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“THE RELEVANCE OF ONE NATION – ONE LAW THEORY”

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ABSTRACT

The Uniform Civil Code treats all sections of a particular society equally, irrespective of their religion. In India, Article 44 of Part IV of the Constitution of India, 1950 explicitly states that the implementation of a Uniform Civil Code is a directive principle. Furthermore, the Supreme Court of India also stressed on the implementation of the Code in the landmark *Shah Bano* case. The Code is implemented in the State of Goa till now. There are a lot of countries which has successfully implemented the Code. However, it is a difficult task to implement the said Code in India as the drafting of this Code itself is a huge task, considering the vast amount of religion, people follow in this country. This paper will emphasise on how the Uniform Civil Code would encompass the aspirations of a young India along with national integration. The paper would further scrutinize a 360 degree view on the proposed Code with a special attention towards its practicality and approach which shall ensure no discrimination, politicization or special privileges to any citizen on the basis of one’s personal belief thus ensuring that the Secular fabric of this great country is not violated.

INTRODUCTION

India, the fifth largest economy in the world¹, situated in South Asia is perhaps the only country in the world which houses many religions. Post the 42nd Amendment when the word Secular was added to the preamble of the Constitution of India, the country has thrived to see that the secular spirit of the country is upheld². Due to the existence of the followers of various religions, India is a melting pot of cultures. However, the problem lies when one looks at it from a legal point of view. Due to the existence of various religions in the country, all followers of all religion are entitled to follow their own personal laws with respect to their personal rights such as marriage, succession, guardianship and adoption. The problem is every religion has their different set of rules and regulations because of which, there is no uniformity between the personal laws of all the religions. The victims of this disparity are women, as they are discriminated against under all personal laws. An excellent example of the same is with respect to the situation of recently criminalized Triple Talaq. *Talaq-ul-Biddat* is a type of divorce under Muslim Law wherein the husband even in the absence of his wife can invoke the words thrice, namely, “*Talaq, Talaq, Talaq*” which results in an immediate divorce³. This was misused by the Muslim husbands who were frequently divorcing their wives in an unreasonable manner. On the other hand, if a Hindu husband wanted to divorce his wife, he had to approach the family courts under Section 13 of the Hindu Marriage Act, 1955 and follow the procedure mentioned in the Act as well as under the Civil Procedure Code. Another interesting example is the process of *Iddat* present under Muslim Law. After a divorce has taken place, the wife cannot remarry for a period of three months as she has to observe this period of *Iddat*. If she marries anyone during this period, that marriage is *void ab initio*. Furthermore, if she wants to remarry her divorced husband, she will first have to observe the period of *Iddat*, then get married to another man, consummate that marriage, divorce him and again have to observe a period of *Iddat* and then marry her first husband. However, in the case of Hindus, after the divorce has been sanctioned by the Courts, both husband and wife can immediately remarry anyone or marry each other. Thus, one can easily see the amount of disparity which is caused to certain people just because they were born in a family following a particular religion or wanted to follow a particular religion. The solution to this problem is the introduction of a

¹ Joe Myers, *India is now the world's 5th largest economy*, WORLD ECONOMIC FORUM, (19th February, 2020), <https://www.weforum.org/agenda/2020/02/india-gdp-economy-growth-uk-france/>

² *S.R. Bommai vs. Union of India*, 1994 AIR 1918

³ DR SHIVANI GOSWAMI, FAMILY LAW – I 273 (1st ed., 2018)

Uniform Civil Code (UCC) which is a civil code which lays down the rights and liabilities of all the persons, irrespective of their religions. Thus, all people have to follow the UCC irrespective of the laws enshrined in their personal laws. In India, such a code has been implemented in the State of Goa and has run successfully. The Bhartiya Janata Party has promised to implement the UCC in their manifesto which was released in the year of 2019 for the general elections⁴.

DEVELOPMENT AND GROWTH OF INDIAN LEGAL SYSTEM: A HISTORICAL OVERVIEW

When the Britishers came to India, they witnessed that two types of laws were being followed: Hindu Law laid down by the Vedas and the Muslim Law followed the tenets of Islam. At first, the Britishers with the help of the learned *pandits* and *maulvis* interpreted the laws and delivered their judgements. However, they found a great amount of disparity between the two sects of law. To eliminate this problem, the Second Law Commission submitted a report in 1835 pressing for a unified law for all the citizens of the country⁵. However, a division was made and two spheres were formed. The first sphere consisted of public laws dealt with crime, contract, evidence, property and were said to be applied to each and every person irrespective of their religion. The second sphere consisted of personal laws dealing with marriage, succession, adoption and other religious ceremonies and it was mentioned that the new law would not violate the second sphere.

Accordingly, the laws were created and all Indians were bound by the new laws such as Indian Penal Code, 1860; Indian Contract Act, 1872; Transfer of Property Act, 1881. The invasion of the state's laws into the second sphere was first seen when the Britishers decided to abolish Sati and for the sake of the widows, they introduced Hindu Widow Remarriage Act, 1856. Furthermore, taking cognizance of the plight of women and lower castes under the Hindu Law, various Acts were introduced by the British Government. With the introduction of Hindu Women's Right to Property Act, 1937, the B N Rau Committee was set up in 1941 with the

⁴ Bharitya Janata Party, *Sankalp Patra Lok Sabha 2019*, BJP, (8th April, 2019), <https://www.bjp.org/en/manifesto2019>

⁵C.K. Matthew, *Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach*, THE HINDU CENTRE FOR POLITICS AND PUBLIC POLICY, (26th October, 2019), <https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>

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sole purpose of examining the necessity for a codified Hindu Law. The Committee sent its report to the Government on Interstate Succession and Marriage Laws and was decommissioned. Again in the year of 1944, the Committee was reinstated and they submitted their report in the Parliament in February 1947. The report was introduced in the Indian Parliament in 1951 when the country was independent and was heavily discussed. The then law minister, B R Ambedkar stated that there should be an Uniform Civil Code (UCC) and the starting step to that was the Hindu Bill. The bill was stalled in the Parliament. Later, Ambedkar resigned. However, whilst drafting the Indian Constitution, Ambedkar being pretty adamant on the implementation of the UCC in India, drafted Article 44 which is a Directive Principle of State Policy which states, “*Uniform civil code for the citizens: The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India*”⁶.

The issue yet again popped up and the Parliament passed 4 Acts in two years namely: Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; Hindu Adoptions and Maintenance Act, 1956. The first glimpse of a secular Act in Independent India was in the year of 1956 when the Special Marriage Act was introduced with a view to cover all religions under this and to legalise marriage between different religions as the aforementioned acts were only applicable to Hindus. Furthermore, the Indian Succession Act, 1925 was continued by the Indian Government and formed one of the starting points of the UCC Movement in India. The case of *Mohd Ahmed Khan vs. Shah Bano Begum*⁷ plays a very important role in the introduction of UCC in the country. The wife claimed that she was entitled to maintenance under section 125 of the CrPC even when it was not allowed under Muslim Law. The Apex Court held that section 125 of the CrPC would be applicable to even Muslims. This enraged the Muslims and in a bid to pacify them, the judgment was nullified by the Rajiv Gandhi Government with the introduction of The Muslim Women (Protection of Rights in Divorce) Act, 1986 which held that the aforementioned section was not applicable to Muslims. This move was heavily criticized in the Parliament by the Hindus and the Left which were stretching for the implementation of the UCC.

The issue revolving around the Uniform Civil Code again came under the radar of the Apex Court in the case of *Sarla Mudgal (Smt), President, Kalyani and others vs. Union of India and*

⁶ Article 44, Constitution of India

⁷ *Mohd Ahmed Khan vs. Shah Bano Begum*, AIR 1985 SC 945

*others*⁸, where the Court requested the Government of India to implement the DPSP which is mentioned under Article 44 of the Constitution of India and enforce the UCC as soon as possible. The issue was yet again silent until previous year, when the Apex Court yet again decided to remind the Government of India to implement the UCC through its judgement in the case of *Jose Paulo Coutinho vs. Maria Luiza Valentina Pereria & Anr*⁹. Though this case dealt with the question that whether the Portuguese Civil Code of 1867 will be applicable to Goans with respect to their succession and inheritance laws if the said properties are situated outside Goa, the Court in its judgement lamented the failure of the Government of India to enforce the UCC and furthermore lauded the State of Goa as a spectacular example of the only State to enforce the UCC irrespective of the religions present within the State.

NEED FOR UNIFORM CIVIL CODE

India houses a lot of people who follow different religions whose practices and customs are quite different. In the entire world, marriage between family members is considered unholy, unhealthy which is incest in many countries. However, amongst Maharashtrians, certain families follow a custom which lays down that a boy can marry the daughter of his maternal uncle. Furthermore, there is another custom which lays down that a girl can get married to her own maternal uncle. Such customs are present not only amongst different religions but also amongst different castes. Therefore, there is a huge disparity amongst all the people. Addressing the second problem is the law which is governed according to one's religion.

It is assumed that if one is a follower of a particular religion, then he will follow the personal laws of that particular religion. However, the exception lies in the case of followers of *Marumakkathayam* laws. Looking historically, before 1956 in South India, the aforementioned customary laws were followed mostly by lower castes and the Nair Community in the North Malabar area. The laws dealt with inheritance. Later on, some of the people residing in North Malabar converted to Muslim religion. However, they refused to follow the Islamic Law of inheritance and continued following the *Marumakkathayam* Law¹⁰. Thus, one can see that even if one is a Muslim but if his ancestors are following the *Marumakkathayam* Law, then he need not follow the Islamic Law. This leads to great amount of confusion as one has to see the entire

⁸*Sarla Mudgal (Smt), President, Kalyani and others vs. Union of India and others*, AIR 1995 SC 1531

⁹*Jose Paulo Coutinho vs. Maria Luiza Valentina Pereria & Anr*, 2019 (10) SCJ 158

¹⁰ DR POONAM PRADHAN SAXENA, FAMILY LAW – II 8, (3rded reprint, 2019)

history of the ancestors as if the chain of following the aforementioned laws is broken, then the entire descendants would be bound by the Muslim Law of inheritance as per the Muslim Personal Law (*Shariat*) Application Act, 1937 which directed the courts that all Muslims should be bound by this law¹¹. Thus in such an event, if it is found that one of the ancestors had given up the *Marumakkathayam* Law, the descendants would be bound by the Muslim Law and all the inheritance would be reworked wasting a lot of time of the courts.

Moving on to the Hindus, if a Hindu marries a Non - Hindu under the Special Marriage Act, 1954 then he is removed from the coparcenary by giving his share to him. Furthermore, even if he has a child who is raised as a Hindu, he will not be able to start a coparcenary with him as he would be bound by the Indian Succession Act, 1925. Thus, he will have to learn the new laws stated under the Indian Succession Act, 1925 which would be quite difficult considering the fact that he was bound by a different law. To make matters more complicated, the Hindus follow two schools for succession laws: the Dayabhaga and the Mitakshara schools. These two schools have different laws for succession too. Thus, there is a high level of disparity. During the Vedic India, the concept of writing was not practiced. As such, the laws which were made were passed down by the teachers to their students orally. This oral transfer continued for a long time during which people made their own additions and deletions to the laws. Therefore, the laws are discriminatory in nature because they are not presented to us in their pure state. It is important to note that the laws change with the passage of time. Therefore, it is necessary to change them. An excellent example of the same is the Hindu Amendment Act, 2005 in which women were allowed to be coparceners in the joint family and were further allowed to be the *Kartas* of the family. Thus, it is necessary for the UCC to be implemented as there is enough disparity. In this 21st century, such a high level of importance must not be given to religious laws as the society should live as one, especially in a country like India.

GERMAN CIVIL CODE

Bürgerliches Gesetzbuch is the civil code followed in Germany. The code was drafted out of the desire for a national law overriding the conflicting customs and codes of various German

¹¹ *Puthiya Purayil Abdurahiman vs. Thayath Kancheentavida Avooma*, 1956 1 MLJ 119

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territories. Therefore, a Civil Code was introduced on January 1st, 1900 and overruled all the customs which were being followed. Their Code is divided in five parts:

Allgemeiner Teil: General Part comprising regulations that have effect on all the other four parts, such as personhood, legal capacity, declaration of will, agency and limitation periods. (Sections 1 - 240)

Schuldrecht: This part consists of the Law of Obligations and governs the contractual, tortuous and other civil obligations. (Sections 241 - 853)

Sachenrecht: This part consists of the laws pertaining to Property Rights, namely possession, ownership and other property rights. (Sections 854 - 1296)

Familienrecht: This part consists of the laws pertaining to Marriage, namely the marriage procedure, adoption laws, marital property laws and other legal relationships amongst family members. (Sections 1297 - 1921)

Erbrecht: This part consists of the laws pertaining to succession. (Sections 1922 - 2385)

The Code has been subject to lot of amendments, especially after the World War II period as many amendments were made during the Nazi Germany regime. However, this Code is still efficient in a country whose population consists of:-

- 29.9% Roman Catholic Christians
- 29.8% Protestant Christians
- 1.3% Orthodox Christians
- 6.1% Muslims
- 32.9% Non - Believers¹²

¹² World Population Review, <http://worldpopulationreview.com/countries/germany-population/>

ADVANTAGES OF UNIFORM CIVIL CODE

GENDER EQUALITY:

The Indian society is largely governed by patriarchal and misogynist laws which root from age-old customs. Laws, especially relating to succession are discriminatory and often tend to tilt towards males of the society. Special practices like *Nikah Halala* which require a woman to go through unspeakable horrors raise a question towards the stature of women in personal laws. A uniform civil code would weed out these old traditions and help in giving equal rights to women.

PROMOTION OF NATIONAL INTEGRATION:

A UCC would end discrimination and politicization of issues based on religion. Special privileges and concessions cease to exist if a uniform code replaces personal laws. All Indians are subject to the same criminal laws and civil laws (barring personal laws). After UCC, all the citizens would share the same set of laws. Personal laws are usually the bone of contention between different tribes, sects and religions due to the preferential treatment given to some specific segments. A uniform code doesn't mean that people won't be allowed to follow their religion; it simply means that everyone would be treated the same in the eyes of law.

MODERNIZATION:

Developed countries across the globe are shifting away from personal laws. A uniform civil code is the sign of a progressive state. In the 21st century, a developing country needs to focus more on economic issues than being divided on religious lines. While we rank among the Top-5 economies, we haven't grown in cultural and social aspects. Instability during the Triple Talaq debate brought out intolerance of the society out in the open. In order to achieve our goal of a modern developed society, we need to look above sectarian politics and focus on our economic objectives.

SECULARISM:

India included 'SECULAR' into the Constitution in 1976. To be secular is to keep religion and state separate. However, this meaning of Secularism stands true in monotheistic states (states with single religion). Due to the diverse nature of the Indian society, this definition of

secularism cannot be applied here. The Indian equivalent of secular is interpreted as “*Sarvdharm Samabhaav*” i.e. equal respect towards all religions. But, since different religions follow different personal laws, disputes are bound to arise. For example- if a Muslim man marries for the second time, he can use the shield of personal laws, a Christian or a Hindu would be persecuted for doing the same. Such differences may give rise to animosity between religious groups and thus UCC becomes a necessity.

POLITICIZATION OF PERSONAL LAWS:

Personal laws have been used as a tool for promoting political agendas. Local *khap panchayats* continue to give judgments which are against the basic tenets of the Constitution. Honour killings and female foeticide violate human rights under the garb of old customs. By allowing personal laws to exist, we have given permission to an alternate judicial system that operates on old misogynist mindsets. Political parties till date, continue to bank upon issues of personal beliefs instead of talking about developmental issues. Not having a UCC is detrimental to the spirit of democracy.

LGBTQ MARRIAGES:

With the pronouncement of the judgement of *Navtej Singh Johar and Ors vs. Union of India and Ors*¹³, the Court had legalized the sexual relationships between 2 consenting adults. This, in turn has legalized the sexual acts performed between an LGBTQ couple. However, the marriage between LGBTQ communities has not been legalised. Therefore, if such a marriage is carried out, then it would be violative of the basic conditions of the required marriage acts and would therefore be void ab initio. There are efforts to legalise the marriage by seeking an amendment in the Special Marriage Act¹⁴. Therefore, with the implementation of the UCC, a proper procedure for a marriage between LGBTQ community members would be established, thus treating them at par with the others.

¹³ *Navtej Singh Johar and Ors vs. Union of India and Ors*, AIR 2018 SC 4321

¹⁴ Live Law Team, *Gay Couple Moves Kerala HC For Recognition Of Homosexual Marriages Under Special Marriage Act*, LIVE LAW (27th January, 2020) <https://www.livelaw.in/news-updates/gay-couple-moves-kerala-hc-for-recognition-of-homosexual-marriages-under-special-marriage-act-152046>

DISADVANTAGES OF UNIFORM CIVIL CODE

RELUCTANCE:

An infinite debate has been sparked regarding the real need behind UCC. Right from the Constituent Assembly debates till date, numerous obstacles and arguments have been made against UCC. However, the most radical stand against UCC has been taken by proponents of *Shariat* Law under the garb of Secularism. Any progress towards implementation of Article 44 of the Constitution is seen as a direct challenge to the authority of all the male decision making body of the Muslims i.e. the *Ulemas*, considering the fact that the Rajiv Gandhi Government in a bid to appease them came up with the radical law of The Muslim Women (Protection of Rights in Divorce) Act, 1986. Therefore, it is highly plausible to come to the conclusion that there would be a major reluctance from the Muslim Community, predominantly the male section consisting of radicals as was seen after the passage of the Criminalisation of Triple Talaq bill was passed..

SENSITIVE TASK:

Another argument against UCC is that the government and constitutional bodies need to ensure unbiased approach towards civil law. Any form of bias towards a particular personal law may lead to communal disharmony. We need to recall that Pandit Nehru codified Hindu Law in 1955. Just 8 years after Partition, when almost every community was fearing for their personal rights and practices; the Government of the day chose to codify the laws of 80% of the population and rightly so. Had it not been so, polygamy amongst Hindus would still be prevalent and issues like maintenance and succession would be ambiguous. The Government with the trust of the people would be able to implement the UCC provided that the Code is completely unbiased with a sole objective of gender empowerment and modification of stereotypical personal laws.

INTERFERENCE OF STATE IN PERSONAL AFFAIRS:

The Constitution provides for freedom to follow the religion of one's choice. Such a uniform code for all religions may reduce the scope of freedom of religion. One needs to question if prioritizing personal laws over fundamental rights of half the population is even a valid argument. There have been many recent examples where the Supreme Court has given

preference to Fundamental rights over personal laws, may it be instant Triple Talaq or the *Sabarimala Devasthanam* issue.

PRACTICAL DIFFICULTIES:

A prudent argument of difficulties in implementation stems from the fact that we have tremendous cultural diversity spreading across hundreds of sects, castes and religions. But how do we attempt to be a secular democratic republic if every religion is governed by a separate personal law? Cambridge Dictionary defines 'secularism' as 'not affiliated with any religion. Multiple personal laws increase the chances of State biasness towards a particular religion for electoral benefit [eg. The Muslim Women (Protection of Rights on Divorce) Act, 1986] It is possible to implement UCC in the same way as codified Hindu Laws. For an effective secular democracy to function, it is necessary that the State shall be completely unbiased in matters involving personal faith. Thus, UCC becomes a necessity.

MINORITIES AND THEIR CUSTOMS:

Minorities believe in the purity of the blood and do not wish to indulge into same caste marriages. In Haryana, the Jats have been demanding to include this provision in the Hindu Marriage Act, 1955 that a marriage done by two people belonging to the same caste is void ab initio. However, with the implementation of the UCC, the Code in all probabilities will not at all entertain such conditions and would rather state that it would be up to the people if they want to get married with the person of the same caste and hence, there will not be any section negating such marriages. This would infuriate the minorities a lot as though even if their rights are not getting affected and they are allowed to practice their customs, their demand for making such marriages illegal will not be fulfilled.

THE PROPOSED UCC

Apart from obtaining a consensus, the only barrier in formation of a Uniform Civil Code is drafting. Western countries like Germany in their UCC, include family laws, property laws as well as contractual laws. We, in India, already have proper contractual laws and property laws to that effect. Hence, the only scope of improvement via UCC is the family laws. To earn the trust of the people by carving out a way to balance the Fundamental rights along with religious dogmas is upon the Parliament. It should be proper and just without any special bias for a

specific religious community or gender. Following are a few points that must be incorporated into the Code:-

MARRIAGE:-

- The proposed Code should ban the practice of polygamy under all religions. The practice of monogamy must be encouraged. Polygamy takes away the basic human rights of women as they are treated as unequal. The practice of polygamy is an indispensable part of Muslim Law, but, in the 21st century, this practice is seen as obsolete and limits the scope of rights guaranteed under Article 21 of the Constitution.
- The minimum age for marriage, already specified under the '*Prohibition of Child Marriage Act, 2006*'; must be applied to all without any discrimination¹⁵. This would discourage child marriages. Punishments and fines should be mentioned for violating the provision.
- Registration of marriages must be made mandatory. Issues relating to the legitimacy of marriage can be resolved easily and here would be lesser ambiguity as a result.
- The process for marriage between the members of the LGBTQ Community members too needs to be added. Such a procedure would legalise marriages between them.

DIVORCE:-

- No woman must be subject to inhumane practices like Nikah Halala. In recent times, the custom has been used as a weapon of gratification of desires instead of catering to the marital needs of the woman. Such practices blatantly contradict the right to equality of women who are forcibly subject to such practices.
- There should be consistent provisions with regard to divorce. Decision and consent of both the parties should be given equal weight in case of divorce. The principles of natural justice must be remembered while framing the laws for the same.

¹⁵ Soumalya Ghosh; *Uniform Civil Code: An ideal vision of Modern India*; Indian Journal of Law & Justice 9 Indian J.L. & Justice (2018), Page 207; Hein Online.
<https://elibrary.smylaw.ac.in:2153/HOL/Page?handle=hein.journals/ijlj9&id=213&collection=journals&index=>

SUCCESSION:-

Indian society, like many others, attaches the worth of the property that a person holds in a bid to evaluate him/her. A uniform law for succession of property which does not distinguish along gender lines is desirable to weed out the prejudices meted out to daughters in such cases. Even in the modern world, social standing is often evaluated by economic status and dignity, thus making the uniform law for succession, a need of the hour.

MAINTENANCE:-

The Code of Civil Procedure provides for maintenance under Section 125 under which a woman of any race or gender can claim maintenance. A similar law needs to be incorporated within the UCC expanding the scope of maintenance from religious grounds to welfare of the women.

NOTE:- The proposed UCC would not curtail customs of believers of different faiths. However, the fundamental rights of the people involved would be prioritized. For example, say, a Muslim would never be forced to abandon the custom of *Nikah* (format of marriage); however, *Nikah Halala*, polygamy and Triple Talaq would possibly be abolished due to their inherent discriminatory nature.

ADOPTION:-

In India, the law pertaining to adoption came into force after the Hindu Adoption and Maintenance Act, 1956. However, the said legislation brought forward certain problems. Adoption was legalised only for Hindus and that too the adoption was pertaining to adoption between families. This means that orphaned, surrendered or abandoned children were not to be adopted. However, post the *Lakshmi Kant Pandey vs. Union of India*¹⁶ the Court directed that a law should be enforced to see that the orphaned, surrendered and abandoned children too can be adopted. The Indian Government enforced the Juvenile Justice (Care and Protection of Children) Act, 2000 which provided that such children can be adopted. Furthermore, the legislation entailed that unlike the Hindu Adoptions and Maintenance Act, 1956, where only Hindus were allowed to adopt children, in this case, an Indian of any religion can adopt a child. Furthermore, the CARA Rules and Regulations too stipulate this. Therefore, it can

¹⁶ *Laxmi Kant Pandey vs. Union of India*, 1984 AIR 469

unequivocally be stated that this is a secular legislation. However, this does not mean that the sphere of adoption laws is perfect. With the passage of time, the law changes. This can be seen through the *Navtej Singh Johar and Ors vs. Union of India and Ors*¹⁷ case where the Hon'ble Apex Court decriminalised Section 377 of the Indian Penal Code, 1860 to the extent of sexual activities between consenting adults. Though this judgement does not legalise the marriage between the people of the LGBTQ Community, it legalises the relationships between them. Ergo, after the legalisation of marriages between the members of LGBTQ Community by the proposed UCC, even adoption should be allowed for them.

THE ROAD TO A UNIFORM CIVIL CODE

In order to address the deepening communal divide because of personal laws, a complete abrogation of religious personal laws is necessary. This part of the paper deals with the procedure that the State must follow in order to enact a full fledged uniform civil code for Indians. A proposed UCC would be successful in changing the social narrative from majority minority tensions by making each community responsible for changes in their laws.¹⁸ The requirement for changes in law would be gender equality. The resultant UCC must echo the views of all the communities alike.

STEP – 1:- UPDATE ALL RELIGIOUS PERSONAL LAWS

Control over personal laws of various communities must be in the hands of respective religious leaders to ensure their legitimacy in the religious groups. There would be interpretation panels for different religions. However, unlike earlier, when powers of interpretation were vested with males only, there should be an equal representation of all genders and from all parts of the country. There must be a parliamentary committee composed of MPs from all major political parties which would decide these leaders in unison. Furthermore, a quota system should be brought in ensuring 40% reservation for women in the interpretation panel ensuring that no gender dominates the other.

Nominees for the interpretation panel would be elected at the ground level by local religious leaders and then be approved by the parliamentary committee empowered to do so. The primary

¹⁷ Supra Note 13

¹⁸ Shalini Chibber; *Creating a new path towards gender equality in India – from Personal laws to UCC*; Indiana Law Journal 83 Ind. L.J. (2008), Page 695; Hein Online.
https://elibrary.sylaw.ac.in:2153/HOL/Page?collection=journals&handle=hein.journals/indana83&id=703&men_tab=srchresults

goal of this is to ignite a debate within the community. Dissent and positive discussion would lead to removal of external and political factors and encourage the religious leaders to take responsibility for dissatisfaction amongst the various sects of their community. People from all walks of life may be lawyers, judges, scientists or ordinary men and women would come together to interpret the laws of their religion with respect to gender rights and equality.

STEP – 2:- DRAFTING A UNIFORM CIVIL CODE

There is a fear among the minority community that their laws would be re-written by the representatives of the majority community. To eliminate their fear, the drafting community should have an equal representation of experts from each community. The gender quota (40% for women) would still remain intact. This stage would be given a long time to discuss, deliberate, dissent and decide on issues of personal laws. Regular updates should be published to gain legitimacy and encourage transparency. Since all religions would have an equal representation in the drafting committee, all of them would have to work together to gain a common objective.

The UCC would serve as a means of gender equality. Once the UCC is enacted, it would have a twofold effect. *Firstly*, religious tensions would ease as gender equality would take priority. *Secondly*, the State would be directly responsible and will be held accountable for women rights. The State would no longer be able to deny rights to women on the argument that the sentiments of a section of society could be hurt by the actions of the State.

STEP – 3:- LEARN, IMPROVISE & REFORM

Once the UCC is in place and gender rights have been equally distributed, it is important for the government to turn to the reality that most women in India are unaware of their rights and do not know how to use them. UCC would be of no use for gender equality if the targeted section of the society i.e. the women lack knowledge of their social standing and the steps taken to improve that. A special commission with the objective of imparting knowledge to women of different religious groups must be set up. This commission would undertake steps such as incorporation of gender rights courses in schools and colleges and so on.

The authority of the Commission would be similar to that of the Commission of Gender Equality in South Africa which is empowered to investigate, educate, monitor, lobby and research on issues concerning gender equality.¹⁹ Further, the Commission would be entitled to adequate funding for nationwide campaigns and access to official records for research

¹⁹ Commission for Gender Equality Act, 1996

purposes. The Commission would also be empowered to present drafts to Legislatures reflecting the status of women in the society. Gender equality would be the primary goal of UCC. By doing so, gender rights will take priority over religious laws and allay fears of different communities. Finally, the Commission would study the positive and the negative effects of the Code on gender equality and evaluate whether the Code has brought any difference to the status of women in the society. Continuous revaluation of the code and the new laws are necessary for the women to take advantage of their newly achieved equality.

CONCLUSION

Indian society will have to be more receptive and broadminded to realize the spirit of this Code. A progressive code will be the end of discriminatory practices and liberalize the public. However, it can be implemented only when there is a unanimous thought procedure irrespective of the communities. Communalism and sectarianism encourage discrimination at two levels; firstly between the communities and secondly between the genders. This can deepen the communal divide and stoke intolerance in the country.

As women make up 50% of the population, it would be a blunder to not acknowledge their demands pertaining to equality and justice with respect to Marriage, Divorce, Succession & Inheritance. The Constitution and Preamble of India pledge equality to all. Thus, a Uniform Civil Code for gender equality and social justice is the need of the hour. Though the existing Uniform Civil Code in Goa might serve as an inspiration to implement throughout India but the Goa Family law also has its own share of flaws. There is a provision in the Goa law that allows a Hindu man to marry again if the wife does not give birth to a boy before 30 years of age. Such a provision is blatantly discriminatory towards women and legalises patriarchy in the society.

A few centuries ago, the Hindu and Muslim princely states used to have different laws for punishment in criminal cases²⁰. While the Hindu societies preferred “*Danda*” i.e. punishment by way of deterrence and rehabilitation; Islamic laws advocated for stricter punishments such as incapacitation for crimes as simple as theft. The Hindu society was deeply indoctrinated with the concept of Dharma and Karma. It was the duty of the King to rehabilitate criminals

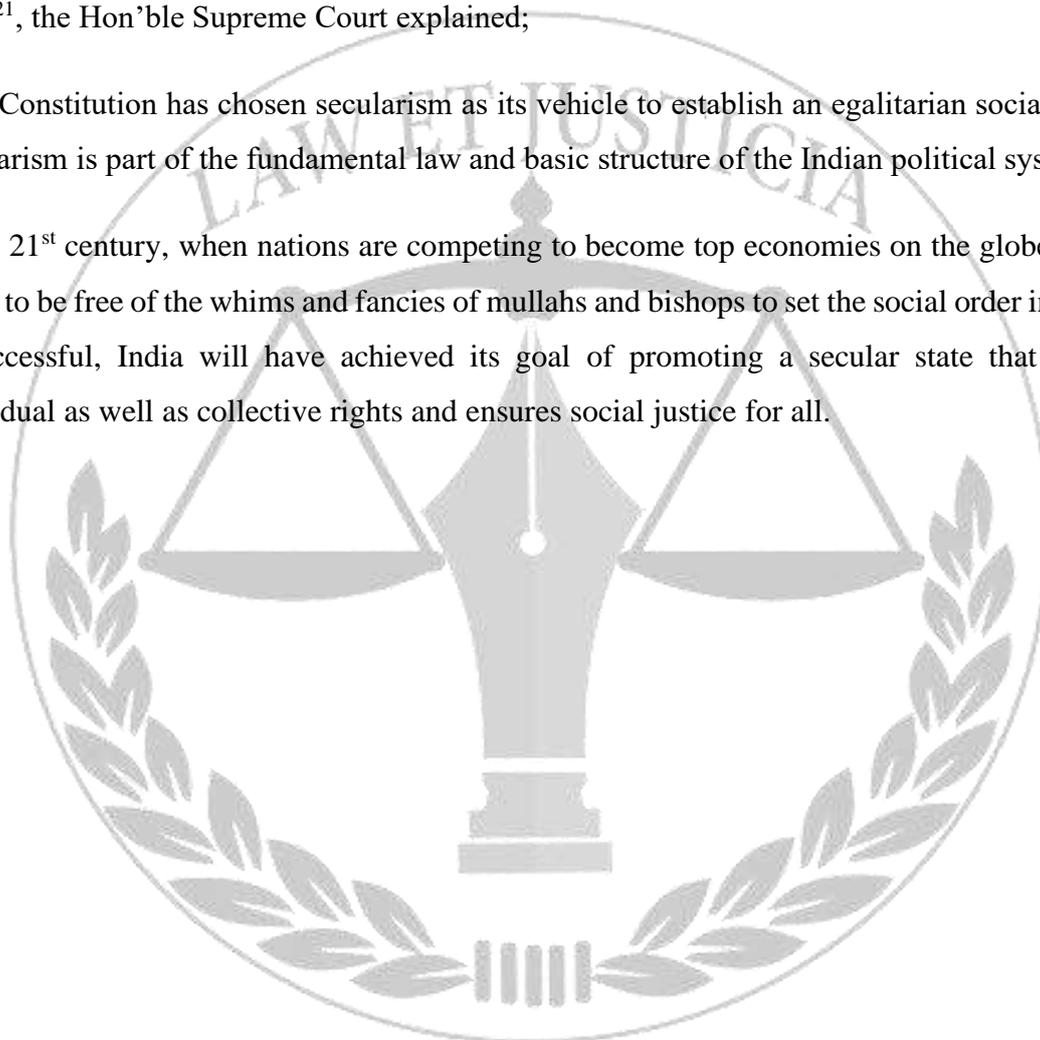
²⁰ Das Gupta, Rama Prasad. *Crime and Punishment in Ancient India* p14-15

and deter them from repeating the crimes in future. We all evolved as the Indian Penal Code came into effect in 1860. It is bizarre though, that even as we adapted to a secular provision for Criminal law; we still remain divided as to whether or not to enact a UCC.

The makers of the Constitution deserve praise for the forward approach towards gender equality. However, such an approach is useless if the most intimate relationships of women are not subject to constitutional scrutiny. In the remarkable judgment of *S.R. Bommai vs. Union of India*²¹, the Hon'ble Supreme Court explained;

“The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system”

In the 21st century, when nations are competing to become top economies on the globe, India needs to be free of the whims and fancies of mullahs and bishops to set the social order in place. If successful, India will have achieved its goal of promoting a secular state that values individual as well as collective rights and ensures social justice for all.



²¹ *S.R. Bommai vs. Union of India*, 1994 AIR 1918