

“Parallel Coalition- A Diverse Amalgamation”**Amritha B**School of Law, SASTRA University
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India is an abode of people with discrete cultures and numerous religious beliefs living in consensus over the years. As a secular state, India fosters legal pluralism and has bestowed its citizens the freedom of conscience and free profession, practice and propagation of religion¹. The personal laws in India dealing with marriage, maintenance, adoption and inheritance have several disparities and are contradictory to one another. The sequela of which has made the enactment of the Uniform Civil Code crucial. The Uniform Civil Code aims to replace the personal laws with a uniform law governing all the aspects dealt under various personal laws. Legal universalism calls for application of uniform laws for all humans at all times and in all circumstances. The doctrine of monism, emphasising ‘oneness’ should supersede pluralism as it states that there are no fundamental divisions, and that a unified set of laws underlie in all of nature. The need for bringing into effect a common civil code was revived in the Shah Bano case² where it was stated that “A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies”³.

The Constitution of India provides in its Directive Principles that “the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”⁴. Though provisions contained in this Part are not enforceable by any court, the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply the principles in making laws⁵. Thus, as rightly contemplated in the case, the State has the legislative competence to secure a uniform civil code for the citizens of the country⁶. There exists an indispensable interconnection between religion and law in India where the former is the premise that influences the formation of latter. However, Religious practices cannot be upheld by sacrificing humanity and generosity. The true object of ‘secularism’ would be attained when the State does not differentiate and discriminate any person by the religion one follows. A country with competing communities is not likely to move towards substantial growth. The implementation of Uniform Civil Code will help eradicate differential treatment of people on the basis of religion which violates human rights and hinders overall development of the society. The presence of a common code which is a blend of the best extracted from the personal laws would transform the country into a

¹ Art. 15, the Constitution of India.

² Mohd. Ahmed Khan v. Shah Bano Begum And Ors, AIR 1985 SC 945.

³ Ibid.

⁴ Art. 44, the Constitution of India.

⁵ Art.37, the Constitution of India.

⁶ Supra 2.

progressive state. Over the years, significant changes in the dynamic world have resulted in persistent evolution. Now it's time to prevent religions from becoming a major cause of disunity and disrupting the society. Thus, the rearrangement of personal laws and adapting a uniform code is the need of the hour.

Problems in Personal Laws in India

Religious beliefs have profound influence in the construction of the society. Lately the differences in the belief systems have become one of the most important reasons that causes chaos and destroys harmony as the believers misinterpret and misuse the beliefs and religious practices. Personal laws in India are incongruent and overlapping in nature. In a broader perspective, gender inequalities, discrimination & injustice to women, religious disparities, etc., are the major problems in the prevailing personal laws of our country. An extensive research gives insight into the underlying issues in the personal laws. The provisions of different religions are contradictory and violates the safeguards provided by our Constitution. People are blatantly discriminated on the basis of gender in the name of religion and are not placed as equals in law's perspective.

Considering the rules of inheritance, under The Hindu Succession Act, since 1956, the female heir is put on par with a male heir. Next in the Shariat law, applicable to Muslims, the female heirs have an unequal share in the inheritance, by and large half of what a male gets. Then comes the Indian Succession Act which applies to Christians and to people not covered under the aforesaid laws, which confers in a certain manner of heirship on females as also males⁷. This is a clear example of gender inequality which the Constitution of India forbids and provides safeguards against Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth⁸. Similarly, while considering the exceptions placed on Muslims from being charged for bigamy which is an offence under Indian Penal code⁹ has been questioned whether that is a reasonable classification¹⁰ and following polygamy was contended of offending the article 14¹¹ and 15 of the Indian Constitution¹². Conversion of religion that becomes a valid ground for divorce is yet another provision that has been misused to satisfy lust over a period of time. In order to re-marry without getting convicted for bigamy, conversion is made in ease which renders the previous marriage to fall apart. In several instances, conversion is also done to avail the privilege to follow polygamy that is not prohibited in Muslim community. In the case of Sarla Mudgal And Ors v. Union of India¹³, it was held that the marriage solemnised by a Hindu husband after embracing Islam may not be strictly a void marriage because he is no longer a Hindu, but the fact remains that the said

⁷ Madhu Kishwar & Others v. State of Bihar & Others, (1996) 5 SCC 125.

⁸ Art. 15, the Constitution of India.

⁹ S. 494, The Indian Penal Code, 1860.

¹⁰ State of Bombay v. Narasu Appa Mali, AIR 2001 SC 3958

¹¹ Art. 14, the Constitution of India

Equality before law: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

¹² Ahmedabad Women Action Group(AWAG) v. Union of India, AIR 1997 SC 3614.

¹³ AIR 1995 SC 1531

marriage would be in violation of the Hindu law which strictly professes monogamy. The Supreme Court of India directed the Government of India to have a fresh look at Article 44 of Indian constitution and constituted guidelines for the same. It is vital to be noted that though Hindu law promotes monogamy, there are provisions in the Act that project that the practice of bigamy may prevail. To quote an example, Section 14(2) of the Hindu Adoptions and Maintenance Act, 1956 can be taken which details how adoptive mother is determined in certain cases, the section makes the seniormost in the marriage as the adoptive mother in the presence of more than one wife. This can be construed in a way that it indirectly allows bigamous practices. There is a lack of clarity due to the complexly designed provisions and the different interpretations that can be made. For instance, in a case the parties were married according to Zoroastrian law. The wife became Muslim whereas the husband declined to do so. The wife claimed that her marriage stood dissolved because of her conversion to Islam. The learned Judge dismissed the suit¹⁴

Another important drawback is that the personal laws in India do not strictly prohibit Child marriage. There are provisions in the Indian Christian Marriage Act, 1872 that passively allow this practice. The said Act deals with minor marriages wherein it requires the consent of father or guardian or mother of minor¹⁵, issuance of certificate in case of minority¹⁶ and Petition to High Court to order certificate within fourteen days where one party to marriage is a minor¹⁷. Moving to the Hindu Adoptions and Maintenance Act, 1956, no person shall be capable of being adopted on the completion of age of fifteen years and if the person is married¹⁸, unless there is a custom or usage permitting it. From the wordings used in this Act it is clear that on the instance of customs allowing such practices, a minor who is married can also be adopted. Even the divorce grounds are not same and slightly vary in laws governing different religions. A comparison of the relevant provisions of the Christian Marriage Act 1872, Hindu Marriage Act 1955, Special Marriage Act 1954, Parsi Marriage and Divorce Act 1936, Dissolution of Muslim Marriage Act, 1939, show that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform¹⁹.

Uniform Civil Code in Goa

Remarkably, Goa is the only state in India that follows the Uniform Civil code. Uniform Civil Code originally serves a Common Code which is applicable all over the country. Surprisingly Goa, being a state in India has established a uniform set of laws related to marriage, divorce, and succession which was adopted from Portuguese act 1867, after undergoing a series of legislative amendments, it was commissioned by the Indian parliament in 1961 when goa emerged as a state in India.

¹⁴ Robasa Khanum vs. Khodadad Bomanji Irani 1946 Bombay Law Reporter 864.

¹⁵ S. 19 & 44, The Indian Christian Marriage Act, 1872.

¹⁶ S. 22, The Indian Christian Marriage Act, 1872.

¹⁷ S. 43, The Indian Christian Marriage Act, 1872.

¹⁸ S. 10 (iii) & 10 (iv), The Hindu Adoptions and Maintenance Act, 1956.

¹⁹ Ms. Jordan Diengdeh v. S.S.Chopra, AIR 1985 SC 935.

Under the Uniform Civil Code of Goa marriage is a contract between two opposite sex to live together and to constitute a legitimate family where registration of marriage is a requisite condition as it bypasses bigamy.

Muslim men whose marriages are registered in Goa cannot practice polygamy. Further, even for followers of Islam there is no provision for verbal divorce. (Jose Paulo case)

However, under certain exceptional cases, marriage contracted by a male Gentile Hindu by simultaneous polygamy shall not produce civil effects; except in the following cases only

- (1) Absolute absence of issues by the wife of the previous marriage until she attains the age of 25 years.
- (2) Absolute absence of male issue, the previous wife having completed 30 years of age, and being of lower age, ten years having elapsed from the last pregnancy;
- (3) Separation on any legal grounds when proceeding from the wife and there being no male issue,
- (4) Dissolution of the previous marriage as provided for in Article 5²⁰

[Source: Family Laws of Goa, Vol 1 by MS Usgaoncar]

The primary features of Goa Civil Code in view to the family property is that after marriage the assets acquired by each spouse before or after marriage will be held under joint ownership. Accordingly, in divorce, each spouse is entitled to half share of the assets. Conversely, in the case of prenuptial agreements which may have a different system of division of assets. Another important aspect is that at least half of the property as to pass to the legal heirs as legitime. This system in some ways is analogous to the concept of 'coparcenary' in Hindu law. However, as far as Goa law is concerned, this legitime will also apply to the self-acquired properties. The Portuguese civil code continues to apply in Goa though it has a foreign origin became part of Indian laws as it was authorised by the Indian parliament. It is no longer a foreign law therefore it is clear that the code was an Indian law and no principals of private international law were applicable²¹.

Uniform Civil Code in other countries

A manifold of countries has separate codified laws, homogeneously applicable to all its citizens without any discrimination based on race, sex or caste. Turkey, a Muslim country follows rules based on Muslim law, but to achieve a secular status, in 1926 the state adopted the Swiss Civil Code and the Civil Code of obligation and it was considered as the best suited code for Turkish society. The enactment of this new code paved way for revolutionary changes in the areas of family law. In Turkey, they follow a state-church model. In this model, the state is separated from religion i.e., the state does not intrude in the matters of religious groups and these groups would not interfere in the state. Due to this action, the

²⁰ MS Usgaoncar, Family Laws of Goa, Vol 1, 2013

²¹ Jose Paulo Coutinho v. Maria Luiza Valentina Pereira, 2019 (12) SCALE 338

rights of both minorities and majorities were affected. Kurds a minority group claims that the ethical and linguistic rights have been demoted due to the ideals of the Turkish unity.

Another example of the state – church model is France. France and Napoleon civil codes were introduced in France during the year 1804. This code struck a balance between privilege and equality and custom and legal requirements. The code was based on three ideals

- Firstly, all men should be treated equally i.e., primogeniture, hereditary, nobility and class privileges.
- Secondly, the law should be valuable and reasonable and it could be applied only if it is duly promulgated and published. Ex post facto laws were abolished.
- Thirdly civilians were given the freedom of person, contract and prohibiting violation of private property.

This code spread all over the European Nations. It recognized the principle of civil liberty and the secular character of the state and put an end to feudalism. Although this code was washed away in the year 1855, its ideas are retained till date.

The United Kingdom had three legal systems, namely, The English law, The Scots law, and The Northern Ireland law. Each jurisdiction has separate laws, court systems, lawyers and judges. While the decisions can be different in each jurisdiction, the statute in one jurisdiction is equal or very similar to the other jurisdiction when it is derived by legislation. The imperfections in this system has led to the introduction of the Laws of the United Kingdom whereby the Supreme Court is the highest court for appeal, but it cannot abrogate any statute. Only the Parliament has the power to abrogate any statute.

In Germany, Burgerliches Gesetzbuch is the civil law which came to force during the year 1900. The main aim of this German civil code was to abrogate the conflicting customary practices and codes prevailing in other countries. To bring a uniform civil code in Germany, a commission was established in 1874 to form an outline of Germany's private law mainly focusing on areas like the civil laws, Family laws, the law of things and the law of succession. The final outline was submitted in the upper house of German in 1887 which had many lacunas: -

- Firstly. it was more theoretical and very difficult for practical implementation
- Secondly, it was discriminating against women since the women were subordinate to their father or husband and the property inherited by the woman will be under the control of her husband or her father and no divorce laws were present at that point of time.

Though it was criticized, it was enforced in 1900. In the later years, it has undergone many amendments and guarantees equal rights for women in civil laws.

The civil codes practiced in Islamic countries are the Sharia laws derived from religious teachings, practices, and traditions. Sharia law is a broad system of the code. This law

governs public behaviour, private behaviour, and private individual religious beliefs. Sharia law mostly favours men and is intrusive against women. Different nations have different interpretations of the sharia laws. The act which is forbidden in one country need not be the same in the other country.

Saudi Arabia does not have any parallel civil code. They strictly follow Sharia law. The person who forbids the law will be punished either by imprisonment or capital punishment. Islam people should only practice their law while the Non-Muslims are prohibited from practicing.

In Pakistan, they pursue a mixed system of law i.e., they follow both sharia law and Pakistan Penal Code. Criminal offences are governed by Sharia law covers crimes like adultery, false accusations in court and property-related crimes.

The United States is a country that has diverse laws like India. In the United States, they have separate laws and courts for both the state and nations while India is governed by a single Constitutional law all over the country. The cases are taken to the Federal Supreme Court if it affects the country as a whole or of federal nature.

Legal practices and modern institutions of Israel are governed by the Israeli law. The law of Torah and the law of Mishra and Talmud are the laws developed by Israel and which was followed during ancient times. After the independence of Israel in 1948, the Ottoman enactments and other English laws continue to be in existence. However, the legal language was changed from English to Hebrew. Israeli laws have separate administrative, criminal and labour laws. The Jewish were not applied as a law of the land but were applied in the Rabbinical courts within their jurisdiction in the matters of personal status and in some areas of civil.

Bountiful of countries have implemented the Uniform Civil Code and achieved in maintaining peace. Similarly, India can also implement Uniform Civil Code to elude discrimination against religions and women.

Aftermath of Uniform Civil Code

In a pluralistic society like India where utmost respect and importance is given to religious beliefs and customs, bringing up a Uniform Civil code that would replace the existing personal laws would have severe effects in the country. Religions have played a major role in establishing the norms and values in the society and forms the foundation of our legal system. The Uniform Civil Code should be a perceivable combination of fundamental rights guaranteed to all and religious dogmas practiced by nearly all. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious or political considerations.

The task of evolving a uniform civil code applicable to the different communities of this country is not very easy. The framers of the Constitution were fully conscious of these difficulties and so they deliberately refrained from interfering with the provisions of the personal laws at that stage but laid down a directive principle that the state shall endeavour hereafter to secure a uniform civil code throughout the territory of India²².

Time has now come for the intervention of the legislature to provide for a uniform code of marriage and divorce as envisaged by Article 44 and to provide by law for a way out of the unhappy situations in which couples find themselves in. It is necessary to introduce irretrievably break-down of marriage, and mutual consent as grounds of divorce in all cases²³. Therefore, it is noteworthy that religions have a greater role to play in the evolution of our society, but at the same time it cannot violate the safeguards provided to citizens under the Constitution of India. The enactment of Uniform Civil Code will not initially have a positive effect on the people as it will stir up their anger and might lead to days of protests coupled with violence. It should be codified in a way that does not take away the freedom guaranteed through Constitutional provisions and should only eradicate practices that cause grave violation of human rights. Once it is implemented and awareness is created, gradually the conditions of men and women in the society would progress and peace and harmony shall prevail.

²² Supra 10.

²³ Supra 19.