

Amicable frame of Uniform Civil Code in India

Saman Narayan Upadhyay,

Assistant Professor & Head, Department of Legal Studies, Sarguja University, Ambikapur, Chhattisgarh,
Mob. No. 07049804100,
Email- samanllmhr@gmail.com

Vikash Kumar Upadhyay,

Research Scholar, Babasaheb Bhimrao Ambedkar University (A Central University), Lucknow.

ABSTRACT

"In India, from time to time, Uniform Civil Code has been a hot issue among the scholars, jurists and courts; but it has misled the populace instead of developing consensus to codify the personal civil laws for all Indians with equal application and force. Doubts have been created that through the uniform civil code the personal civil laws of majority in India will be imposed over the minority as regards to their private issues viz. Marriage-divorce-maintenance, adoption, gift, inheritance and succession. Personal laws are, by and large, customary laws; all customary laws are not necessarily to be progressive. In all customary laws, there exist some rigorous/ static arrangements, not admissible in a welfare society. The need is to severe such rigorous/ static arrangements or to put certain restrictions upon it; as has been done through codification of Hindu personal laws in India. Since in India, unlike other welfare democracies, here is diversity of religion, custom, practices and opinion etc., looking for a uniform civil code could be futile to implement. Here requires an Indian Civil Code to codify and regulate the personal affairs of the Indians putting the diversity in its centre. In this paper the author has tried to put certain plan to codify all personal laws in India so that they could be progressive and stand in conformity with the notions of a welfare society."

Key Words: Uniform Civil Code, misleading, religious institutions, religious injunctions, Indian Civil Code, progressive and welfare State.

Introduction

The term 'uniform civil code' conveys imposition of personal laws of majority over personal affairs of minority. The personal affairs, which have been taken at task, are the marriage, divorce, inheritance, succession, maintenance, adoption and gift. To codify the Muslim Law within the cap of uniform civil code several justifications are being cited. Some

scholars are citing the codification of Muslim Law in most of the countries where Muslims are largely populated. Some says that Muslim personal law is an unjust law; it is a barbaric and outdated law because it treats women as inferior.¹ It is true that at most of the occasions codified laws have abolished social

¹ I would like to quote here Hon'ble Mr. Justice Markandey Katju (Rtd.), The Times of India, New Delhi, September 30, 2014

malpractices. But the history of legislation reveals that law has always attempted to curb only those issues which were not integral to the religion. Here, it seems that through the uniform civil code the affairs of life, which are integral to the religion, are to be curbed. It is also suggested that uncodified Hindu Laws were also feudal and barbaric; which had treated women inferior and helpless etc. in all perspectives. Through codification of Hindu Laws the personal affairs of Hindus viz. Marriage, divorce, maintenance, inheritance, succession, adoption, guardianship have been regulated and equal rights among the men-women have maintained. It has given equal rights to men and women of divorce, maintenance, adoption, succession, inheritance etc. But it is notable that the codified Hindu Laws have yet left most of the customary practices untouched viz. relaxation in saptpadi, sapinda, prohibited relationship, registration of marriage etc. it has codified only those Hindu customs which had become obsolete and were not in practice.

Through Uniform Civil Code the uniformity, as it purports, in the personal affairs of the people, which are integral part of the religion, has to be achieved. Irrespective of the religious mandates personal affairs of the people are to be brought at the same footing. Here it is notable that as the religion has always been way of life. Personal affairs viz. marriage, divorce, maintenance, inheritance, succession, adoption and guardianship stems and get recognition from the religion. There is diversity in all religions in this respect. Then, bringing uniformity in the personal affairs of people, which is governed by their own religious scriptures, would be futile and would lead to the lack of religious validity.

In India, the prime personal laws of the minority are the Muslim Law, Christian Law, Parsi Law. Prior to the codification, personal affairs of the Christians, Parsis' and Hindus' were governed by their religious scriptures. These were also filled with the barbarism and feudalism. But with the passes of time these communities had given up or minimised their rigours. Ultimately these personal customary laws have been codified with little or without any religious rigours. In customary Muslim Law also small portion of their personal affairs, which were integral

part of Muslim religion, have been codified and rights of Muslim women have been ensured viz. the Dissolution of Muslim Marriage Act, 1939 and the Muslim Women (Protection of Rights on Divorce) Act, 1986. These laws have availed Muslim women with the rights of divorce and protects their right to maintenance after divorce, which were not available to them prior to such codification. It could have been possible only through the common consensus among the Muslims. Still many aspects of the Muslim personal affairs are in grey area. Inequality, barbarism and feudalism still exist. Still, Muslim women have secondary state in matters of divorce, maintenance, inheritance and succession.

History of legislations reveals that codification of these personal affairs could have happen only within the periphery of their religious mandates and had got religious stamp of validity easily. The proposed uniform civil code, by and large, will purport not only imposition of personal laws of one religion over other but also will lack the validity stamp of religion, whereas the Indian Civil Code could be good alternate of it to accommodate the personal laws of all religions with the religious seal of validity. Herein, those obsolete practices rooted in personal affairs of the Muslims can be regulated which are not in practice frequently, such as Muta marriage, bigamy, matters of inheritance and succession. In this era of modernization, Muslims have almost given up these barbaric and feudal practices and treated women with equality. Common consensuses of Muslim community to codify these personal affairs are feasible, if it is done within the periphery of the Muslim religious scriptures, as happened in the codification of Hindu Laws.

Keeping into mind the honest effort to codify the customary Muslim Laws to modernise the Muslim community so that it can also cater the benefits of the welfares' and may come out of the barbarism and feudalism and equality may be maintained between the men and women. The author has based this article on the hypothesis that the term uniform civil code is misleading and will lead to absurdity, the codification of uniform civil code is very difficult and only the Indian Civil Code

can suffice the need of codification of customary personal laws to meet the Indian Constitutional mandates. Author has deployed the doctrinal research methodology and has utilised the primary and secondary sources to defend his abovementioned hypothesis. First; author has tried to introduce the Uniform Civil Code and Indian Civil Code, secondly; debates of Constituent Assembly and approaches of the Honourable Supreme Court of India have put forward, thirdly; the Indian waves have stretched upon and finally; author has defended his hypothesis with concluding remarks and suggestions.

(A) Constituent Assembly debates on Uniform Civil Code in India

Article 44 of the Constitution of India prescribes for the uniform civil code for the citizens as a directive principle for the State to make its policies. It runs as; "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Some of our constitution framers wanted to make uniform civil code, which could have binding effect at the choice of people, but it couldn't happen due lack of consensus on account of the religious diversity, besides others. Present article 44 of the Constitution of India was Draft article 35. During debate on the draft article 35 in the Constituent Assembly some of the Muslim representatives insisted that the uniform civil code will include the personal law as well and would stand in opposition to the religious institution (i.e. in the matters of marriage) and religious injunctions (i.e. in the matters of inheritance). It would lead giving up the observance of personal religious practices, and he who does not follow it would render illegality.

Mr. Mohamad Ismail Sahib (Madras: Muslim) preferred to add a proviso in the draft article 35 as "Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law." He had tried to justify his move giving stance of the Yugoslavia which has guaranteed rights of minorities under treaty with liberty to the Muslims to follow

their practices in the matters of marriage and personal status. The idea behind the uniform civil code is to secure harmony, he opined, but it would bring discontent.² Mr. Naziruddin Ahmad begged to move a proviso to draft article 35 as "Provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law." Otherwise the bare draft article 35 would stand, he opined, in clash with draft article 19 (article 25 of the Constitution of India) and would undo what has been given in draft article 19. During the 175 years of British Rule, he said, they didn't interfere with certain fundamental personal laws, though they had enforced several civil laws viz. Civil Procedure Code, Limitation Act, Registration Act, Law of Contract, Sharda Act, TPA etc. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. What the British in 175 years failed to do or was afraid to do, what the Muslims in the course of 500 years refrained from doing, we should not give power to the State to do all at once. He submitted that the interference with these matters should be gradual and must progress with the advance of time. Therefore, religious laws relating to particular communities should not be affected except with their consent to be ascertained in such manner as Parliament may decide by law. Parliament may well decide to ascertain the consent of the community through their representatives, and this could be secured by the representatives by their election speeches and pledges. Otherwise, it would lead to a considerable amount of misunderstanding and resentment amongst the various sections of the

² CAD, Vol. VII

country.³ Mahbood Ali Baig Sahib Bahadur opined that the words "Civil Code" do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The personal law are very much kin to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them.⁴ Supporting to the proviso to draft article 35 moved by Mr. Mohamad Ismail Sahib, Mr. Pocker Sahib Bahadur (Madras: Muslim) said that during the rule of 150 years even Britishers had not touched the personal matters of the people, which been one of the secrets of their success and the basis of the administration of justice.⁵

The Muslim representatives in Constituent Assembly had raised two grounds to oppose draft article 35. First, that it infringes the Fundamental Right mentioned in draft article 19; and secondly, it is tyrannous to the minority.

Shri K. M. Munshi (Bombay: General) had advanced his argument that Draft Article 19 is not absolute, but qualified with several restrictions. The House has already accepted the principle that, he said, if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare; it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority. If wouldn't be draft article 35, further he advocated, even then the parliament has authority to enact uniform civil code curving the secular activity to do social reforms. Further, he questioned that how uniform civil code could be tyrannical? Nowhere in advanced Muslim countries, he said, has the personal law of each minority been recognised as sacrosanct as to prevent the enactment of a Civil Code e.g. Turkey or

Egypt. No minority in these countries is permitted to have such rights. He went further, that when the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied. They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? He suggested that when you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. He stretched upon the disadvantages that that could be perpetuated if there is no Civil Code. In Hindus, there are several personal laws viz., the law of Mayukha applying in some parts of India; Mithakshara in others; and the law-Dayabagha in Bengal. The Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is therefore not merely a question for minorities but it also affects the majority.⁶In conclusion I will discuss that what learned members of the Constituent Assemble missed to take into consideration in advocating for a Uniform Civil Code in India.

³ CAD, Vol. VII

⁴ CAD, Vol. VII, pp. 545

⁵ CAD, Vol. VII

⁶ CAD, Vol. VII

(B) Indian Judiciary on Uniform Civil Code

The approach of courts in India, particularly the Supreme Court, has always been towards framing the uniform civil code for the country. It has separated several activities of life from the religion and declared them a secular activity viz., maintenance for Muslim women, succession in Christians etc. And the court has emphasised at several occasions for framing the uniform civil code for the country. In *Ms. Jordan Diengdeh vs S.S. Chopra*⁷ the petitioner belonged to the 'Khasi Tribe' of Maghalaya and was born and brought up as a Presbyterian Christian. The respondent-husband is a Sikh. They were married under the Indian Christian Marriage Act 1872. The petitioner filed a petition in 1980, for declaration of nullity of marriage or judicial separation under ss. 18, 19 and 22 of the Indian Divorce Act, 1869, on the ground of the impotence of her husband. The Supreme Court has affirmed the decree of judicial separation awarded by the trial court, which has lead difficulty to turn it into decree for dissolution of marriage. Comparing relevant provisions of the Indian Christian Marriage Act 1872, Hindu Marriage Act 1955, Special Marriage Act 1954, Parsi Marriage and Divorce Act 1936, Dissolution of Muslim Marriage Act, 1939, it has concluded that under the Hindu Marriage Act, a decree for the judicial separation may be followed by a decree for the dissolution of marriage on the lapse of one year or upwards from date of the passing of a decree for judicial separation, if meanwhile there has been no resumption of cohabitation. There is no corresponding provision under the Indian Divorce Act, and a person obtaining a decree for judicial separation will have to remain content with that decree and cannot seek to follow it up with a decree of divorce, after the lapse of any period of time. It show that, the court further opined, the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform.

⁷ AIR 1985 SC 935

In *Mohd. Ahmed Khan vs Shah Bano Begum and Ors*⁸ the Supreme Court has ruled that a Muslim husband is liable to pay maintenance to the divorced wife beyond the iddat period. The court has regarded that Art. 44 has remained a dead letter as there is no evidence of any official activity for framing the uniform civil code for the country. The court has emphasised that a common civil code will help the cause of national integration by removing disparate loyalties to the laws which have conflicting ideologies.

In *Sarla Mudgal v. Union of India*⁹ Hindu husband had embraced the Islam and solemnised second marriage, the marriage had been declared void and the husband held guilty of bigamy under section 494 of the India Penal Code 1860. The court has further pleaded that there have been many instances where Hindus have converted to Islam only to escape the consequences of bigamy. The protection of oppressed and the promotion of national integrity can be achieved through the uniform civil code only. The court has pointed out that the successive governments in India till-date have been wholly remiss in their duty of implementing the constitutional mandate under Art. 44. Here, the court has urged to the government of India to have a fresh look at Art. 44 and endeavour to secure for the citizens a uniform civil code the territory of India.

In *Lily Thomas v. Union of India*¹⁰ the court has liberally interpreted section 3 of the Muslim Women (Protection of Rights on Divorce) Act 1986 and ruled that a Muslim woman is entitled for the maintenance even after the period of Iddat. The court has again reiterated the need for uniform civil code. Though the decision for the maintenance of divorced wife even after Iddat had been criticised as anti-Shariat by the Orthodox Muslims.

In *John Vallamttom v. Union of India*¹¹ the court held that the directive contained in the Art. 44 no way infringe the freedom of religion guaranteed

⁸ AIR 1985 SC 945

⁹ AIR 1995 SC 1531

¹⁰ AIR 2000 SC 1650

¹¹ (2003) 6 SCC 611

by Art. 25. Art. 25 (2) specifically save the secular activities associated with the religious practices from the guarantee of religious freedom contained in Art. 25 (1). Here court has again reiterated for the uniform civil code.

Here, I must say that the court has looked at the diverse practices in different religions with one glass. Court has forgotten that there are few personal matters of the people which are so closely related with religious practices which can't be separated viz. matters relating to marriage and adoption. None of the community in India is, as of now, ready to give up their religious institutions and injunctions. The Hindu laws are projected for the regulation of all Hindu religious institutions and injunctions, but it is not so. In Hindu laws also, the norms of Hindu religious institutions and injunctions have been honoured and wherever customary practices were necessary, have been left open. For example, where marriages in Hindus were permissible in Sapinda and prohibited relations they are left open yet.¹² Earlier there had been no practice of Hindu marriage registration; accordingly it has not been made compulsory.¹³ Though gradually the society has felt that there are several personal matters which are secular and should be separate from religion; which has given way to codification but in the style of Hindu religious practices; so as in Indian Christians Marriage Act 1872 and Parsi Marriage and Divorce Act 1936, Dissolution of Muslim Marriage Act, 1939.

Indian waves on Uniform Civil Code in India

The uniform civil code has been a debatable issue since inception of the Constitution of India, even in the Constituent Assembly of India. It has got fire from time to time, particularly from the point of fundamentalist and progressive politics; within and off the court premises. Whenever any attempt has been appeared to take advantage of the customary

¹² Section 5 of Hindu Marriage Act, 1955

¹³ Section 8 of Hindu Marriage Act, 1955

personal laws, it has started debate to enact a uniform civil code. Marriage and maintenance has been most notable issues to boost this debate. Conversion into Islam to avoid bigamy, extraordinary rights of husband to pronounce divorce in Islam and inferior status of Muslim women in rights of maintenance have attracted Indian waves for the enactment a uniform civil code. On inheritance, succession, gift and adoption there appear no such strong waves. On the issue of uniform civil code the Indian wave is itself dividing it. It is much emphasising upon the regulation on one and leaving other matters of personal laws. On the side, it is advancing the justifications, such as integrity of the nation, harmony in the society, upliftment of the backward Muslim community and betterment of Muslim women, for the unification of issues like marriage and maintenance leaving other facet of the personal customary laws. On the contrary, there are Muslim fundamentalist having their own wave opposite to the majority. They are looking at these matters as their identity and distinct feature of their religion. There are not appearing in concurrence with the enactment of uniform civil code fearing that it would lead to the giving up of their religious rites too. Though on the issues of succession, inheritance and adoption the progressive Indian Muslim section is getting ready to give equal rights to Muslim women.¹⁴ They themselves are advocating to cut down these disparities. But in no way there are appearing ready to come down under a personal law of majority, though they appear ready for the codification of their personal on few issues, but within the periphery of their own identity and ways.

Concluding Remarks and Suggestions

Piecemeal legislations have been significant in the matters ridden with religious institutions and injunctions. Acts relating to Child marriage

¹⁴ Shabnam Hashmi v. Union of India, (2014) 4 SCC 1; the court ruled that personal law prohibition against adoption would not bar a Muslim from adopting a child if he chose the secular Juvenile Justice (Care and Protection of Children) Act route.

Restraints, Widow Remarriages and Dowry prohibition in Hindus are the most suitable examples of the piecemeal legislations, which have reformed Hindu religious institution and injunctions. Same can be seen in Muslim personal laws also, where Shariat Act, Dissolution of Muslim Marriage Act, 1939 and Muslim Women (Protection of Rights on Divorce) Act, 1986 have brought drastic reform in the Muslim religious institutions and injunction. Saying that the British rulers in India has not touched religious matters, which became the key of their successful rule here for 176 years altogether, appears incorrect to me. They had done several reforms in these religious institutions and injunctions, but they did it through piecemeal not at one go. What they did to reform herein had always been within the sphere of separate religions. They had never attempted to mess up these religious matters.¹⁵ Perhaps they had better understanding than our current policy makers that every religion has its own way and practices of life. It appears to me that Indian Constitution framers couldn't come with such deliberations, as debate of Constituent Assembly of India reveals. It also appears in the Draft Article 35 which has been renumbered as Article 44 of the Constitution of India. Some of the Muslim members of Indian Constituent Assembly opposed the Uniform Civil Code in India posing fear that it would destroy their religious identity, interfere in the religious matters, stand opposite to the freedom of religion guaranteed under draft article 19 (article 25 of the Constitution of India) and impose civil laws of majority over the minority; while on the side some of the members of the same assembly favoured for the Uniform Civil Code in India emphasising that it would lead equality among men and women, following the same religion, fraternity among the religions in India, religious harmony, development off people and many more. But all of them could not realise that any attempt for immediate enactment of Uniform Civil Code in India would develop a state of religious ferment. It is reality that only those laws can survive which have support of the people. In

¹⁵ Separate personal laws for Hindus, Muslims, Parsi and Christians.

post independent India, the legislature has enacted several personal laws viz., Hindu Marriage Act, 1955, Special Marriage Act 1954, The Hindu Minority and Gaurdianship Act, 1956, The Hindu Succession Act, 1956, The Hindu Adoptions and Maintenance Act, 1956, The Dowry Prohibition Act, 1961, the Family Courts Act, 1984, The Foreign Marriage Act, 1969, The Maternity Benefits Act, 1961, The Muslim Women (Protection of Rights on Divorce) Act, 1986 and Administrators-General Act, 1963. These laws have been instruments for the reforms in the religious institutions and injunctions within the periphery of respective religion, not to mess up them together. On other side, they touched only those personal religious customary practices which had become obsolete. For example, in Hindus bigamy was not restricted, but had become obsolete, thus has been nullified through law. Further, different Hindu religious customary laws relating to marriage, adoption, maintenance, inheritance and succession spread over among followers of Mitakshara and Dayabhaga, prominently, have been unified through codifications strictly within the periphery of Hindu religious norms with the liberty to the Hindus to observe their customary practices wherever they are strictly adhered with. So as happened with the Muslim religious injunction relating to right to maintenance of Muslim women after period of Iddat through the Muslim Women (Protection of Rights on Divorce) Act, 1986 and expanded by Supreme Court of India declaring secular to section 125 of the Criminal Procedure Code 1973.¹⁶

At several occasions, Supreme Court of India had opined for the Uniform Civil Code in India but had always refrained from doing so and went for piecemeal reforms through its judgments.¹⁷ It is

¹⁶ Mohd. Ahmed Khan vs Shah Bano Begum and Ors; AIR 1985 SC 945

¹⁷ Right to maintenance to Muslim women even after period of Iddat declaring secular to section 125 of the Criminal Procedure Code 1973, reformed one of the Muslim religious injunction in Shah Bano and Lilly Thomas case; sec. 119 of Indian Succession Act 1925 stands against Article 14 of the Constitution of

notable that whenever the court has delivered obiter for the enactment of uniform civil code in India, only religious injunctions viz., maintenance, inheritance and succession have been in its centre. The court has never delivered any obiter for the unification of personal civil laws relating to the religious institutions. Moreover, whenever the courts have passed obiter for enactment of uniform civil code in India, it has never suggested for unification of personal civil laws or imposition of personal civil laws of one religion over other (s) rather it has always opined for personal civil laws, progressive in nature, to avail equal rights and obligations to men and women to cherish the welfare State. Though emphasising upon the enactment of uniform civil code in India, however, the courts have taken note of codified Hindu Laws but it has been misunderstood among the academics, scholars and the political arena as the court is suggesting to impose Hindu Laws upon other (s) personal laws, which is not correct. What the courts have suggested was not imposition of Hindu Laws upon other (s) personal laws but these were mere illustrations for comparison among different personal laws.

In concluding this article I would like to go for defending the hypotheses, to give my suggestions, which have been blueprint of this research work. My hypothesis that the term uniform civil code in India is misleading and will lead to absurdity is correct. The term 'uniform civil code' sounds as imposition of personal laws of one religion, particularly Hindu Personal Laws, over other (s) personal laws to the academics, scholars and politicians. This misleading sound has outraged religious sentiments of fundamentalists. It is suggested that the uniform civil code in India will lead equality, fraternity and harmony among the people. It is again incorrect and misleading. No one could support that the religious practice of Saptadi in Hindus and Nikah in Muslims, two different religious rituals, is the reason for disturbing harmony, equality and fraternity among the people; or any other religious rituals and institutions are

responsible for such disturbances. It is also suggested that uniform civil code in India will provide a platform for the development of religious followers, if it is so then why it has not happened among Hindus, it is again incorrect and misleading. Still more than thirty percent Hindus in India are condemned to live in misery. As this term is appearing misleading to the minorities in India and appears to force them to give up their religious rituals and injunctions, it would create absurdity instead of maintaining harmony, equality and fraternity among the people in India. Though the Hindu personal Laws have been codified but the Hindu religious institutions, rituals and injunctions-in-modified forms have been kept intact, so as in other religions through their personal laws. It seems that a Uniform Civil Code in India will either impose the Personal laws of one over other (s) or develop a new Civil Code to nullify all Personal Law (s). In both the situations it would be difficult to have religious stamp to adopt it heartedly. By and large, it would also be absurd to the courts to decide the matters relating to different religious institutions and injunctions; so that it may be easily acceptable by all. Constitutionally, it would stand against freedom of religion unless a consensus is developing for it amongst the people that the matters falling thereunder are secular and no longer integral to the religion. Second hypothesis of the article that the codification of uniform civil code in India is very difficult without having confidence of the people, is true; otherwise why the Constituent Assembly could have left the issue of Uniform Civil Code in India as one of the directive principals of the State policy. There were heavy roar not to enact it. Reasons were placed that it would be play with the religious institutions and injunctions, it would put an end to the religious identity and it would go against the freedoms for which they fought against the Britishers. They left it under Part IV of the Constitution of India as one of the non justiciable rights. Now days, Indian politics have been flooded with the appeasement of minorities, hence none of the government could dare to enact it. History of sixty five years of Indian Republic is sufficient to support my argument. Further, if the present Union

India; John Vallamtom Paul v. Union of India, (2003) 6 SC 611.

Government is enacting it at one go it would lead apathy among the followers of the suffered religion.¹⁸ Final hypothesis of this article that the Indian Civil Code can suffice the need of codification of customary personal laws is correct. Here we can codify those customary laws which have yet not been codified and have authorised the religious abbots to arbitrarily impose their whims in the name of interpretation of customary civil laws. I support for an Indian Civil Code instead of a misleading and absurd Uniform civil Code with suggestions that it should keep intact the rituals, institutions and injunctions-modified of all religions. All religious injunctions should be tested, first and foremost, at the touchstone of the Constitutional mandate not on any personal laws, and accordingly reforms therein should be done. It won't lead any religious apathy or outrage. It would be also easy to be accepted by all religious followers. But this reform should be done within their religious periphery only and shouldn't be messed up with other religion(s). Here, those religious injunctions should be taken at task which have become obsolete or lost their effect among the respective followers. Adoption in Muslims, for example, was not permissible, but now under Juvenile Justice Act, 2000 (Amendment Act 2006) a Muslim can adopt a child.¹⁹ In Shah Bano²⁰, when Supreme Court of India has declared section 125 of Criminal Procedure Code, 1973 secular and allowed to Muslim women right to get maintenance even after period of Iddat, it had been opposed by few Muslim leader only, but latter on decision of the court on the same issue in Lilly Thomas case²¹ has not been attacked rather has been accepted by the Muslims. Thereafter, our legislature should go for reform in the religious institutions but not in rituals by any way. As the legislature has done reform in the Hindu religious institutions such as in the matters of bigamy, sapinda and prohibited relationships, child

marriages and widow remarriages etc., in the same way it can be done in the religious institutions of the minorities. In Muslim, for example, maximum four married wives are permissible to men at a time, but in reality it is very hard to find a Muslim man who has more than one wife at a time. Muta marriage is permissible only amongst the Ithan Asariya Shiyas', but in practise they are refraining from performing the Muta marriages. These can be curbed through legislation since it won't create any religious ferment. There remains only arbitrary power of the Muslim male to pronounce Talaq, which Muslim female does not have at all with the same degree. Basically, Muslims are prominently concerned with this religious right. But if they are being convinced with the fact in the present progressive world there won't be justice unless women are not being given equal sense of matrimonial security, there is possibility that they may come along this reforms also. Putting the justifications for uniform civil code in India that it will help in the progress of the Muslims and will bring peace, harmony, equality and fraternity among the people of all religions, will not solve the issue at task rather would disrupt it, since researches are showing that all religions are teaching for equality, liberty, fraternity and harmony. Further, the point of progress and development of particular religious community through uniform civil code in India will hold no water and would be frustrated by the illustration that if it is so then why approximately thirty percent Hindus are condemned to live in a miserable status, major portion of Hindu women are still waiving their rights, Hindu women are being killed for dowry and female foeticides are being practised in Hindus. In other words the uniform civil code in India has nothing to do with religious harmony, fraternity or development. If it can do something then that is bringing equality amongst the men and women. But achievement of this end through uniform civil code in India seems to be obstructed by the religious ferments on account of several grounds as mentioned above.

¹⁸ Here I have preferred the term suffered religion for those who are going to be compelled to give up their religious institutions, rituals and injunctions under the Uniform Civil Code.

¹⁹ Shabnam Hashmi v. Union of India, (2014) 4 SCC 1

²⁰ AIR 1985 SC 945

²¹ AIR 2000 SC 1650

Suggestions

In my opinion, only Indian Civil Code can be helpful to freed the followers of uncodified civil laws in India from their religious Abbots, who are arbitrarily imposing their whims in the name of the interpretation of the personal civil laws. Herein, none of the personal civil laws should be compared with others; rather should be tested at the Indian Constitutional mandate of liberty, justice, equality and fraternity. Attempt should be done to dissect secular activities from the religious one. It is notable that many religious injunctions viz., maintenance, adoption, gift and inheritance have been already held secular one. Thereafter, those secular activities should be codified in the light of the above mentioned Indian Constitutional mandates within the domain of their religion to avoid any status of ferment. In doing so we will find that very little portions of religious activities connected with the civil laws are left to be codified viz., marriages and divorce. About marriage and divorce only Muslim community is very much adhered with. It is remarkable that though in Muslim customary personal laws a Muslim male is allowed to marry with four wives at a time but in practice it is very rare to find a Muslim male having more than one wife at a time. In other religions in India, it is an offence of bigamy to solemnise afresh marriage while either spouse is alive. Reports are revealing that to avoid this legal sanction people from other religions are renouncing their religion and getting convert in the Islam. Muslims and Non-Muslims, all have feeling that this liberty of Islam is being misused. Thus, codification of marriage in Muslim declaring bigamy an offence would lead no religious aggravation. Unlike codified civil laws in India, the Muslim civil law avails uncontrolled power to the Muslim male to pronounce Talaq which is equally not available to a Muslim woman. This religious liberty hits the Constitution of India at several fronts viz., article 14 and 51 A (e). Article 14 guarantees the fundamental right to equality before law and equal protection of laws the people whereas Article 51 A (e) suggests renouncing the derogatory practices

against the women as one of the fundamental duty. At the touch stone of these Indian Constitutional Mandates, the issues of the divorce should be handled with. Piecemeal work can carried out to codify this issue too. This uncontrolled right of Muslim male to pronounce Talaq can be curbed down and some more rights can be given to the Muslim women too. After passes of ample of time we can go far the unification of civil laws through uniform civil code in India. India is full of diverse religious practices. Here, still religion plays important role in family matters. Codified Hindu Laws are also rendering liberty to practice customary practices, which have been generated from the Hindu religious institutions, in some family matters; but had cubed the Hindu religious injunctions altogether to bring it along the Indian Constitutional mandates of liberty, justice, equality and fraternity. Thus, after attaining a mature understanding that men-women are born with equal rights and duties and the ultimate aim of all religions is to protect and promote it, we can codify personal laws spread into different religious institutions and injunctions in one text in India with uniformity. Ultimately, it will protect and promote the fundamental human rights of all.

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