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UNIFORM CIVIL CODE: NEEDS AND LIMITATIONS IN A MULTI-RELIGIOUS SOCIETY

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INTRODUCTION

India claims to be a secular country. The Uniform Civil Code (hereinafter “the Code”) has been embedded in Article 44 of the Indian Constitution, 1950 as a non-justiciable Directive Principle of State Policy. Even though almost 70 years have passed such a law is yet to be implemented in the country. Postcolonial India’s Uniform Civil Code’s idea seemed to follow the West incorporating a new revitalizing civilizing mission, a loud and clear call for unified nation-building and the attainment of legal modernity through top-down state-driven secularizing reforms.¹ This was of course met with excitement and a positive appraisal from the Eurocentric and Europhilic modernists from around the globe. But from less than half a century later and to date there has been the birth of many state laws but no Uniform Civil Code.

The present write-up concentrates on the crucial changes that have taken place in the religious legal system concerning the Code. It shall also discuss the needs and limitations of the Code in the religious Cext.



¹ Werner Menski, The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda, 9 GERMAN L.J. 211 (2008).

Merits of Uniform Civil Code

- 1) Speedy justice.
 - 2) The burden on the judiciary would decrease.
 - 3) Simplify the Indian legal system.
 - 4) The country would emerge with new force and power.
 - 5) The nation would speak together.
 - 6) All people will get equal status and there will be no discrimination.
- ★ Overlapping provision of law will be avoided

Disadvantages of the Uniform Civil Code

- Difficulties due to India's diversity
- Not yet the correct time for implementation
- Government's interference in personal freedom
- ★ A threat to communal harmony

Individual laws are worried about marriage, separate care of youngsters, support for separated ladies, guardianship, selection, progression, and legacy. Such issues have scarcely any reflection on religion even though diverse strict networks practice distinctive individual laws. Religion can be claimed and proliferated independent of consistency in close-to-home law. Religion discusses interminability, commitment to God, and quests for profound objectives and salvation, while

individual law has its space in everyday common undertakings.

The confidence of an individual in religion isn't shackled by close-to-home law. Distinctive individual laws truth be told struggle with the Right to fairness and to get sexual orientation equity. It was vital because there has not been consistency Law inside Muslim individual law, with one for Shias and another for Sunnis. The Law Commission has recommended that accentuation ought to be laid on changes in close-to-home laws.

It recommends that varieties in close-to-home law may proceed and reformative advances could be presented bit by bit. Presently the inquiry emerges whether matters identifying with individual laws involve religion. Religion isn't worried about close-to-home law even though it is rehearsed inside strict networks. Taking a gander at the precepts of any religion and the nuts and bolts of individual law of any strict local area, religion has its fixings established in otherworldliness, methods of love, leading supplications, and customs identifying with strict practices.

Yet, individual law has nothing to do with so many items as its area incorporates marriage, separation, reception, progression, and legacy. To guarantee that strict networks don't stay denied the products of a liberal viewpoint, equivalent treatment of laws in the issue of individual life, it is for them to approach and request to be represented by a similar law.

STANCE OF THE SUPREME COURT

There exists religiously a deep-rooted schism between some of the religions in the country, especially between the Hindus and the Muslims. A huge outcry of discontentment emerged from the minority communities on the full implementation of the Code. Therefore, the Code in India adopted a character of symbolism that was not enforceable in court for its violation, if any. Minority groups like the Muslims had their doubts about the implementation of the Code. The reason was

that they were afraid of the curtailment of their rights which they were enjoying under their Muslim Personal Law.

But the Supreme Court of India through its various landmark judgments has shown to have taken a different stand. It has directed the implementation of the Code by integrating personal laws to deal with divorce, marriage, maintenance, inheritance, and succession. In this regard, Parliament has enacted step by step some progressive legislation. For instance: The Hindu Marriage Act 1955, The Hindu Succession Act 1956, The Hindu Adoptions and Maintenance Act 1956, The Hindu

Minority and Guardianship Act 1956, to replace the long-established and conventional laws based on different schools of thought.²This was done to enhance the proper administration of justice.

In the case of *Mohd. Ahmed Khan v. Shah Bano Begum*³ popularly known as the Shah Bano case the Supreme Court had directed the Parliament to frame a Uniform Civil Code in the year of 1985. This is considered as a landmark judgment because the appellant Shah Bano had knocked on the doors of the judiciary and brought to light the issue of gender inequality. She had been deprived of the Right to Equality because of which she was unable to claim maintenance. The apex court contented that Muslim women could get any kind of financial assistance or alimony under Section 125 of the Criminal Procedure Code. The Court did not hold back from expressing its dismay in saying that Article 44 of the constitution had remained a “dead letter”. The aforementioned case threw light on some crucial matters:

- It applauded the progressive character of Muslim women as they challenged the religious dogmatic and orthodox practices;
- The Supreme Court was provided with ample scope to interpret the notability of a uniform civil code which is secular in its true

sense and in character over the religious nasty customs and personal laws;

- It brought to light the condition of Muslim women and the sexism, prejudice, and bigotry that was prevalent against them in matrimonial matters;
- It was a firm and bold step in the direction of implementation of a uniform civil code.

Without a doubt, the judgment had attracted a much-displeased crowd from the Muslim community throughout the nation who took the words of the judgment as interference and intervention into their personal laws. Later the Rajiv Gandhi government passed the Muslim Woman (Protection of Rights on Divorce) Act, 1986, and simultaneously the judgment was also nullified.

On a similar ground, the case of *Sarla Mudgal v. Union of India*⁴ is another landmark judgment. A question was raised whether the second marriage of a Hindu who converted himself to Islam (without giving divorce to his first wife) is considered legal. It was held that conversion to Islam and marrying for a second time again would not dissolve the previous Hindu marriage. Rather it would amount to bigamy which was punishable under Section 494 of the Indian Penal Code. The reasoning behind the observation was that the Hindu Marriage Act was a strict enforcer of monogamous marriage. This meant marriages that were solemnized under this particular legislation remained married forever even when the husband converted to Islam in the pursuit of another wife. Moreover, the second marriage would be in violation of the principles of natural justice.

A more recent influential judgment in this direction came in July 2003.⁵ John Vallamattom (a Christian priest) approached the Supreme Court with a petition that challenged the constitutional validity of Section 118 of the Indian Succession Act, 1925.

² Soumalya Ghosh, *Uniform Civil Code: An Ideal Vision of Modern India*, 9 INDIAN J.L. & Just. 207 (2018).

³ 1985) 2 SCC 556.

⁴ (1995) 3 SCC 635.

⁵ *John Vallamattom & Anr. v. Union of India*, (2003) 6 SCC 611.

His contention was that Section 118 was discriminatory against the Christian community alone for it imposed unreasonable and unnecessary restrictions on their donation of property for religious and charitable purposes by will. Such classification did not have any nexus with the object sought to be achieved by the legislation. The court held that Section 118 indeed violated Articles 14 and 15 of the Constitution. The court further ruled that there should not be any discrimination or any kind of variation in the treatment of various religious communities. Thus, Section 118 was struck down and ruled unconstitutional.

AREAS OF LACUNA: -

As much as there are pressing necessities to have a Uniform Civil Code, especially in a country like India which is enriched with diversity, however, there are certain problems that may pose a threat to the already fragile federation of the communities. The author would like to bring to notice the gray areas that cannot be eradicated easily. The listed bulleted points may also serve as limitations of the Code.

- There is no doubt from the observations of the judgments mentioned above that the Supreme Court has approved of the implementation of the Code. It stands true that such reforms are urgently necessary. But such a reform should come from within the common people. In case the Code gets implemented the people, especially ones belonging to the minority communities may turn hostile towards the judiciary.
- Some communities are educationally and financially backward. The government should start working towards the betterment of these communities. It is a given that touching upon personal laws is a near-impossible task. It is a sensitive subject. Policies and schemes remain a convenient method for reaching out to oppressed people.
- Sharia law is an integral part of the Islamic religion. It is a law made by God. Therefore, no mortal being can meddle with it.

Therefore, implementation of the Code will lead to the deprivation of the community from their personal laws and rights.

- Article 44 of the Constitution has been a dead letter for years. Complete secularism can never be achieved unless the directive contained in Article 44 is given some kind of preference and permanence.
- Uniform law may take a political turn. It may become a communal weapon for the ruling regime to create civil unrest. With the onset of religious divide in the country which is currently being driven by political agendas; the enactment of the Code may prove fatal.

CONCLUSION

The citizens of the country must carry a very liberal, progressive, and broad-minded look to understand the spirit of the Uniform Civil Code. But the problem arises in implementing such a code due to the varied religious sentiments of the people. There is no doubt that people are afraid or suspicious that the Code might be nothing but a conglomeration of Hindu personal laws. This thought among the different minority communities has only grown stronger with the current government regime.

Therefore, the author would like to suggest some traits which may also serve as fundamental features of the Code

. The author believes these suggested features will help the Code to attain the ideal and exemplary standard.

The Code shall encourage monogamy for all religions. This would mean the banning of multiple marriages for a person whose first spouse is still living. Polygamy is a violation of the principle of equality. Moreover, the scope of the right guaranteed and protected under Article 21 of the constitution is reduced.

Provisions concerning the registration of marriage should be adequate and made obligatory. This will give legal recognition to a marriage. It will get rid of any skepticism surrounding the legality of the marriage.

A minimum age of marriage has already been prescribed under the Prohibition of Child Marriage Act, of 2006. This should be enforced strictly without any unfairness and severe punishment be meted out to those for violating it.

There should be uniform laws for divorce. The new Code of law should keep in check that the aggrieved party is listened to and tended to. In case the aggrieved party is the wife there should be provisions in the Code that enable her to be awarded sufficient alimony.

Uniform law on the succession of property should be made statutory. It should be equally applicable to both sons and daughters. This would reduce gender-based inequalities. This is important in an Indian society which mostly follows the patriarchal system and results in a society dominated by males.

Apart from framing uniform laws on the subject matters talked about in the above bullet points, the Code should however refrain from interfering in the religious or cultural practices of any community. Any kind of intervention will lead to distrust or misconception about the Code.

The Uniform Civil Code should be the representation of the pillar of secularism. However, it can only be implemented when there is a unison of thoughts and opinions. There are examples of countries such as France, Japan, Russia, Israel, etc.

Where the Code has been successfully enacted and evolved. Since the judiciary cannot enforce the Code due to the presence of Article 37 of the Constitution (the provision states that Article 44 amongst others is not enforceable by the court) therefore the citizens of the country have to look up the aforementioned countries' Uniform Civil Code and have a comparison with the existent personal laws in India. The Uniform Civil Code of Goa can also serve as an aspiration. This will show them the modern thought of equality, liberty, and fraternity.

References

1. Malagodi, M. (2013). Protection of Religious Rights in India.
2. Suleman, S. (2010). Freedom of Religion and Anti-Conversion Laws in India: An Overview. *ILI Law Review*, 1(1), 106.
3. Claerhout, S., & De Roover, J. (2019). Religious Freedom and the Limits of Propagation: Conversion in the Constituent Assembly of India. *Religions*, 10(3), 157.
4. Durai, H., & Niranjana, K. (2019). A Study on Religious Laws and Religious Crimes in India. Available at SSRN 3442697.
5. Is India a Secular Country? (n.d.). Retrieved March 02, 2021, from <https://www.ummid.com/news/2018/December/02.12.2018/is-india-really-a-secular-countr-justice-katju-cast-doubt.html>