

Personal Laws vs Need of Uniform Civil Code in India

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Abstract – Under International law, a State that ratifies an International instrument becomes legally bound to implement its provisions. Accordingly India having ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, is bound to enforce the relevant provisions and ensure gender equality under its national laws. However, women in India under Hindu, Muslim and Christian laws continue to suffer discrimination and inequalities in the matter of marriage, succession, divorce and inheritance. So as a step towards a gender just code, the personal laws of various communities in India need a closer look and reform, not only in compliance with the Indian Constitution but also as per the provisions of the International law. Prevalence of discrimination against women under various personal laws of different communities in India was openly accepted by India in its periodic report before the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) when it admitted, “The personal laws of the major religious communities had traditionally governed marital and family relations, with the Government maintaining a policy of non- interference in such laws in the absence of a demand for change from individual religious communities.” India has been submitting periodic compliance reports vis-à-vis the implementation of the CEDAW, to this committee. This committee expects India’s compliance to the provisions of the said International instrument and noted that “steps have not been taken to reform the personal laws of the different religious and ethnic groups, in consultation with them, so as to conform to the Convention,” and warned that “the Government’s policy of non-intervention perpetuates sexual stereotypes, son preference and discrimination against women.” The committee also “urged the Government to withdraw its declaration to Article 16, Paragraph 1 of the convention and to work with and support women’s groups and members of the community in reviewing and reforming these personal laws” and expected the Government “to follow the Directive Principles in the Constitution and the Supreme Court decisions and enact a Uniform Civil Code that different ethnic and religious may adopt.

Keywords – Constitution of India, United Nation, Uniform Civil Code, Personal Laws, Marriage, Divorce, Maintenance, Adoption, Inheritance

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INTRODUCTION

The term Civil Code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance. The demand for a Uniform Civil Code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde. The spine of controversy revolving around Uniform Civil Code has been secularism and the freedom of religion enumerated in the Constitution of India. The preamble of the Constitution states that India is a

"Secular Democratic Republic" This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A State is only concerned with the relation between man and man. It is not concerned with the relation of man with God. It does not mean allowing all religions to be practiced. It means that religion should not interfere with the mundane life of an individual. Rebecca J. Cook rightly points out that although the Indian Constitution contains articles mandating equality and non-discrimination on the grounds of sex, strangely however, several laws exist that apparently violate these principles and continue to be there especially in personal laws of certain communities with provisions that are highly discriminatory against women. The situation is further criticized when it pointed out that, “The Indian State has, however, made no effort to change these laws or introduce new legislation in

conformity with Constitutional principles. In fact Indian Government seems to have chosen to ignore these principles completely and acts as if they did not exist." The Indian Constitution expressly stands for gender equality. For example, Article 44 of the Constitution envisages a Uniform Civil Code for all citizens and lays down that, "The State shall endeavor to secure for the citizen a Uniform Civil Code throughout the territory of India." However, even after half a century from the framing of the Constitution, the ideal of Uniform Civil Code is yet to be achieved. Women, who make up nearly a half of India, continue to clamour for a gender just code to enjoy equality and justice irrespective of the community to which they belong. The Uniform Civil Code is required not only to ensure (a) uniformity of laws between communities, but also (b) uniformity of laws within communities ensuring equalities between the rights of men and women. One of the major problems that has provoked exciting polemics and aggravated majority pressures is the enactment of a Uniform Civil Code for the citizens throughout the territory of India, as desiderated in Article 44. The provision is cautiously worded and calls upon the State to 'endeavour' to secure such a code. It is neither time-bound nor carries a compulsive urgency. But the Hindu fundamentalists make it a militant demand as if Hindu law should be made the national family law. There is apprehension in the mind of the Muslim minority that the Quran is in danger, that its sacred family law will be questioned. In the Shah Bano's case in 1986, the Supreme Court expressed displeasure at the delay in framing a Uniform Civil Code, which was regarded as a secular imperative. Raging controversy demanding the Uniform Code followed and was resisted in full fury by the Muslim minority, with distinguished exceptions. Attempts have been made from time to time for enacting a Uniform Civil Code after independence and the Supreme Court in various cases has been giving directions to the government for implementing Article 44 of the Constitution and to reform the personal laws specially those relating to the minorities and to remove gender bias therein. While a Uniform Civil Code is not particularly high on the national agenda, value-based progressive changes, preserving the separate identity of each religious group, is a feasible project avoiding insult and injury to any minority. Mobilization of Muslim, Christian and Parsi opinion in this direction is sure to yield salutary results and reduce fundamentalist resistance. Maybe, to facilitate a national debate, a facultative common code may be drawn up at a non-governmental level. It will be purely optional for minorities to accept or reject those provisions. Our founding fathers have been cautious in their phraseology while drafting Article 44 and therefore in a situation where the nation is in the grip of communal tension hurry must make way to moderation. Initially the idea of Uniform Civil Code was raised in the Constituent Assembly in 1947 and it was incorporated as one of the directive principles of the State policy by the Sub-committee on Fundamental Rights and Clause 39 of the draft

Directive Principles of the State Policy provided that the State shall endeavor to secure for the citizen a Uniform Civil Code. The arguments put forward was that different Personal laws of communities based on religion, "kept India back from advancing to nationhood" and it was suggested that a Uniform Civil Code "should be guaranteed to Indian people within a period of five to ten years" The Chairman of the drafting committee of the Constitution, Dr. B.R. Ambedkar, said that, "We have in this country Uniform Code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the Indian Penal Code and the Criminal Procedure Code. The only province the Civil law has not been able to invade so far as the marriage and succession and it is the intention of those who desire to have Article 35 as a part of Constitution so as to bring about the change." Though Ambedkar was supported by Gopalaswamy Ayyangar and others but Jawaharlal Nehru intervened in the debate. Nehru said in 1954 in the Parliament, "I do not think at the present time the time is ripe for me to try to push it (Uniform Civil Code) through." Since the Uniform Civil Code was a politically sensitive issue, the founding fathers of the Constitution arrived at an honorable compromise by placing it under Article 44 as a Directive Principle of State Policy.

UNIFORM CIVIL CODE - GENDER JUSTICE

In Mohammad Ahmed Khan v. Shah Bano Begum, popularly known as Shah Bano's case, the Supreme Court held that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter." Though this decision was highly criticized by Muslim Fundamentalists, yet it was considered as a liberal interpretation of law as required by gender justice. Later on, under pressure from Muslim Fundamentalists, the central Government passed the Muslim Women's (Protection of rights on Divorce) Act 1986, which denied right of maintenance to Muslim women under Section 125 Cr.P.C.1973 The activist rightly denounced that it "was doubtless a retrograde step. That also showed how women's rights have a low priority even for the secular state of India. Autonomy of a religious establishment was thus made to prevail over women's rights." In Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and others, Kuldeep Singh J., while delivering the judgment directed the Government to implement the directive of Article 44 and to file affidavit indicating the steps taken in the matter and held that, "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44, Therefore the Supreme Court requested the Government of India, through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and endeavor to secure for its citizens a uniform civil code throughout the territory of India."

However, in Ahmadabad Women' Action Group (AWAG) v. Union of India, a PIL was filed challenging gender discriminatory provisions in Hindu, Muslim and Christian statutory and non-statutory law. This time Supreme Court became a bit reserved and held that the matter of removal of gender discrimination in personal laws "involves issues of State policies with which the court will not ordinarily have any concern." The decision was criticized that the apex court had virtually abdicated its role as a sentinel in protecting the principles of equality regarding gender related issues of personal laws of various communities in India. The Apex Court pursued the same line in Lily Thomas etc. v. Union of India and others and held : "The desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change." The situation regarding the personal laws for Christians in India was different. In their case, the courts seemed to be bolder and took a progressive stand in terms of gender equality. For example, in 1989, in Swapana Ghosh Sadananda Ghosh, the Calcutta High Court expressed the view that Sections 10 and 17 of the Indian Divorce Act, 1869, should be declared unconstitutional but nothing happened till 1995. In 1995, the Kerala High Court in Ammini E.J. v. Union of India, 22 and Bombay High Court in Pragati Verghese v. Cyrill George Verghese, 23 struck down section 10 of Indian Divorce Act, 1869 as being violative of gender equality. In September 2001, a poor Muslim woman, Julekhabhai, sought changes in the divorce provisions in Muslim law as well as that polygamy be declared illegal. The Supreme Court asked her to approach Parliament, refusing to entertain the petition. Julekhabhai had sought equality with Muslim men, requesting court to declare that "dissolution of marriage under Muslim Marriage Act, 1939, can be invoked equally by either spouse". It also requested the court to strike down provisions relating to "talaq, ila, zihar, lian, khula etc", which allowed extra-judicial divorce in Muslim personal law. Mohammed Abdul Rahim Quraishi, Secretary, All India Muslim Personal Law Board, says: "It is also to be seen that the subjects of marriage and divorce, infants and minors, wills, intestacy and succession, partition etc, are enumerated in the concurrent list of 7th Schedule of the Constitution. These are subjects on which both the central and state governments have the power to make laws.

Bigamy is punishable by law in all communities save the Muslims, who are governed by the Sharia law. The Muslim Personal Law (Shariat) Application Act 1937 was passed by the British government to ensure that the Muslims were insulated from common law and that only their personal law would be applicable to them. Bigamous marriages are illegal among Christians (Act XV of 1872), Parsis (Act II of 1936) and Hindus, Buddhists, Sikhs and Jains (Act XXV of 1955). Enactment of a Uniform Civil Code would impinge upon Muslim rights to

polygamy. In almost all recent cases where the need for a Uniform Civil Code has been emphasized women were at the receiving end of torture in the garb of religious immunity. Apart from the famous Shah Bano (1986) and Sarla Mudgal (1995) cases, there have been several other pleas by Hindu wives whose husbands converted to Islam only in order to get married again without divorcing the first wife. "To conserve the cohesion of Hindu society, the Hindu laws made allowances for customs and usages. The imposition of uniformity would have undermined Hindu social cohesion. If matters relating to family laws and customs fall under the jurisdiction of Parliament and state legislatures, the country will have a variety of regulations. The State amendments have made many in-roads in the Hindu laws damaging the uniformity of these laws, affecting many substantive rules." In a Uniform Civil Code which is the cherished constitutional goal, if we have a single ground of divorce viz. that the marriage has broken down irretrievably, the scope of any controversy is ruled out. Where factually marriage has broken down irretrievably, no useful purpose will be served in finding out the guilt or innocence of the parties and in such cases law proceeds to cut off the tie. Analytical discussion on these issues shows that there should be one single ground of divorce, viz., irretrievable breakdown of marriage. Irretrievable breakdown of marriage and divorce by mutual consent should be made uniformly a ground to dissolve the marriage of spouses irrespective of their religious faiths. The critical analysis of different existing grounds of divorce contained under various divorce laws shows more uniformity and less contrast in them. Therefore, the conceptual analysis of the different existing ground of divorce paves the way to push up the matter of uniformity in them legislatively. In Naveen Kohli v. Neelu Kohli, the Supreme Court, clearly and strongly while permitting dissolution of thirty year old mismatch, urged the Government of India to amend Hindu Marriage Act in order to make Irretrievable break down of marriage a valid ground for divorce. The court held that "irrevocable break down of marriage" as a ground for divorce was prevalent in many other countries and recommended the Union of India to seriously consider bringing an amendment in Hindu Marriage Act, 1955 to incorporate irretrievable break down of marriage as a ground for the grant of divorce. The court ordered to send a copy of judgment to the Secretary, Ministry of law and justice, Department of legal affairs, Government of India for taking appropriate steps. The express introduction of the "irretrievable break down" principle, as has been done in England will be much more conducive and functional than merely relying on the "implied" principle. Besides, the administration of justice on the basis of clearly codified law is superior to the adjudication from case to case. For this, Parliament could reintroduce the Marriage Laws (Amendment) Bill, 1981 (No.23 of 1981), which earlier did not fructify into law for expressly introducing irretrievable break down of marriage as the singular

ground for divorce, as the bill was allowed to lapse. Recently in *Ramesh Jangid v. Sunita*, the wife wanted her husband to leave his parents and live separately. The Court held that the demand of wife was unreasonable and as wife was living separately for 13 years and denying physical relationship, so divorce was granted. The court observed that, "The differences that have grown up between the parties, the distance which has widened for over a decade cannot be brushed aside lightly. Thus irreparable break down of marriage is obvious." In *Prabhakar v. Shanti Bai*, parties were married in 1955, they have not stayed together since 1958, and no cohabitation was there since last 49 years. The court granted the decree of Divorce as the marriage between the parties was irretrievably broken. The Law Commission of India and the Supreme Court have recommended that the irretrievable break down of marriage should be made a separate ground of divorce by the legislature. No useful purpose would be served by keeping alive de jure what is dead de facto. It is possible that if Parliament does not act on this recommendation the legislature of some states of India may take the lead, exercising power under Entry 5 of the concurrent list of the 7th Schedule. The Law Commission of India recommended in 2008: "It is, therefore, suggested that immediate action be taken to introduce an amendment in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 for inclusion of „irretrievable breakdown of marriage" as another ground for grant of divorce." The State should come out with specified steps to endeavor to secure the citizens a Uniform civil Code throughout the country. The Supreme Court ruled in *Seema v. Ashwani Kumar*, that all marriages irrespective of their religion be compulsorily registered. The Court felt that, "this ruling was necessary by the need of the time as certain unscrupulous husbands deny marriage, leaving their spouses in the lurch, be it for seeking maintenance, custody of children or inheritance of property." The Supreme Court order is a first step towards the Uniform Civil Code. The Supreme Court ruled that all the marriages irrespective of their religion, be compulsory registered. Justice Pasayat, writing the judgment for the bench in a matter that was on offshoot of a matrimonial case, directed the Government to provide for "consequences of non-registration of marriages" in the rules, which should be formalized after inviting public response and considering them. The Law Commission of India recommended in 2008: "It is high time we took a second look at the entire gamut of Central and State laws on registration of marriages and divorces to assess if a uniform regime of marriage and divorce registration laws is feasible in the country at this stage of social development and, if not, what necessary legal reforms may be introduced for streamlining and improving upon the present system. But in 1997, cruelty, physical and mental torture were made ground enough for a Christian woman to obtain a divorce, with the Bombay High Court recognizing cruelty and desertion as independent

grounds for the dissolution of a Christian marriage. Divorce under the Hindu Marriage Act 1955 can be obtained on the grounds of adultery, cruelty, desertion for two years, conversion in religion, an unsound mind, suffering from venereal disease or leprosy or if the spouse has renounced the world and has not been heard from for seven years. Also no resumption of co-habitation for one year after the decree of judicial separation, no restitution of conjugal rights for one year after decree for restitution of conjugal rights, or if the husband is guilty of rape, sodomy or bestiality. All major religions thus have their own laws that govern divorces within their own community, and there are separate regulations under the Special Marriage Act, 1956 regarding divorce in interfaith marriages. Under a common civil code, one law would govern all divorces. Significantly, in the matter of a Uniform Civil Code, India's binding Obligation under international law has also started attracting attention of legal and other experts. Satyabrata Rai Chawdhuri, rightly observed in 2003⁴²: [Since] different treatment for any religious group is violative of the UN Covenant on Civil and Political Rights and the Declaration on the Rights to Development adopted by the world conference on Human Rights, it is hoped that Parliament will frame a common civil code without further delay, divesting religion from social relations and personal law. One should not forget that nationhood is symbolized by one Constitution, a single citizenship, one flag and a common law applicable to all citizens and India's obligations under international law and requirements of various international instruments relating to the human rights of women such as Universal declaration of Human Rights, 1948 and the Declaration on the Elimination of Discrimination Against Women, 1967, also demand that even if one rules out Article 44 the Union of India cannot evade its international obligation to make laws to remove all discrimination against women. For that, just as 27 years ago, the Equal Remuneration Act, 1976 was enacted for the benefit of all working women, "The next logical step is to make a law to secure equal rights to women. An Equal Right Act would largely achieve the objective of Common Civil Code. In the alternative, parallel reform of each personal law to give effect to the Human Rights declared by the United Nation would help in the emergence of common pattern of personal laws, paving the way for uniform code, and a beginning could be made in the direction but it seems that the Political will is lacking." The Article 44 of the Constitution of India requires the state to secure for the citizens of India a Uniform Civil Code throughout the territory of India. As has been noticed above, India is a unique blend and merger of codified personal laws of Hindus, Christians, Parsis and to some extent of laws of Muslims. However, there exists no uniform family related law in a single statutory book for all Indians which is universally acceptable to all religious communities who co-exist in India. As discussed above, the

Supreme Court of India for the first time directed the Indian Parliament to frame a Uniform Civil Code in 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum. In this case a penurious Muslim woman claimed maintenance from her husband under Section 125 of the Code of Criminal Procedure after her husband pronounced triple Talaq (divorce by announcing the word "Talaq" thrice). The Apex Court held that the Muslim woman had a right to get maintenance under Section 125 of the Code and also held that Article 44 of the Constitution had remained a dead letter. To undo the above decision, the Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim Woman for maintenance under Section 125 of the Code was enacted by the Indian Parliament. Thereafter, in the case of Sarla Mudgal Vs. Union of India, the question which was raised was whether a Hindu husband married under Hindu law can, by embracing Islamic religion, solemnize a second marriage. The Supreme Court held that a Hindu marriage solemnized under Hindu Law can only be dissolved under the Hindu Marriage Act and conversion to Islam and marrying again would not by itself dissolve the Hindu marriage. Further, it was held that a second marriage solemnized after converting to Islam would be an offence of bigamy under Section 494 of the Indian Penal Code. In this context, the views of Mr. Justice Kuldip Singh are pertinent: "Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of the „Uniform Civil Code“ for all the citizens in the territory of India." Thus, the Supreme Court reiterated the need for Parliament to frame a common civil code which will help the cause of national integration by removing contradictions based on ideologies. The Directive Principle of enacting a uniform civil code has been urged by the Apex Court repeatedly in a number of decisions as a matter of urgency. Unfortunately, in a subsequent decision reported as Lily Thomas v. Union of India, the Apex Court, dealing with the validity of a second marriage contracted by a Hindu husband after his conversion to Islam, clarified that the court had not issued any directions for the codification of a common civil code and that the judges constituting the different benches had only expressed their views in the facts and the circumstances of those cases. Even the lack of will to do so by the Indian government can be deciphered from the recent stand stated in the Indian press. It has been reported in the Asian Age, "that the Indian government does not intend to bring legislation to ensure a uniform civil code because it does not want to initiate changes in the personal laws of minority communities." However, this ought not to deter the efforts of the Supreme Court of India in issuing mandatory directions to the central government to bring a common civil code applicable to all communities irrespective of their religion and practices in a secular India. Hopefully, the Apex Court may review its findings in some other case and issue mandatory

directions to the central government to bring a common civil code applicable to all communities irrespective of their religion.

The Preamble of the Indian Constitution resolves to constitute a "Secular" Democratic Republic. This means that there is no State religion and that the state shall not discriminate on the ground of religion. Articles 25 and 26 of the Constitution of India as enforceable fundamental rights guarantee freedom of religion and freedom to manage religious affairs. At the same time Article 44 which is not enforceable in a Court of Law states that the state shall endeavor to secure a uniform civil code in India. How are they to be reconciled? What will be the ingredients of a Uniform Civil Code? Since the personal laws of each religion contain separate ingredients, the uniform civil code will need to strike a balance between protection of fundamental rights and religious principles of different communities. Marriage, divorce, succession, inheritance and maintenance can be matters of a secular nature and law can regulate them. India needs a codified law which will cover all religions in relation to the personal laws of different communities. Critics of the uniform civil code think that the true principles of Muslim law remain eclipsed by its extensive alleged misreading over the years. It is suggested by Tahir Mahmood, an eminent scholar in his article that "an Indian Code of Muslim Law based on an eclectic selection of principles from the various schools of Shariat is the ideal solution to all the contemporary problems of Muslim Law". In another Report, it has been reported that the Supreme Court of India dismissed a public interest litigation petition challenging the legality of the customs of polygamy, talaq and divorce practiced by Muslims under personal laws. The plea for a direction to the Central Government to make Uniform Marriage Laws for all communities was rejected on the ground that it is for Parliament to change or amend the law. Thus, the debate is endless and the issue remains unresolved. It is in this context that we need to understand the issue of the uniform civil code. The time has come to place personal laws of all religions under a scanner and reject those laws that violate the Constitution. Personal laws of all religions discriminate against women on matters of marriage, divorce, inheritance and so on. There is an urgent need to cull out the just and equitable laws of all religions and form a blueprint for a uniform civil code based on gender justice. The Hindu code cannot be applied uniformly to all religions. On the other hand, Triple Talaq would have to go, as would polygamy and all the advantages that accrue to Hindu undivided families in matters of property and inheritance. In this backdrop, one can say that in our country, personal laws continuously affect the lives and rights of a large number of women of all most all the communities. Although various efforts are being done by the means of international instruments, reforms of national laws, changing judicial trends, recommendations of Law Commissions and other social elite groups to ensure gender equality but

still women in our country are not treated equally and discriminated in the field of family law especially in cases of marriage, divorce, maintenance, inheritance etc. In these situations, a gender-just code is the need of the time. So a Uniform Civil Code is very important for the protection of oppressed women, to protect their human rights, to remove discrimination against them irrespective of their religion or community they belong and, lastly to make our national laws in accordance with the international instruments which are legally binding on India through various international conventions and international Human Rights instruments which are ratified by India. I think at the present time, the time is ripe for us to try to push it (Uniform Civil Code) through. To sum up in last, it can be said for citizens belonging to different religions and denominations, it is imperative that for promotion of national unity and solidarity a unified code is an absolute necessity on which there can be no compromise. Different streams of religion have to merge to a common destination and some unified principles must emerge in the true spirit of Secularism. India needs a unified code of family laws under an umbrella of all its Constituent religions. Whether it is the endeavor of the State, the mandate of the court or the Will of the people is an issue which only time will decide. The brave fight put up by Muslim women against the practice of triple talaq has once again brought into focus the lack of a Uniform Civil Code in India. The Narendra Modi government has now asked the Law Commission to examine the issue. This is hopefully the first step towards the implementation of something that has been delayed for far too long. India needs a uniform civil code for two principal reasons.

First, a secular republic needs a common law for all citizens rather than differentiated rules based on religious practices. This was a key issue debated during the writing of the Constitution, with passionate arguments on both sides. The Indian Constitution was eventually stuck with a compromise solution, a directive principle that says: "The state shall endeavour to secure for citizens a uniform civil code throughout the territory of India." Several members of the Constituent Assembly disagreed vehemently with the compromise. Among them were the trio of Minoo Masani, Hansa Mehta and Rajkumari Amrit Kaur. As Kaur argued: "One of the factors that have kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life."

Later, in the first decade after independence, the opposition from Hindu conservatives to the Hindu Code Bill was eventually overcome. Nothing similar was tried when it came to Muslim conservatives. The political leadership of the day mistakenly decided to not take on conservative Muslim opinion just after the trauma of partition. There is a second reason why a uniform civil code is needed: gender justice. The

rights of women are usually limited under religious law, be it Hindu or Muslim. The practice of triple talaq is a classic example. It is important to note that B.R. Ambedkar fought hard for the passage of the Hindu Code Bill because he saw it as an opportunity to empower women. The great Muslim social reformer Hamid Dalwai also made the rights of women a central part of his campaign for a Uniform Civil Code.

It is unfortunate that the demand for a uniform civil code has been framed in the context of communal politics. Too many well-meaning people see it as majoritarianism under the garb of social reform. They should understand why even the courts have often said in their judgments that the government should move towards a uniform civil code. The judgment in the Shah Bano's case is well known, but the courts have made the same point in several other major judgments.

The move towards a common civil code cannot be a hasty one. There is the obvious political challenge on assuaging the fears of the Muslim community. The government will have to work hard to build trust, but more importantly, make common cause with Social reformers rather than religious conservatives, as has been the wont of previous governments. One strategic option is to follow the path taken after the fiery debates over the reform of Hindu civil law in the 1950s. Rather than an omnibus approach, the Modi government could bring separate aspects such as marriage, adoption, succession and maintenance into a uniform civil code in stages. The civil law in Goa—derived from the Portuguese Civil Procedure Code of 1939—could be a useful starting point for a national debate. The coastal state continued with its practice of treating all communities alike even after its entry into the Indian Union. The government would also do well to complement the overdue move towards a uniform civil code with a comprehensive review of several other laws in the context of gender justice. That too is important in our times.

The underlying principle should be that constitutional law will override religious law in a secular republic. Many practices governed by religious tradition are at odds with the fundamental rights guaranteed in the Indian Constitution. Even those who argued in the Constituent Assembly for continuing with different civil codes were not arguing on matters of principle, but of political expediency. They hoped that India would move to a common civil code within a decade or so.

India is the universe of diversities. The people living here belong to different castes, creeds and races. The law has allowed them to follow their own rules and rites in certain matters like marriage, adoption, inheritance and maintenance etc. These matters are called personal matters of the communities. The laws dealing with these matters

are called personal laws. The difference between laws is allowed based on it, but the fact is that these personal laws cause disparity among the communities, for example, polygamy, unilateral divorce etc. Such differences in laws are the biggest obstacle in the way of providing women's rights, equality and secularism. So, to fight these problems and bring justice in real sense, it is the need of the hour that uniform civil code (UCC) should be implemented. Now the question arises what the UCC is. The term „UCC“ means unifying all the personal laws to have one such law that would apply to all the citizens of India irrespective of their religion or community.

Here a very crucial question arises, i.e., why the UCC could not be prepared. If we talk from the very beginning, the codification of law was given by the British rule. Prior to them, the disputes were resolved according to the rules of the community the disputant parties belonged to, be it civil or criminal or family matter. It was only on the initiation of the British Empire that a common law on crime „IPC“ could be drafted in 1860. From its very inception, it is equally applicable on every person in India irrespective of his/her community. Besides it, the Code of Criminal Procedure, the Code of Civil procedure, the Contract Act, the Transfer of property Act etc. are other examples of law made and enforced in the British rule. All the personal laws have provisions regarding the matters dealt with in these laws, but the British succeeded in making secular laws and convincing people to follow them. Here, my point is that if British wished, they could implement the UCC. Though initially, people would resist, but later on, they would accept it as above mentioned laws. But they did not prefer it because they did not want resistance from any community leaders. Thus, for personal interest, they discarded it and played divisive politics.

Today, our present political leaders are playing the same game of bad politics. For the sake of their vote bank, they don't take any step towards it, as they know that the people will be annoyed if they have to sacrifice their liberty given under their own religion, for example, polygamy under Muslim Law. It would definitely affect their vote bank. They assure, from time to time, to make the UCC but actually, do nothing to execute it. It is general perception that if the UCC is applied, the Muslims will be affected to the highest extent. But it is not so. In the UCC, the positive and progressive points will be taken, be it taken from Hindu, Muslim, Christian, Parsi or Jewish personal law to make the law really uniform, secular and well-wisher. Prof. M P Jain has rightly stated: "It is necessary that law be divorced from religion. With the enactment of the UCC, secularism will be strengthened; much of the present day separation and divisiveness between the various religious groups in the country will disappear; and India will emerge as a much more cohesive and integrated nation." ¹ Even our Judiciary has also realized the importance of UCC and has emphasized to establish it for many times. In Sarla Mudgal Case, the

Supreme Court has emphasized that UCC is imperative both for the protection of the oppressed and promotion of the national unity and solidarity. Justice Kuldeep Singh even lamented that Indian government, even after 47 years of independence, had failed to enact a uniform civil code. The same was held in Lily Thomas v. Union of India³. Again, in Mohd. Ahmad Khan v. Shah Bano Begum⁴, the Hon^{ble} Justice Y V Chandrachud, the then Chief Justice of India has stated thus: "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so."

Some people who oppose the UCC argue that UCC would be in violation of the Right to Freedom of Religion guaranteed under Article 25 which assures the freedom of conscience and free profession, practice and propagation of religion. This contention is baseless. Firstly, the UCC is being proposed to be made regarding marriage, divorce, adoption, inheritance etc. These matters are of secular nature and are in no way, related to the right to religion. Secondly, even if in any way, it affects the right to freedom of religion, this right is itself subject to public order, morality, health and other provisions of Part III of the Constitution of India. So, if polygamy or unilateral divorce is restricted, it would rather be helpful in controlling population explosion, maintaining public order and providing right to equality. Rather, I think, the UCC is favorable in all respects. It would be helpful in achieving the goals mentioned in the Preamble of the Constitution of India. It declares India to be a secular State. A secular State is one which does not discriminate among people on the ground of religion. So, on the one hand, we are restricting bigamy declaring it to be an offence under Section 494 of IPC, 1860 and simultaneously, on another hand, allowing polygamy, though limited (a Muslim male can contract four marriages at a time), only because he is a Muslim. Are we justified? Is it equal treatment? Are we acting in consonance with the concept of secularism? Certainly NOT. Moreover, Article 14 guarantees the right to equality. In Islam, a male can contract four marriages at a time, but a female is restricted only upto one marriage. Is it right to equality? Further, if a Muslim male contracts more marriages than one, but does not treat equally with all of his wives, it

gives mental agony to that wife who is being ignored. Sometimes, her life becomes miserable. It is clear violation of her right to life guaranteed under Article 21. In the same way, Muslim male has unrestricted right to divorce his wife even without giving any reason. Divorce spoils the whole life of women. After divorce, husband is bound to maintain his wife only up to the period of Iddat. Thus, customarily, on the one hand, unrestricted rights are given to male and no protection is given to females. Is it equal treatment? Is it reasonable to give protection to such law? To make the UCC is legislative act, but legislature has not taken much interest in it. If it had made efforts, it would have certainly succeeded. It is evident from the fact that it could have successfully codified Hindu law in 1955-56. Prior to it, laws applicable to Jains, Sikhs and Buddhists were also different. They all compromised up to some extent and consequently, today, along with Hindus, they are being considered under the same law. Prior to the Hindu marriage Act, 1955, polygamy was allowed to Hindus also, but now, monogamy is the rule having no exception to it. Today the people have become used to it. So, there is no resistance for its implementation. The same formula may be applied for the UCC also. The legislative competence is one thing and political courage to use it is another one which is not had by our political leaders. Section 125 of the CrPC, 1973 lays a good example of it. Sec. 125 provides for the maintenance of wife, children and parents. This law is of secular nature and is equally applicable to all including Muslims. Under Muslim personal law, husband is bound to maintain his divorced wife only during Iddat.

The Supreme Court showed the courage to provide maintenance even to divorced wives of Muslims in Shah Bano Begum's case. But due to great upheaval and considering the political interests, the Muslims were exempted from this provision by passing the Muslim Women's (Protection of Rights on Divorce) Act, 1986. The Child Marriage Restraint Act, 1929 is another authentic example of it. This is a secular law which prohibits the child marriage. A blank space has been left in this Act. This Act does not invalidate the child marriage, if it is permissible under the customs of the parties to the marriage. The punishment provided for child marriage is so nominal that this law has proved to be totally fruitless. Thus, though some laws have been made, but they have proved to be weak ones. So, when the legislature could not do well for the UCC, the Judiciary had to come further and adopt another way to implement it, e.g., adoption is not allowed under Muslim personal law. But, the Supreme Court passed a salutary decision in Shabnam Hashmi v. Union of India allowing adoption even to Muslims under Sec. 40 of Juvenile Justice (Care and Protection of Children) Act 2000 and held thus: "The personal beliefs and faiths, though must be honoured, cannot dictate the operations of the provisions of an enabling Statute." One has to identify what is the moving jurisprudence behind UCC that is it national integration with one nation-

one people motto or is it the eradication of the gender based injustices engrained in the all personal laws. These two future results of the UCC are quite distinct from each other. It has been observed that the original dialogue around UCC was more inclined towards the idea of national integration, with the cause of gender equality as an ancillary effect. However, today in the contemporary times UCC has come up as a champion of the gender equality. If so, then the dialogues around UCC have woefully missed their mark. It is not that uniformity in laws is undesirable. Extensive cultural diversity is the truth of India, but absolute heterogeneity in laws is also not desirable. Uniformity very rightly leads to a constricted scope for arbitrariness and equal protection of law to all the subjects irrespective of the diverse backgrounds they come from. The clarion call for UCC in India has always been with the idea of divesting law from all kinds of religious influences. That law, even the personal laws should be stoic without specific religious and cultural hurdles creeping in. Religion and culture since a very long time have been the ultimate explanation to any and every social evil that exists in the society. Sati, therefore was justified because the religious tenets supported it. One could find a number of justifications ranging from pure religious fanaticism to scientific rationalism and sociology. However, in a country where Hindus shared their day to day lives with other religions where women who need not deliberately die with their husbands existed, questions were raised that why Hindu women be subjected to such atrocity? In fact those who raised such questions became the beacon lights for a movement of social reform such as Raja Ram Mohan Roy, Ishwarchandra Vidyasagar and others. In a heterogeneous society like ours comparisons are normally to be made. These rigid and compartmentalized personal laws which cannot, in any probability, be influenced by others might have the tendency to throttle any scope of social reform. Codification of scattered laws and legal norms, religious edicts, traditions and cultural laws gives a fixed recognition to rules and eases the enforceability of laws. The rights and duties which flow out of such laws and rules also get due recognition and traceability. Indeed, a uniform law with all populace equally and uniformly governed by it is the desired goal and as Dr. Ambedkar had said the society to inch towards its complete realization. However, the taking example of a uniform criminal law as a benchmark for the goodness of uniformity in personal laws is not correct. Personal laws govern the unique and peculiar realms of family and marriage which are endemic to each and every diverse group of people. Unlike the criminal law, personal laws govern the way of life of the people which can differ from one community to other. And therefore uniformity in personal laws has to be treated much more delicately. Two questions need to be addressed which are being completely ignored in the present din around UCC. Firstly, how can

uniformity in personal laws are brought without disturbing the distinct essence of each and every component of the society. What makes us believe that practices of one community are backward and unjust? If one does not address these questions with gravity and depth, then we would commit the same horrible mistake of the Americans who considered the indigenous population as savages, needed to be liberated from their customs and rescued by the progressive, civilized norms of Christianity. The second question is that whether uniformity has been able to eradicate gender inequalities which diminish the status of women in our society? This question is interlinked with the previous question. The definitions of inequality may differ from community to community. It is necessary to determine the layers of gender injustices and inequalities that work separately in one society than in the others. The personal law of one society, without a doubt is dotted with many aspects which are contradictory to the sense of gender equality existing in that society. The first step therefore is to eradicate those unjust practices which are endemic to that specific society. Instead of hurriedly creating a uniform definition of injustice and inequality, which is the dominant point of view, it is necessary that all these societies first recognize the definitions of inequality and injustice within their peculiar sphere of life. Otherwise, what is happening is that these societies become defensive against the demands of uniformity and injustices within their communities are rendered invisible. This positive side of the debate on UCC time and again reminds the people to tend to the diseases in their personal law system and adjust them to the contemporary times, by taking inspirations from another community which might be more progressive in some aspect. It must never be forgotten that all this is a slow process and any undue haste would only result in failure rather than the desired outcome.

CONCLUSION

Recently, in *Khursheed Ahmad Khan v. State of U.P. and Others*, the Hon'ble Supreme Court upheld the validity of the rule that prohibits Second Marriage during the subsistence of first marriage without the permission of the government and held that this provision affect the rights of the Muslims at all. Thus if the legislature has not made direct laws for the UCC, the Judiciary has taken good step by interpreting the secular laws in such a way that they help in implementing it. Though it is good that the Judiciary has come forward, but legislative work has its own value. So, laws should also necessarily be made to implement the UCC. Dr. Tahir Mahmood has made a powerful plea for framing a uniform Civil Code for all citizens of India. He says: "In pursuance of the goal of secularism, the State must stop administering Religion based Personal Laws". He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act. Even it is stated in *Sarla Mudgal v. Union of India*: "When more than 80% of the citizens

have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "Uniform Civil Code" for all citizens in the territory of India." For it, I have some suggestions. First of all, the marriages should be made compulsorily registration. The registration of a marriage has a great evidentiary value to ensure the prevention of child marriage, checking illegal bigamy/polygamy, enabling married women to claim their right to live in the matrimonial house, maintenance etc., empowering widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husbands, deterring men from deserting women after marriage and preventing guardians from selling young girls to any person under the garb of marriage. Secondly, the UCC should be blend of all personal laws picking up the best elements from them and should adhere to constitutional mandate. It should be based on gender equality and impartiality with regard to religious or political consideration. The Special Marriage Act, 1954 is a good example of it. It provides for a marriage outside the realm of any specific religion. It applies to whole of India except the State of Jammu and Kashmir irrespective of the religion, community or caste etc. Under this Act, polygamy is illegal and succession is governed by the Indian Succession Act, 1925. Such law, with necessary modification if necessary, may be compulsorily applicable to all. Thus, the UCC is imperative for the country. It may successfully be made and enforced by reconciling the divergent laws and formulating a common code acceptable to all the communities. The State should do no more delay in formulating it and should take prompt action for it.

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