

LEGAL CHANGES AFTER THE UNIFORM CIVIL CODE “WITH REFERENCE TO PERSONAL LAWS”

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INTRODUCTION

India is a country with many religions, customs and practices. A uniform civil code will help in integrating India more than it has ever been since independence. It will help in bringing every Indian, despite his caste, religion or tribe, less than one national civil code of conduct. All the laws related to marriage, inheritance, family, land etc. should be equal for all Indians. Uniform civil code is the only way to ensure that all Indians are treated same. It just means that every person will be treated the same and all citizens of India have to follow the same laws whether they are Hindus or Muslims or Christians or Sikhs.

In the Constituent Assembly, K.M. Munshi said, “Now here in advanced Muslim countries the personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a Civil Code”.

The law is communal insofar as each community or religious group has its own distinct law to govern domestic relations. It is also personal in so far as each and every person carries his own law wherever he goes in India. The family law is partly statutory and partly non-statutory. The present-day family law is thus a big maze. There are no *lex loci* in India in matters of marriage, succession and family-relations. All are very confusing.

So, the constitution has a provision for Uniform Civil Code in Article 44 as a Directive Principle of State Policy which states that “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”

Uniform Civil Code, it is meant that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly. They cover areas like-Marriage, divorce, maintenance, inheritance, adoption and succession of property. It is based on the premise that there is necessarily no connection between religion and personal law in a civilized society.

Uniform civil code is a proposal to replace the personal laws based on the scriptures and customs of each major religious community in India with a common set of governing laws for every citizen. It provides equal status to all citizens. The codification was a great task which involved selection, appropriation and renovation of scriptural texts which were large in number and at many instances, contradictory in nature. The religious scholars – pundits and maulavis tried to have the caste and class implications on these laws. Personal laws were being codified by the East India Company, the argument that the laws were based on Indian Religions custom and practice helped the British to be familiar with the Indians. While on the other hand as religion formed the basis of the laws, communities that were predefined by religious affiliation, are reflected in the political system through separate electorates. Although this provision did not exist after independence, yet through the constitutional provisions and fundamental rights, the rights of minorities to practice their religions were protected.

EFFORTS FOR BETTERMENT OF CODIFICATION IN CONTEXT OF PERSONAL LAWS

A uniform law thus prepared and made applicable to all would on the contrary promote national unity. It was pointed out at that time that:

1. Common Civil Code would infringe the fundamental right of freedom of religion as mentioned in Article 25 and
2. It would amount to a tyranny to the minority.

The first objection is misconceived because secular activity associated with religious practice is exempted from this guarantee and since personal laws (as argued from this point of view) pertains to secular activities they fall within the regulatory power of the state. Regarding the second point, nowhere in advanced Muslim countries has the personal law of each minority been recognized as so sacrosanct as to prevent the enactment of a civil code. The country would emerge with new force and power to face

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any odds finally defeating the communal and the diversionist forces. The Indian legal system and make Indian society more homogeneous. It will de-link law from religion which is a very desirable objective to achieve in a secular and socialist pattern of society.

According to the Committee on the Status of Women in India: "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens "equality of status, and is against the spirit of natural integration". The Committee recommended expeditious implementation of the constitutional directive in Art 44 by adopting a Uniform Civil Code.

The Supreme Court for the first time, directed the Parliament to frame a UCC in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum, popularly known as the Shah Bano case, In this case, a penurious Muslim women claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given Triple Talaq from him. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125. The Court also held that Article 44 of the Constitution has remained a dead letter. The then Chief Justice of India 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"

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". in Lily Thomas case The Court said that the directives as detailed in Part IV of the Constitution are not enforceable in courts as they do not create any justifiable rights in favour of any person. The Supreme Court has no power to give directions for enforcement of the Directive Principles. The Supreme Court's reminder to the government of its Constitutional obligations to enact a UCC came in July 2003, when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The bench comprising of Chief justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. , as seen above,

the apex court has on several instances directed the government of realize the Directive Principle enshrined in our Constitution and the urgency to do so can be inferred from the same times have changed, societies have changed and it is high time that laws change. Education, economic prosperity, agricultural improvements, cross border migration and western influence has spread its hand over every nook and corner of Urban India. On the flip side, rural settlements are still struggling with adherence to customary and superstitious beliefs in family matters. So I observed that after accepting the uniform civil code, Indian people got the lots of benefits, Like;

- A uniform civil code will not only change the entire perception of how families are governed but also change the lives of millions by filling the lacunas in various religious laws.
- Justice Y.V. Chandrachud, rightly remarked, a common civil code will also help in strengthening the cause of national integration by removing conflicting interests. Because Humanism is our creed and a Common Law for all Indian is our ideal.
- We believe and subscribe to rule of law and it is only a Common Civil Code that would help establish the rule of law. It is the panacea for all our ills.
- It would help and accelerate national integration;
- Overlapping provisions of law could be avoided;
- Litigation due to personal law would decrease;
- Sense of oneness and the national spirit would be roused, and
- It will create a national identity and will help in containing fissiparous tendencies in the Country .
- The uniform civil code will contain uniform provisions applicable to everyone and based on social justice and gender equality in family matters.

SCOPE OF THE RESEARCH

The broad objective of the research is that a tremendous change may be brought in governance provided that people are aware of their right to know and they use it properly in their interest. In my Research paper, I am focusing on the sociological and legal benefits of uniform civil code and try to find out some proper and effective solutions for the removal of those inequality situations and want

to subscribe to rule of law. This codification always helps in strengthening the cause of national integration by removing conflicting interests.

METHODOLOGY

The research methods and methodologies proposed to be used for the present research work would be of comprehensive and composite in nature. The research methodology will be a harmonious combination of fundamental, empirical and action research. Primary data will be collected from the available literature on uniform civil code related website, govt. and private organization and the concerned sections of the historical field. Relevant journals, Magazines and reports will also be studied to understand various facts of the problem pertaining to the subject of the research in question.

CONCLUSION

Conclusively, the law is communal insofar as each community or religious group has its own distinct law to govern domestic relations. It is also personal insofar as each person carries his own law wherever he goes in India. The family law is partly statutory and partly non-statutory. The present-day family law is thus a maze. There is no *lex loci* in India in matters of marriage, succession and family-relations. Thus it is very confusing. To achieve 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".

A uniform law thus prepared and made applicable to all would on the contrary promote national unity. It was

pointed out at that time that, firstly, as Common Civil Code would infringe the fundamental right of freedom of religion as mentioned in Article 25 and secondly, it would amount to a tyranny to the minority. The UCC will not and shall not result in interference of one's religious beliefs relating, mainly to maintenance, succession and inheritance. This means that under the UCC a Hindu will not be compelled to perform a Nikah or a Muslim be forced to carry out Saptapadi. But in matters of inheritance, right to property, maintenance and succession, there will be a common law. "Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But religious practices, violation of human rights and dignity and sacerdotal suffocation of essentially civil and material freedom are not autonomy but oppression. Therefore, a unified code is imperative, both for protection of the oppressed and for promotion of national unity and solidarity."

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