



MODEL UNIFORM CIVIL CODE

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INTRODUCTION

All Indians irrespective of religion, caste, race or gender are governed by a single Constitution, a uniform Penal Code and a uniform Code of Civil and Criminal Procedure among other uniform laws. However, when it comes to personal laws, we do not have a Uniform Civil Code that is applicable to all religious faiths. The Uniform Civil Code finds its mention in our Constitution under Article 44 which states that it is the duty of the state to secure for the citizens a Uniform Civil Code throughout the territory of India. It backs the ideals of secularism as enshrined in the Preamble of the Constitution. A Uniform Civil Code ensures that the fundamental and constitutional rights of all the citizens are protected, leaving no room for discrimination.

Hindu Laws were codified in 1955 as the old Hindu laws and customs didn't stand the test of time. After 65 years since codification, the laws that were relevant immediately after independence have little or no relevance today. Muslim personal laws have also witnessed important amendments. Personal laws are inching towards a progressive outlook. It is time that archaic beliefs that are not backed by logic and reason be transformed to laws that encompass the welfare of the whole population without favoring one religion over the other.

We're moving into a more progressive world where the notion that a wife is subordinate to her husband on account of his physical and intellectual superiority is no longer relevant owing to women empowerment. Uniform Civil Code would hence prevent discrimination against women on religious grounds. It is essential that some retrograde laws be altered to adapt to the changing conditions of India.

Considering the fact that India is a diverse country accommodating various religious groups, it would seem difficult for all such groups to be governed by the same personal law. However, it is not impossible to implement the Uniform Civil Code. This research paper draws an outline of a model Uniform Civil Code that deals with uniform laws related to marriage and succession.

MARRIAGE

Marriage laws in each religion are worlds apart. The uniform civil code should not prevent any person from celebrating their wedding according to the customs and traditions associated with their religion, but it should seek to introduce such laws that bring about uniformity in the legal procedure associated with marriages.

1. COMPULSORY REGISTRATION OF MARRIAGES

In a Court of law, to prove the validity of a marriage is easy for the parties as there is no formal procedure that needs to be complied with. Invitation cards to the wedding and photographs from the wedding are usually used to prove the validity of the marriage. However, it is very easy to fabricate an invitation or photograph in order to deceive the Court. In such cases, an official marriage certificate by a Marriage Officer serves as the best form of evidence of the solemnization of



marriage. Hence, registration of marriages must be made compulsory for all religions.

Section 7 of the Hindu Marriage Act states a marriage is solemnized in accordance with the customary rights of either parties including saptapadi. However, it is vague as to what constitutes customary rites. This ambiguity can be misused by the parties to deny the validity of the marriage. In Islam, a valid marriage is said to come into existence when an offer is accepted. A written contract or presence of witnesses is not necessary making it difficult to prove the solemnization of marriage. In the absence of clear definition of customary rites or the absence of a written contract, compulsory registration would work wonders. Section 15 of the Special Marriage Act provides for registration of marriages solemnized under the Act. However, it is only a directory provision. Registration of marriages should be made compulsory.

Registration of marriages should come within the ambit of Schedule VII List III Entry 30 of the Constitution that deals with 'Vital Statistics'. It presently includes registration of births and deaths. It should be amended to include compulsory registration of marriages.

Such registration of marriage is to be accepted as a proof of marriage and be made admissible as evidence in a Court of law when the validity of the marriage is in question. If a marriage is not registered, it must be considered null and void before the Court of law. Registration of marriage in no way should stop people from celebrating their marriage according to their tradition and culture. Compulsory registration would ensure security to women as there will be

hardly any chances of men denying the marriage and abandoning the women.

2. MONOGAMY

Section 494 of the Indian Penal Code makes bigamy punishable for all religions with a special provision for Muslim men. Section 494 applies to Islam only when a man marries more than 4 wives during the subsistence of the existing marriages. He is not punished if he marries another during the subsistence of his first marriage like the men of other religions. This is an unreasonable discrimination on the ground of religion.

In pre-Islamic Arabia, unlimited polygamy prevailed to provide security for the widows of war. This eventually became harsh on women. The prophet introduced limited polygamy up to taking of 4 wives as a definite step towards the amelioration of the oppression on women. A thorough reading of the Koranic verses states that a man can take up to four wives if he can treat all of them like which is humanly impossible to achieve. The Prophet himself was in favor of monogamy.

The objective behind polygamy to secure the lives of widows of war is no longer relevant today. This provision is misused by Muslim men to satisfy their sexual desires. It also paves way for immoral conversion to Islam to avail such a benefit.

This is discriminatory on the ground of religion as only Muslims are given this special exception. It is also discriminatory on the ground of gender as only Muslim men are the beneficiaries of this provision. Hence, regardless of religion, bigamy should be made punishable. Monogamy should be the prescribed form of marriage. This would



ensure solidarity in the family and prevent immoral conversion. Polygamy is anachronistic and modern India cannot accommodate this practice.

3. MAINTENANCE

Laws related to maintenance enshrined under Section 18 of the Hindu Adoptions and Maintenance Act, Section 3 in The Muslim Women (Protection of Rights on Divorce) Act, 1986 and Section 36 of the Special Marriage Act, 1954 are only applicable to women. They state that women are to be awarded maintenance in the event of divorce by the husband.

With the rise in financial independence of women, maintenance laws must be made gender neutral to include either the wife or the husband who is economically weaker and is needed to be maintained by the other spouse until they are able to maintain themselves. Maintenance should be awarded only when the spouse was dependent on the other during the subsistence of the marriage.

When a marriage is declared void, maintenance should not be awarded to the wife who freely consented to the marriage and knew at the time of such marriage that it is void in the eyes of law. But if the wife realizes the marriage was void after the solemnization of marriage, some quantum of maintenance must be awarded. In the case of *C Obula Konda Reddi v C Pedda Venkata Lakshmma*¹, the Court held that the second wife should not be given maintenance if she had reasons to believe that it was a bigamous marriage. But if she didn't know about the

first marriage, she should be awarded reasonable maintenance.

Hence, maintenance must be made available to the economically weaker spouse or the spouse that is dependent on the other. Its applicability should not only be confined to the wife.

4. AGE

Marriage of a Hindu male under the age of 21 and a Hindu female under the age of 18 is voidable according to Section 5(iii) of The Hindu Marriage Act, 1955 but is punishable with rigorous imprisonment up to 2 years and fine up to 1 lakh rupees under Section 18 of the same Act. The Prohibition of Child Marriage Act 2006 and Section 4 of the Special Marriage Act, 1954 also prescribe the same ages for the two sexes. This difference in age is based on reasons that are not logical or reasonable and hence is discriminatory to the males under Article 14 of the Constitution of India.

Under Muslim Law, the legal age to be wed is determined by the age of puberty, i.e., 15 years. This is too early to be wedded and conjugal responsibilities would only divert school goers from gaining the required education to lead a meaningful life. Section 2(vii) of the Dissolution of Muslim Marriage Act states that a woman cannot repudiate the marriage if she was given in marriage by her father/guardian before she attained the age of fifteen years and the marriage has been consummated. This provision causes grave injustice to child brides who are forced into the marriage by their guardians without the child bride's consent. The provision neglects

¹ AIR 1976 AP 43



child rape and disallows a minor married woman to repudiate her marriage on attaining majority on the 2 grounds namely- (i) her free consent was not obtained and (ii) she was forced into having sexual intercourse.

Hence, it is reasonable if all persons regardless of religion and gender to have completed 21 years of age to be legally wed. This is the perfect age as they would have completed their undergraduate studies and would have gained sufficient maturity, responsibility and financial independence. Marriage should be made void and punishable if either party is a minor, i.e., under 21 years of age. This would keep a check on child marriage and child rape.

5. INTER-RELIGIOUS MARRIAGE

No marriage should be declared void on the sole ground that the parties to the marriage follow different religion. Under Shia law, a marriage between a Muslim male/female with a non-Muslim is considered void. Under Sunni law, a marriage between a Muslim male with an idolatress or fire worshipper is void and a marriage between a Muslim woman with a non-Muslim man is considered void. This anomaly should be corrected and inter-religious marriages should be made valid. A penalty/punishment must be imposed on those who protest inter caste or inter religion marriages. When a marriage has been solemnized with the free consent of both the parties, religious disparity between the two should not come in the way of a perfectly valid marriage.

6. DIVORCE

Unilateral divorce

For dissolution of marriage to take place, a Court decree must be procured on reasonable grounds. Unilateral divorce and oral divorce without the intervention of the Court and without any cause must be held void. In Muslim law, a man can dissolve the marriage orally according to his whims and fancies. Hence, unilateral divorce without the intervention of Court must not be regarded as a formal dissolution of marriage and it should be presumed that the marriage is still in subsistence.

Expedited divorce proceedings

In order to ensure that the parties and their children do not get stuck in the legal battle for years, expedite divorce proceedings should be the mandate. Divorce proceedings should be concluded within 6 months of the filing of the divorce petition. A penalty must be imposed on advocates/parties who file for unnecessary adjournments that adversely affect the normalcy of lives of the parties and their families.

7. SAME SEX MARRIAGES

The landmark judgment of *Naz Foundation v. Govt. of NCT of Delhi*² is a progressive move by the Supreme Court. It decriminalized consensual sex between two people of the same gender. However, same sex marriages have still not garnered recognition in the eyes of law. It is now pertinent to legalize same sex marriages to bestow rights and obligations that flow out of a heterosexual marriage associated with inheritance, maintenance, divorce etc. Failing which, would be a glaring violation of Article 15 of the Constitution of India as it discriminates the conjugal relationship between same sex couples.

² 160 Delhi Law Times 277



INTESTATE SUCCESSION

A uniform intestate succession should apply to all religions, doing away with the unnecessary and unreasonable methods of division of shares. In Hindu law, the division of shares is different for a man and a woman. In Muslim Law, it is too time consuming to calculate the shares of each heir while following the doctrines of radd and aul. Hence a uniform law that regulates intestate succession is needed.

1. ORDER OF PREFERENCE

The property of the deceased, irrespective of the sex of the deceased, must be equally divided among the nearest relations and dependents, i.e.,-

1. their spouse,
2. their descendants of the first degree,
3. their ascendants of the first degree.

For instance, if A dies without leaving a will, his property should be divided equally between his wife [spouse], son(s) [descendants of the first degree], father and mother [ascendants of the first degree].

In case the son/daughter dies before the death of the person dying intestate, the share of such predeceased son/daughter, as they would have got had they been alive at the time of succession, should be allotted to the surviving dependents of such predeceased son/daughter. If a descendant dies before the death of the person dying intestate, the latter's property should pass on to the children of the predeceased child by following the doctrine of representation or per stirpes. The living parent of such predeceased child should not be allotted the share of the predeceased child passed on by the deceased parent on the ground that he/she

is a dependent as such living parent has received shares of the deceased spouse already.

For instance, if A dies without leaving a will, leaving behind his

1. wife W,
2. son S1,
3. daughter GD1 of son S1,
4. daughter GD2 of predeceased son S2

his property should be divided equally between W, S1 and S2, i.e., each get 1/3rd of the property. Since S2 is predeceased, his property by default passes on to his dependents, i.e., S2's wife and S2's daughter GD2. Hence they each get 1/2 of S2's share, i.e., 1/6th of A's property. Hence property is devolved as if S2 died after the death of A. Since S2's mother W already received a share in A's property, the share in S2's share in A's property must not dissolve to W again. Hence, W finally receives 1/3rd, S1 receives 1/3rd, GD1 doesn't get a share in A's property as her father S1 is still alive. Since S2 is predeceased, his wife gets 1/6th and his daughter GD2 gets 1/6th.

2. DEFINITION OF CHILD

The estate of the deceased should be divided among the children equally, irrespective of the gender, legitimacy and marital status of the children. It has already been established that adopted children are considered in par with the natural born children.

All children are legitimate. It's the couple who is illegitimate if they begot a child out of wedlock. Hence children born out of wedlock should be treated equally as the children born out of marriage.

Step children should not be made an heir as their original parent passes down their property. Property should hence be devolved



to natural or adopted children and not step children.

3. **CONVERSION**

Conversion should not sever a person from his family or disqualify him from inheriting his share of the joint property. Section 19 Special Marriage Act, 1954 states that a marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jain religions shall be deemed to affect his severance from such family. Hence it is in bad taste.

CONCLUSION

With the implementation of the Uniform Civil Code, legal procedure associated with marriage, divorce, succession, maintenance will prove to make personal lives easier. It is high time that archaic laws be put to the grave. Uniform personal laws will bring about unity in people as they will have to follow the same procedure and be guided by the same ideas of justice.

