

PERSONAL LAWS OF INDIA VIS-A-VIS UNIFORM CIVIL CODE : A CRITICAL ANALYSIS

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ABSTRACT

Citizens of India are governed by different personal laws, based on their religion, caste, community, etc. The Uniform Civil Code (UCC) in India is proposed to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set of laws governing every citizen. More than 67 years have been completed since commencement of the supreme law but government of India has failed to formulate UCC. A. 44 of Constitution of India lays down that the state shall work towards administering the same set of civil laws to govern people belonging to different religions .

KEYWORDS:- Uniform Civil Code, Personal Laws, Rule of Law, Secularism, Minority, Unity and Integrity.

1.1 INTRODUCTION:-

In the modern era, a secular democratic republic country should have Uniform Civil Code [UCC] for its citizens irrespective of their differences like – religion, caste, class, gender, etc. India is a secular country and there are many castes, religions, cultures etc. and they are governed by their own personal laws. In India we have different personal laws. Some personal laws are reformed time-to-time but other personal laws remained unreformed and create problems for the country. As we know that some issues which are related to religion and caste are very sensitive like Triple Talaq, Halala and polygamy among Muslims. The demand of UCC has arisen by many social activists, jurists, law experts even by Muslim women too. Under the constitution, Article 44 provides that state shall endeavour to secure for its citizens a Uniform Civil Code throughout the territory of India. There are many personal laws in India. Having a Uniform Civil Code will mean that all forced personal laws will be replaced by only one law which will be applicable for all irrespective of

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religions. It seems to be good for the nation' unity and secular character but unfortunately UCC is facing many challenges.

Some Muslims perceived this as an attack on their religion and Muslim religious groups are against it. The next challenge is that it would lead to a loss of the culture and the identity of the minorities in the Indian society. It would be against the right to religion which is given by the Indian constitution. But these challenges are baseless.

1.2 OBJECTIVES OF UCC:-

The objective underlying a UCC is to enhance national integration by eliminating 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 personal laws. Rule of law says that no one is above the law. All are equal before law and equal protection should be given to all. Personal laws are against the soul of rule of law. If the same law of contract or torts applies to a Hindu and a Muslim, why not the same law of marriage, divorce etc. will be applied to Hindus, Christians and Muslims alike. The legal principle of the rule is that law should govern a nation, as opposed to being governed by arbitrary decision of individual groups of people.

1.3 HISTORICAL BACKGROUND OF PERSONAL LAWS:-

Before the commencement of the constitution the situations were different about the personal laws in different matters. These differences have made critical situation towards the country. Historical background of personal laws -

A. Personal laws in ancient time:-

Since the Hindu period there was no interference of the state with personal laws. Society was an organized unit. There were universal laws which were laid down by the religious leaders of society. Civil laws were not differentiated from religious and society rules. The leaders of the society were Hindu sages. There was no conflict between personal laws. This position was good at that time as personal laws and religious and social rules were not differentiated from each other. Personal laws were primarily evolved from customs.

B. Personal laws in Muslim period in India:-

Under the **Muslim period** situation had changed about personal laws because other religions communities entered in India. Leaders of Muslims were the heads of the state. Prophet was the religious leader. They made personal and religious laws for Muslims like Hindu sages. Muslim law also became the law of land which was enforced through the machinery of the state rules. They did not accept Hindu laws for themselves. On the other hand they did not abolish the Hindu system of law. So Muslims followed their Muslim law and Hindus were free to follow their own law. The result was the people of India were divided in Hindus and Muslims for the purpose of personal law. So, two separate systems of personal laws were in the existence during Muslim era.

C. Personal laws in British period in India:-

In the British era, the Indian society was governed by Hindus, Muslims and Britishers. They introduced their own system that dealt with various matters of civil law but they did not want to hurt religious matters. It has been proved that as far as personal laws are concerned, Britishers left Hindus & Muslims to follow their own belief. The Hindu law and Mohammedan law derived their authority from Hindu and Mohammedan religion. So the Britishers adopted the policy of neutrality while dealing with the personal law of Hindus and Muslims. Legislation aimed at maintaining their personal laws. Britishers did interfere with Hindu law and Muslim law through judicial interpretation but they did not directly interfere in the personal laws of Hindus and Muslims.

So, we can say that the basic principle of Hindu personal law was drawn from Vedas, Puranas, Ramayana, Mahabharata and Bhagwat Gita. In ancient India the king usually did not interfere in personal laws of people and local customs and traditions were part of the personal law. During Muslim rule, Muslims did not interference in Hindus personal laws and they governed their own personal laws and they

did not implement their personal laws on Hindus. Britishers did the same. They did not interfere in Muslim and Hindu personal laws.

D. Personal laws after commencement of the supreme law of the country

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In 1947, India got freedom. At this time the laws relating to marriage, divorce, maintenance guardianship and succession governing the Hindus, Muslims and Christians, etc. were different and varied from one religion to other. Constituent assembly debated a lot about different personal laws. The makers of constitution had the principle of Uniform Civil Code in their mind but it couldn't come into reality and separate personal laws were retained for separate communities.

In today's era these personal laws lead to contradictions within the Constitution. Separate personal laws of India are inherently unequal as they are founded on the rules and traditions of completely different religion. UCC in India proposes to replace the personal laws based on the scriptures and customs of each major religion community in the country with a common set of laws governing every citizen. Is UCC essential for country like India? Answer is that in the modern era, a secular, democratic republic should have common civil and personal laws for its citizens irrespective of their religion, class, caste and gender. It is commonly observed that personal laws of almost all religions are discriminatory towards their citizens. We have a criminal code that is equally applicable to all. Why we don't have a similar code with respect to civil cases like divorce, marriage, succession, maintenance, etc. We are still governed by the personal laws, which varied in their sources, philosophy and application. The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956, The Hindu Minority and Guardianship Act, 1956, and The Hindu Adoptions and Maintenance Act, 1956 are Hindus personal laws, dealing respectively with marriage, divorce, maintenance, succession, adoptions, etc. The Indian parliament also enacted the Special Marriage Act, 1954. It provides a special form of marriage and divorce. This enactment of solemnizing marriage by registration is resorted to by Hindus. Divorce can also be obtained by non-Hindus under this act but the ceremonial marriage is related to their respective personal laws.

Non-Hindus personal laws are The Parsi Marriage and Divorce Act, 1936, The Christian Marriage Act, 1872, The Muslim personal law (Shariat) Application Act, 1937, The Dissolution of

Muslim Marriage Act, 1939, The Muslim Women (Protection of Rights on Divorce) Act, 1986 and The Muslim Women (Protection of Rights on Divorce) Rules, 1986 apply to their respective classes in India.

1.4 Need of the Uniform Civil Code:-

There are many differences between personal laws which are against the right to equality, Rule of law and real soul of secularism. There must be a uniform civil code in India. Personal laws have controversial differences about marriage, divorce, maintenance etc.. India needs Uniform Civil Code for the sake of the unity and integrity of the country, to respect the soul of the secularism, give similar rights to all citizens etc. .

1.5 Judicial directions for Uniform Civil Code:-

The Supreme Court has given a clear call for the implementation of a uniform civil code in India in 1985 in **Mjd. Ahmed Khan v/s Shah Bano Begum** case. Another important case, in which the Supreme Court once again gave a strong reminder to the government, was **Sarla Mudgal v/s Union of India** in 1995. In a recent judgment, Lily Thomas v/s Union of India, (AIR 2600 SC 1650) the court has taken a backward step with this clarification that the court had not issued any directions for the codification of UCC, but in John Vallamattan v/s Union of India (AIR 2003 SC 2902) three judge bench has once again expressed regret for non-enactment of UCC. In a land mark judgement held by supreme court in **Seema v/s Ashwani Kumar (AIR 2006 SC 1158)**, court said that all marriages must be registered. It is the first step towards uniform civil code. The court directed the government to provide for "**consequences of non-registration of marriages**". Rules would continue to operate till the respective governments framed proper legislations for the compulsory registration of marriages. These rules will prevent child marriage, check bigamy and polygamy, help women to exercise their rights under marriage, maintenance, custody of children, enable widows to claim inheritance and deter husbands from deserting their wives. Judicial activism has done a lot to have UCC but it will be done only by the will power of the legislature.

1.6 SUUGGESTIONS:-

In modern era a country like India should have Uniform Civil Code. India is as a socialist, secular and democratic country and for making these three words real our country must provide equality in all manners. It is true that each religion has its own philosophy but unity and integrity of the nation must be preserved. Our country is declared as a welfare country and citizens should have equality towards civil laws too. Provision is made in Article 44 to promote unity and integrity which is the cherished goal in the preamble of the Indian constitution. Muslim community especially women are facing many problems because of their marriage & divorce related laws. The present situation is open to misuse and is inhuman and unjust for them too. That's why in many times Supreme Court and Law Commission requested the government of India to secure uniform civil code for all citizens of India.

1.7 CONCLUSION:-

It is clear that from the ancient time to present era personal laws are prevailing in Indian society. Time to time there has been changes in personal laws and they are amended. But because of difference in them they have created a problematic situation. Everyone knows that India is a unique blend of codified personal laws. The question is not that common civil code will be against the minority because only civil affairs will be codified in it not religious matters. It is simply one of treating each human person with the dignity that he deserves, something which personal laws have so far failed to do. The main objective of UCC is to treat each person of the country equally and everyone is to be protected by just, fair and predictable laws.

In 21st century time has been completely changed. Modern governments cannot run the country on the basis of religion. Today's youths want development, employment, good health, fair environment, education, economic prosperity, agricultural improvement etc. As **Justice Y.V. Chandrachud** said that "Uniform Civil Code will also help in strengthening the cause of national integration by removing conflicting interests".

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