



UNIFORM CIVIL CODE

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Abstract:-

India celebrates 70 years of glorious independence and has gone through various tragic and victorious moments. India is claimed to be a secular country and every citizen secures its rights to practice any religion in the country. But due the secularism, there has been a misuse of the personal laws for selfish purpose in the country. From time to time the court and the politicians have laid down the importance of the uniform civil code in the country but no one has been successful to influence the lawmakers or the legislative assembly who is empowered to make laws for the same. Uniform civil code has been embedded in the constitution by the its makers in Article 44 but the implementation of the article still lies with the dignitaries. The implementation of the same brings pros and cons with it. Article 25 & 26 I.e. Right to practice any religion being as one of the main pillars of our constitution would need to be scrapped off or amended. Also, if the implementation of the Uniform Civil Code is done it may lead to the disintegration of the nation and this would lead to the breakdown off the peace and harmony among the people. Because India is the biggest democracy in the world and has the highest level of diversified population. So, to resolve this issue a flexible law is the need of an hour rather than a rigid one. Therefore, this paper tries to evaluate the entire dialogue around Uniform Civil Code and the arguments on

its necessity and the various doubts on its nature.

Introduction: -

India is a secular state and nation, which implies that it doesn't follow any particular religion or there is no official religion of the country. It further means that the state will not be dependent on any kind of religious institutions for taking decisions of the state, it will not interfere with the religious matters and the religion will not interfere with the efficiency of the state. India is known as the world's largest democracy and is the second most populous countries in the world. India has a strong military and has cultural influence almost over everything. India is a highly diverse country with so many linguistic, cultural and religious identities.

This diversification of culture and people are also reflected in India's federal political system, whereby the power is shared between the central government and the states. Religion in India has been serving as the foundation of culture in India but on the contrary has enormous effect on Indian politics and society. In India religion is the way of life. It is an integral part of the Indian constitution and tradition as well.

As it has already been said that India has numerous religion and languages, the people of various religions have been governed by their own personal laws since time immemorial. There are different personal laws for different religions in the country like for Hinduism there are Hindu marriage act, Hindu succession act, Hindu adoption and maintenance act for different purposes such as adoption, marriage, inheritance, etc. Christians and Muslims are governed by their own personal laws and the reason why we have separate personal laws in every



religion is because of different beliefs, customs and practices. It can be often noticed that when the question of marriage, inheritance, divorce, adoption, Maintenance, etc arise personal laws face difficulty. The difficult portion of them arise because different kinds of judgements have to be given with taking into consideration the different personal laws. The part of the distribution of justice does not remain uniform in its application and faces a lot of difficulty and so to solve, these decisive steps were taken towards the national consolidation in form of idea of uniform civil code which was for the first time mooted seriously in the Constituent Assembly in the year 1947.

The Uniform Civil Code has been envisaged in the Article 44 of the Constitution which includes inter alia, entire gambit of family law. There is no uniform civil code applicable to almost any law in the country. Every religion has its own personal law along with difference of opinion. So, through Article 44, the modern state is called upon to perform its onerous responsibility of giving uniform civil code throughout the entire territory, applicable to all the citizens of the country.

India being a secular state, there has been intense scrutiny of the topic during the Constituent Assemble Debates & the Muslim members were very defensive against this provision because Muslim personal law has to be very carefully amended with keeping in mind the core of the personal law. The Uniform Civil Code would include laws relating to adoption, marriage, inheritance, divorce, etc.

Historical background: -

The Lex Loci report:

The initiative for UCC first began in India in the 19th century by the feminists who demanded equal rights for women. the Lex Loci report¹ of 1840 said that the Indian laws relating to criminal, contract and evidence should be codified while the personal laws of the territory should be kept outside the reach of it. The British initially were speculative about the inclusion of religion into a uniform civil code. They refrained from interfering with the religious demography of the country, fearing a communal backlash. Uniformity was restricted only to the laws that excluded the matters of religion.

Post-Colonial period:

The framers of the constitution were convinced about the fact that there is a need of uniformity in the law prevailing the territory. Dr. B. R. Ambedkar being the epicentre of the drafting committee felt the need of a Uniform Civil Code that would govern the masses, while Pandit Nehru was convinced to an extent that the UCC needed modernisation due to its communal sensitivity and it would be seen as an annexation into the cultural fold of the country. The country was still soaked in the blood of the victims of partition which also was a matter of concern for the government. The times changed but the dream of a uniform civil code still remains unrealised even after 70 years of Indian independence.

Present day scenario:

¹ <http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/UNIT%20-%204.pdf>.



UCC has been a hot topic of debate for the past 6 decades. Even today people are still unclear about the consequences of the implementation of the UCC. Many believe it to be a majoritarian agenda which will favour only a single community while others see it as a force that will unite the nation and bind it together. The ongoing debate is about the violation of the fundamental rights and the eradication of religious autonomy. The provisions of UCC should relate to matters where human rights are violated and the autonomy of practising the religion prevails. The fire that started with the rights for equality for women has now spread to other institutions of the society. The crux of the code is to ensure equality for all irrespective of religion, caste, class or gender. Many laws today which place restrictions on people from a particular community will cease to exist, and uniformity will be observed, but are we ready to accept it?

Uniform Civil Code & Personal Law:

The people of India belong to different religions and faiths. They are all governed by different sets of personal laws belonging to their respective religions. India is a secular country and everyone has the right to practise any religion and religion is one of the major issues that hampers the applicability of UCC. Political parties refrain from interfering with this topic with the fear of losing their vote bank which is backed by the religious communities.

India has always been a patriarchal society. Women have always been considered inferior and as possession of men, who are no equal to men. This inequality extends to the topics of matrimony, succession, adoption and even inheritance. The women were the first individuals to demand for a

UCC that would not only be for the protection of their rights but also grant them an equal status in the society alongside their male counterparts.

The personal laws in India are mostly in compliance with the religion of the people. With numerous religions practiced across the subcontinent there are numerous laws that govern the laws relating to marriage, adoption, succession and inheritance.

Marriage:

Different religions have different forms of marriages and different codified laws governing them. These are: -

1. The Convert's Marriage Dissolution Act, 1863
2. The Indian Divorce Act, 1869
3. The Indian Christian Marriage Act, 1872
4. The Kazis Act, 1880
5. The Anand Marriage Act, 1909
6. The Indian Succession Act, 1925
7. The Child Marriage Restraint Act, 1929
8. The Parsi Marriage & Divorce Act, 1936
9. The Dissolution of Muslim Marriage Act, 1939
10. The Special Marriage Act, 1954
11. The Hindu Marriage Act, 1955
12. The Foreign Marriage Act, 1969
13. The Muslim Women (Protection of Rights on Divorce) Act, 1986

These are the acts governing the laws of marriage and divorce in the country. Under the Hindu law specifically in the years 1955-56 the women did not enjoy as compared to the men. Prior to 1955 polygamy was prevalent among Hindus as well. Hindu women could not hold any property as an owner except for their streedhan. In the matters of adoption Hindu women had no



rights of adoption and were not the guardians of their wards as long as their husbands are alive. It is evident from these laws that Indian society was governed by laws which favoured patriarchy. Even though the Hindu law has been codified to a certain extent but some discriminatory provisions still exist.

When it comes to discussing the Muslim law, women have always been given a secondary status. The advent of Islam has contributed much when it comes to deterioration of Muslim women and the escalation of their problems. The holy Quran gives equal provisions to both the men and women however there are certain aspects of Islam that contradict the provisions provided in the Quran and render the position of Muslim women, specially the wives insecure and inferior. In Islam a man is allowed to marry four times while a woman cannot and the most derogatory practise of divorcing a woman (Talaq-e-Biddat) is practised in Islam. Though talaq-e-biddat was struck down by the hon'ble Supreme Court² not all primitive and discriminatory can be struck and thus the need for a UCC. The Muslim Women act 1986 was passed to overrule the decision made in the case of *Mohd. Ahmed Khan v. Shah Bano Begum*³. The court held that "section 124 of CRPC extends to the Muslim men as well and they have to maintain their wives beyond the idatt period". The controversy began when the parliament passed the abovementioned act. The effect of this act was that muslim husband was not liable to maintain his divorced wife beyond the idatt period unless bit the spouses submit it the court that they

would like to be governed by the CRPC. This was like having the provision but not using it for the welfare of the women who needed it the most.

Marriage in India is a sacred institution. India has personal laws that cover all forms of marriages in India, UCC aims at developing a single law that would govern all the citizens without hurting their religious sentiments. Talking about adoption, where it is permitted in Hindus, Muslims still are restricted from adopting. In India the all India Muslim law board is an institution which is an influential body when it comes to laws relating to the Muslim religion. Muslims prefer to settle their disputes before such institutions rather than going to the court.

Adoption:

Although there is no general law for adoption it is permitted by the Hindu adoption and maintenance act 1956 particularly amongst Hindus only. Since adoption is legal affiliation of a child, thus it forms the subject matter of personal law. Muslims, Parsis and Christians have no such adoption law and therefore have to approach the court under the guardians and wards act 1890. The drawback of this act is that the child adopted in this act is only taken for foster care. Once the child becomes major, he is free to break away all the relations, the child also does not have any legal rights of inheritance.

In Hindu personal law the father is known as the first guardian and then the mother. Prior right of mother is acknowledged only in cases of children below the age of 5. in cases of illegitimate children, the mother has a

²Shayara Bano vs Union of India And Ors., (2017) 1 AIR, (India).

³ AIR (1985), SC (945)



better claim than the putative father. Under the Muslim law, the father is a dominant figure. Mother is not recognised as a natural guardian of the children even after the demise of the father. The rights of the father even extend to both property and person. There is no such codified law in Muslim personal law that provides equality to women in matters relating to adoption. Hence the need for UCC.

Maintenance:

It is the duty of a husband to maintain his wife which arises out of marriage. Hence right to maintenance forms a part of the personal law.

Under the Hindu Law absolute right is given to the wife for claim maintenance from her husband given that she doesn't deviate from the path of chastity. This has been codified under Hindu Adoption and Maintenance Act, 1956. The court takes into account various factors like the liabilities of the husband while assessing the amount of maintenance. The grounds of divorce are also accessed under that foresaid act, maintenance temporary or permanent will be borne by either husband or wife if the other spouse has independent income for his or her support.

Under the Muslim Law the divorced Muslim women are entitled to⁴

- a. *reasonable and fair provisions and maintenance to be made and paid to her within the iddat period by her former husband.*
- b. *When she herself maintains children born to her before or after her divorce, a reasonable*

and fair position and maintenance to be made and paid by her former husband for a period of two years from the respective date of her children.

- c. *An equal amount equal to the sum of mehr or dower agreed to be paid to her at the time of her marriage or anytime there after according to the Muslim law.*
- d. *Or property given to her at the time of marriage by her relatives or friends or her husband or relatives or husband.*

In addition, the act also provides powers to the magistrate to pass an order in the favour of a divorced Muslim woman if she is unable to maintain herself after the period of iddat. These provisions are for in court divorce, Muslim personal law also incorporates out of court divorce. In such cases the woman although is legally entitled to maintenance, but there is no law that makes it a compulsion for the husband to maintain woman when the divorce is given out of court.

We can cite the case of *Mohd. Ahmed Khan v. Shah Bano Begum*⁵ as an example. In this case it was held that a husband is liable to pay maintenance to his divorced wife beyond the period of iddat, but the judgement was overruled with the enactment of Muslim Women Protection Act, 1986 by the parliament. This was done after a communal backlash from the Muslim community and a fear of losing their vote bank.

The Parsi Marriage and Divorce Act, 1936 recognises the right of women to maintenance both permanent and temporary.

⁴ The Muslim Women Protection Act, 1986

⁵ AIR (1985), SC (945)



The maximum amount of amount of maintenance that can be decreed by the court is one-fifth of the husband's income. In fixing the quantum of permanent maintenance the court will determine by keeping in mind the ability of the husband to pay, wife's own assets and conduct of the parties. The order will remain in force as long as wife remains chaste and unmarried. The main motive of UCC is to compile all of these laws into a single law to rule them all, which does not discriminate on the basis of gender or religion and provides equal opportunity to all and such law will replace the existing law relating to the matters of marriage, divorce and maintenance.

Secularism and Uniform Civil Code:-

The preamble of the Constitution states that India is a secular, democratic republic. This simply means that there is not state religion. India is a secular state that does not discriminate on the basis of religion. Religion is only concerned with the relation between man and god. Therefore, the process of secularisation is closely related with the goal of UCC like a cause and effect relationship. In the case *S.R. Bommai v. Union of India*⁶ it was held by Justice Reddy that religion is the matter of individual faith and cannot be mixed with activities and can be regulated by the state by enacting a law.

In India, there exists a concept of positive secularism while the US and European states have adopted the concept of doctrine of secularism which means there is a wall of separation between the religion and state. The positive aspect of the latter concept is that American and European states is that

they can enact a law stating that state shall not interfere with the religion. On the contrary, in India, the responsibility lies on the state to interfere in the matters of religion so as to remove the impediments in the governance of the state.

The reason why India cannot undergo a renaissance is very clear. We have already discussed above how there exist not only diverse religions in this country but they also have their own personal laws. That is why there are a lot of chances of an increase in religious conflicts, showing a reverse effect on laws that are made. It is said that we all want a change but no one accepts the change. In India people find it extremely difficult to accept or adapt to certain changes and when it comes to religion, it defines the way of life, people connect with their religion. People find it difficult to realise the fact that people make religion and it is defined by them and not the opposite. This thought finds itself in the graveyard because some people still believe in burning. Thus, there is a need for a Uniform Civil Code which would govern and regulate the behaviour of people of all religions and not any particular section of the society.

Therefore, the Uniform Civil Code aims to strike balance between the protection between the fundamental rights and religious principles of the different communities existing in India. Issues relating to marriage, divorce, maintenance, etc could be taken up as matters of secular nature and law can regulate them.

Recommendations and Conclusion: -

⁶AIR (1994),SC (1918)



At last the question that arises is regarding the desirability of UCC. Is there a need of UCC or not? Many believe that if UCC is enacted and implemented there are chances of communal tension and violence which would further lead to the disintegration the country. Secondly it would be very difficult to cover every aspect of personal law. When it comes to setting standard of UCC the problem that arises is that, which law will prevail over the other. In India religion is not just the way of life but is considered as something supreme and sacred. Implementation of UCC would not be warmly accepted by the people, the major reason being the diversity of the country. Thus, we personally feel that codification of UCC is of secondary value with the priority being an amendment in the various personal laws. As stated before, Pandit Nehru said that UCC should only be implemented in modern India. Though India is on the verge of modernisation, the aspects such as religion which are retrospective in nature should only be dealt with by keeping in mind the diversity and religious autonomy of the country.

