civil code is not necessary in India right now.

VI. Suggestions and Conclusion

Implementation of a UCC can be of a sensitive nature for specially those belonging to the minority sects. No community should feel neglected or discriminated and thus it is pivotal that through discussions are held amongst the various religions and their leaders in consonance with the law makers. Rather than exploiting this issue as an emotional issue to achieve electoral benefit, political and intellectual leaders should strive to reach an agreement. The issue is not one of minority protection or even national unity; rather, it is one of treating each human being with dignity, which personal laws have so far failed to accomplish.

Article 44 states that each state should “secure” a Uniform Civil Code for its citizens. Therefore, the term “secure” does not imply imposition. Thus, UCC should be made optional for citizens like Special Marriage Act, 1954. We can only aim to achieve full justice for the society if we follow the fundamentals of our Constitution.

It is crucial to understand that people are habitual and comfortable with the old laws, whenever a UCC is applied there will be protests and dissent from some sectors of the society. However, this does not mean that implementation is done in a haphazard way. Every new law requires time for people to get adjusted to it and accept it. Allow it to advance until it reaches a degree of modernity at which people begin to insist on being ruled not by the personal rules of the past, but by neutral, progressive laws. UCC can only arise through a process of evolution that safeguards India's legal heritage, of which all personal laws are equal parts. Significant sensitization efforts are required to alter present personal laws, which should be led by religious communities. The people need to be educated and made aware about the possibilities that this reform could bring for which sensitization workshops should be held.

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