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A Term Paper on Uniform Civil Code

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Abstract: After 68 years of independence and claiming that India is a secular country, can help combat the misuse of personal laws for selfish purposes. From time to time Courts as well as politicians have laid the importance of the Uniform Civil Code but none of them has able to influence the law makers or the Legislative Assembly who is empowered to make laws regarding the same. Uniform Civil Code will not only ensure that there will be no person hiding behind the veil of religion and misusing personal laws for exploitation of women. It is interesting to note that in Goa there is Goa Civil Code, which is a uniform civil code in itself. It is followed since Portuguese time. Although there were chances to revoke the old law after the departure of Portugal but locals raised the voice against that decision. This is an indication that people are willing to accept uniform code regardless of religion.

Keywords: Uniform Civil Code, Secularism, Equality, Rule of Law.

I. INTRODUCTION

Uniform civil code in India is the proposal to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. These laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance. Article 44 of the Constitution which talks of a uniform civil code for all Indians was the subject of a recent debate in Chennai.

The main argument of those who spoke in favor of such a code was that it has the potential to unite India because Hindus and Muslims had followed the “common customary Hindu civil code” smoothly till 1937 when “the Muslim League-British combine” divided them by imposing sharia on Muslims through the Muslim Personal Law (Shariat) Application Act. But only a minuscule minority of Muslims followed Hindu customs before 1937. Even this section had the right under laws such as the Cutchi Memons Act, 1920 and the Mahomedan Inheritance Act (II of 1897) to opt for “Mahomedan Law”. As for a majority of Muslims, there is enough evidence to show they followed Muslim law, not the Hindu civil code.

In 1790, when Governor-General Cornwallis introduced a three-tier court system in Bengal (which was subsequently extended to other parts of India) he included qazis and muftis as “law officers” to assist British judges. The highest criminal court of this system, Sadr Nizamat Adalat, was assisted by the chief qazi of the district and two muftis. In cases pertaining to Muslims it had to apply Islamic law as per the fat was of these law officers, which were binding on the court. The British judges had to wait till 1817 to overrule the fat was when a resolution was introduced to repeal their binding character (Rudolph Peters: Crime and Punishment in Islamic Law). However, these laws were sometimes superseded by antiquated customs that had acquired the force of law. For example, as per prevailing custom, property received by a woman as inheritance or gift was not hers and had to be given back to the heirs of the last male owner [Muhammad v. Amir (1889) P.R. 31, cited in Mulla, Principles of Mahomedan Law]. As such customs deprived Muslim women of their property rights in Islam; Muslims wanted only Muslim law to be made applicable to them.

II. RITES AND CEREMONIES

Also, for a marriage to be valid under Hindu law it has to be solemnised in accordance with the customary rites and ceremonies of at least one of the parties. Thus, if a Jain marries a Buddhist by performing the rites of a Sikh, the marriage is invalid (Sakuntala v Nilakantha 1972, Mah LR 31, cited in Family Law by Paras Divan). In Muslim law there are no elaborate rites or ceremonies, but Sunni and Shia practices differ.

It, therefore, needs to be asked if it is possible or practicable to reconcile these divergent laws and formulate a uniform or common code that is acceptable to all communities. India already has an optional civil code in the form of the Special Marriages Act, 1954

and this, read with similar Acts such as the Indian Succession Act, 1925, provides a good legal framework for all matters of marriage, divorce, maintenance and succession for those who may wish to avoid the religion-based laws. The call for equal rights for women was only at its initial stages in India at that time and the reluctance of the British government further deterred the passing of such reforms. The All India Women's Conference (AIWC) expressed its disappointment with the male-dominated legislature and Lakshmi Menon said in an AIWC conference in 1933, in court, we are to state that we are not Hindus, and are not guided by Hindu law. Members in the Legislative assembly who are men will not help us in bringing any drastic changes which will be of benefit to us." The women's organisations demanded a uniform civil code to replace the existing personal laws, basing it on the Karachi Congress resolution which guaranteed gender-equality.

The passing of the Hindu Women's right to Property Act of 1937, also known as the Deshmukh bill, led to the formation of the B. N. Rau committee, which was set up to determine the necessity of common Hindu laws. The committee concluded that it was time of a uniform civil code, which would give equal rights to women keeping with the modern trends of society but their focus was primarily on reforming the Hindu law in accordance with the scriptures. The committee reviewed the 1937 Act and recommended a civil code of marriage and succession; it was set up again in 1944 and sends its report to the Indian Parliament in 1947. The Special Marriage Act, which gave the Indian citizens an option of a civil marriage, was first enacted in 1872. It had a limited application because it required those involved to renounce their religion and was applicable only to Hindus. The later Special Marriage (Amendment) Act, 1923 permitted Hindus, Buddhists, Sikhs and Jains to marry either under their personal law or under the act without renouncing their religion as well as retaining their succession rights.

First time demand for Uniform Civil Code was raised by India's first Prime Minister Jawahar Lal Nehru but he failed to implicate the provision stating that Muslim society is not ready for the change.

After that in 1985, Supreme Court went on to say in the Judgment of Shah Bano case that "A Common Civil Code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies.

However, in 1986 Government went against the recommendation and passed Muslim Women's (Protection of Rights on Divorce) in 1986 which nullified the Supreme Court judgment. It was alleged that this was done to protect the vote banks.

Even after this, Supreme Court kept on laying emphasis on the need for Uniform Civil Code in its several key decisions like Danial Latifi, Iqbal Bano and Shabana Bano that women could not be deprived of the benefits arising out of Section 125 of Cr. P.C

In Shabana Bano's case, The Apex Court went on to state that even if Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of Cr.P.C after the expiry of the iddat period as long as she does not marry.

A divorced woman is entitled to claim maintenance for her children till they become major. The Apex Court, in Noor Saba Khatoon V. Mohd.Qasim, held that under section 125 of Criminal Procedure Code 1973 the obligation of the father was absolute when the children are living with their divorced wife. The court made it clear that this right is not restricted, affected or controlled by divorced wife. Section 125 and Section 128 are self-contained procedure for wife, divorced or not. The court in this case also mentioned that we have adopted for a secular republic, state does not owe loyalty to any religion. Religion has nothing to do with socio-economic laws of the state. Constitution does not allow religion to infringe adversely on secular rights of the citizens.

In Danial Latif v. Union of India, a five judge Supreme Court bench upheld the validity of Muslim Women (Protection of Rights on Divorce) Act 1986 and held that a Muslim divorced women has a right to maintenance even after 'iddat Period'. If relatives are found incapable of maintaining the women then the State Wakf Board would pay the maintenance.

Three Judges Bench of C.J. V.N. Khare, J. Sinha and J. A.R. Lakshmanan held in John Vallamattan v. Union of India that section 118 of Hindu Succession Act is unconstitutional and violative of Article 14. The majority said that Article 25 and 26 have no application in case of disposition of property for religious and charitable uses and is not an integral part of Christian religion. The Chief Justice reiterated his view that Common Civil Code should be enacted in this case. Supreme Court's Two Judge Bench, directed the legislature to make new rules which make registration of marriage mandatory.

III. WHY INDIA NEEDS A UNIFORM CIVIL CODE

During The proponents of a uniform civil code have been campaigning for it even before the independence of India. India has always been a place of many colors and spices and before independence in 1947 it would have been hard to point out what constituted India. Fighting the British rule and winning independence also helped in creating this nation call India. It was known even at that time that to further unite India and make it a truly secular nation would need a uniform civil code. But even after 66 years of independence haven't been able to do this and the reasons for why this has not been done are complex and a different topic on its own but it all boils down to political will. Politicians have always found it beneficial to play vote bank politics and try to appease different castes and groups instead of attempting to integrate nation. The objective underlying a uniform civil code is to enhance national integration by elimination contradictions based on religious ideologies. All communities in India would then stand on a common platform on civil matters like marriage and divorce, which are currently governed by diverse personal laws. The pertinent question that poses itself is: If the same law of contract or torts applies to a Hindu and a Muslim, why not the same law of marriage?

As once observed by the Supreme Court, the implementation of a uniform civil code is imperative for both, the protection of the oppressed and the promotion of national integrity and unity. It is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, divorce, adoption, succession and the like are matters of a secular nature, and can therefore be regulated by a law applicable to all persons in a country.

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