

FEASIBILITY OF UNIFORM CIVIL CODE IN INDIA WITHIN MODERN LEGAL HORIZON AND CONSTITUTIONAL MANDATE: A CRITICAL APPRAISAL

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ABSTRACT

From the very day the Constitution of India came in force, the voice from different corners of society for making Uniform Civil Code (UCC) was raised time and again and it has now gained momentum. The reason is that India is inter alia, a multi-religion country where persons belonging to any religion or sect have been provided freedom of fundamental right for practicing and propagating their religion for advancement of their community without injuring interest of other religions communities. However, Art. 44 of the Constitution provides a mandate for UCC applicable equally to the citizens. The Supreme Court has also expressed its opinion in one way or another at different times for its enactment. The judgment of the Supreme Court in Seema's case for compulsory registration of marriages irrespective of religion of parties is a step ahead promoting this context. The Law Commission of India in 2018 in its Report submitted to the Government was of the opinion that the UCC is neither necessary nor desirable at this stage. It is quite obvious that there are certain family matters like marriage, maintenance, adoption, inheritance, etc. which are governed by distinct laws but enacting UCC cannot be treated as passing legislations on other matters. So, it can be enacted in consultation with scholars and legal luminaries of all the communities and should not be enforced forcefully.

Keywords- Uniform Civil Code, Constitutional Mandate, Legislative Measures, Maintenance, Triple Talaq.

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I. INTRODUCTION

Uniform Civil Code is supposed to focus its scope and object on unified law with regard to especially those matters which are strictly of personal nature and dealt with by personal law i.e. family law. India is multi-community, multi-culture, multi-tradition, multi-religion, multi-language and multi-sect country where members of every community are at liberty to follow, practice and propagate ideology and tenets of their religion for reshaping their lives and promoting welfare and wellbeing of human values all over the world. Nevertheless, we live together with the idea of peace, harmony, fraternity and extend our mutual love and respect to religions of one another. It is why it is true to say that we the people of India live with concept of diversity in unity and unity in diversity holding the humanity and welfare of nation at the highest esteem with spirit to sacrifice anything including our lives for protecting interest of the nation. During ancient India, when the concept of State was not in existence upon violation of right, the victim could seek self help or defence as remedy. But when States were created, the institution of kingship also came into existence whereby the King was empowered to rule over his estate and protect rights and welfare of his subjects. Nevertheless, such powers were conferred on him by law which was superior to him.¹ The King was bound to follow law as found in Vedas, Smritis, Upanishad and other religious texts on the concerned matter. Besides, rituals, yajna and rights were performed by Hindus according to religious tenets in form of Mantras and Shlokas especially in Vedas and other religious texts. It was believed that performing a good deed is always bliss and would be rewarded by the Almighty but committing a sin is a curse on the doer and can never be forgiven by the God rather he will be punished by the God. Such belief was prevailing in the minds of human beings because of the fact that if the doer of a good deed is not rewarded by the king due to any reason or doer of a sin escapes punishment likely to be inflicted by the king due to unavoidable reasons, the doer of good deed could not lose his hope for being rewarded by the king and the doer of sin was sure to be punished by the God. So, the people live together in an environment of harmony, peace and sense of security regarding their life, liberty and property with this certainty of their future prospect, they usually abandon the bad activities and God themselves involve in doing good deeds for their personal betterment and for development of their king and kingdom.

However, owing to foreign Muslim invasions, Hindu rulers in India were overpowered by such invaders and consequently Muslims ruled over

¹ Brihadaranyak Upanishad, Chap. (Adhyaya) 1, Brahaman (Khand) 4, Para. (Anuchhed) 14: Justice M. Rama Jois, Legal and Constitutional History of India 10-12 (1st ed. 1984 Rep. 2005).

India for a long span of time. The Islamic culture was also practised and propagated by Muslims in India. Thus, India became multi-community and multi-religious country with Hindus including Buddhists, Jains and Muslims comprising its population. India was ruled by Muslim rulers especially by Islamic principles and ideologies during medieval period as Islamic principles were given primacy during this period whereas religious tenets of Hindus were enforced by the king only in personal matters that too when it was considered by him necessary to be applied. Afterwards, India came under reign of Britishers and it was ruled by them until 14th of August, 1947. Significantly, during the British rule in India efforts were made to generate healthy system in the fields of education, transport, administration, infrastructure and so on. Moreover, this can be recognised as a great era for codification of law on various matters viz. contract, crime, banking, partnership, etc. to bring certainty of law for deciding conflicting issues. For example, the Indian Contract Act, 1872, the Indian Penal Code, 1860, the Transfer of Property Act, 1882, the Negotiable Instruments Act, 1881, the Indian Succession Act, 1925, the Sale of Goods Act, 1930, the Indian Partnership Act, 1932 are the major enactments which were made by the British Government in India and are still enforced irrespective of caste, race, place of birth, sex, religion of the concerned parties. During a long period of British rule over India, the influence of Christianity spread over so quickly and vastly that it became a distinct religion to be practised by Britishers on Indian soil. English people began to live in India during the British rule and they were also free to practise and propagate their religion. As a result, religious scenario of India widened encompassing a number of religions to be followed, practised and propagated by various communities living within territory of India. Thus, it is worth mentioning that India became free on 15th of August, 1947 comprising such population within its territory which included multi-community i.e. Hindus, Muslims, Christians and so on with rich tradition of providing liberty to members of every community to practise its own religion and culture. So, it is not out of point to submit that when people of India saw the dawn of independence on August 15, 1947, they inherited legacy coming into being for a long time to practise their religion along with the spirit of mutual love and respect towards religion of others.

II. MEANING OF UNIFORM CIVIL CODE

Uniform Civil Code may be defined as a Code consisting of such provisions of law which apply at par to deal with certain family (civil) matters of all the citizens of India belonging to different communities.

In other words, when a single Code applies to the family civil matters equally irrespective of religion of the persons concerned, such Code may be termed as a Uniform Civil Code. Thus, when religion does not come in the way of application of laws incorporated in a Code which is exhaustive enough to cover all the kinds of personal or family matters of citizens of every community of India, the Code may naturally be treated to be a Uniform Civil Code. So, uniformity of law covering within its domain the family matters e.g. marriage, maintenance, divorce, guardianship, inheritance, etc. is an edifice of concept of a Uniform Civil Code.

III. DESIRABILITY OF UNIFORM CIVIL CODE

As we are multi-religion, multi-cultural, multi-language country where people of different community are living as citizens of India, therefore, it is natural for different communities to have various matters which are strictly considered as personal or family matters. For example, marriage, maintenance, guardianship, divorce, etc. are strictly personal matters of persons of every community but they are dealt with by different laws. To illustrate, marriage requires different essentials for its validity in different communities; the question of divorce is disposed of by different laws in community different from each other especially in term of religion. Similarly, the question of guardianship and maintenance in all the communities are not decided by the single uniform law. That is to say, the questions relating to marriage, maintenance, guardianship, divorce exist on the basis of uniform notion and nature but law of Hindu marriage is not the same as the law for Muslim marriage is there. Again, law of providing maintenance to Hindus does not correspond to the Muslim Law in respect of maintenance. Likewise, the law dealing with the dispute of divorce between Hindu spouses does not have resemblance with the Muslim Law on the question of validity of divorce. So is the situation with Christians and Persians. The strictly family matters of the persons belonging to these communities are covered by distinct laws and not by common laws.

Since, in the same country i.e. India there are different laws to deal with the family matters of persons of different communities- Hindus, Muslims, Persians, Christians, etc. therefore, voice is often raised from different corners of society that there should be Uniform Civil Code which can focus on all the family matters of every community with uniformity and certainty. Such voice has its root in the concept of promoting welfare of members of all the communities belonging to different religions with parity and clarity.

IV. CONSTITUTIONAL POSITION

Keeping into consideration the varying principles of personal laws dealing with the family matters of different communities practising different religions, the Constitution makers came across vibrant idea that there should be Uniform Civil Code for all the citizens of India irrespective of their religion. It is why they incorporated in the Constitution of India a distinct provision with regard to Uniform Civil Code under its Part IV with the head 'Directive Principles of State Policy' (DPSP). Art. 44 of the Constitution provides that State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. It is well settled that DPSP are though not binding on the State while Fundamental Rights under Part III are binding against the State, but the DPSP have no less force and effectiveness than the Fundamental Rights. It is because the DPSP have the aim and objective for securing welfare of the citizens of India. So, it becomes moral duty of the State to make every such endeavour to implement the DPSP with a view to making the concept of welfare State a reality. The idea of Uniform Civil Code rests on the notion of community welfare and our Constitution makers must have brought in their mind the noble thought that one day all the communities and our Parliamentarians would surely realise the necessity of Uniform Civil Code.

Further, as enshrined in the Preamble of the Constitution, India is a secular State. The term 'secular' was inserted in the Preamble by the 42nd Amendment Act, 1976 and it implies the idea that the State does not have its own religion nor does it provide special favour to any religion being practised by the Indians within its territorial limits. Albeit, the State provides equal recognition to all the religions i.e. it treats all the religions on equal footing. Therefore, it cannot be said that India is an atheistic State or it is such State which ignores all the religions. What really the term 'secularism' denotes is only that it has duty to protect all the religions and it does not interfere with any religion. All the persons have been guaranteed equally with the Fundamental Rights to freedom of conscience and the right freely to profess, practise and propagate religion under Arts. 25 to 28 of the Indian Constitution.

Before the 42nd Amendment Act, 1976 which inserted the words 'socialist', 'secular' and 'integrity' in the Preamble, the Supreme Court focusing on the expression 'secular State' had observed in 1974 in **St. Xavier College v. State of Gujarat**² that although the words 'secular

² A.I.R. 1974 S.C. 1389.

State' are not expressly mentioned in the Constitution but there can be no doubt that Constitution makers wanted to establish such a State. It is why Arts. 25 to 28 have been incorporated in the Constitution. Again, in **Aruna Roy v. Union of India**,³ the Supreme Court held that secularism has a positive meaning and this meaning may relate to developing, understanding and respect to different religions.

It is therefore obvious that the idea of Uniform Civil Code has got its support by the Constitution of India with special provision on it under Art. 44 and the Parliament is empowered by this Constitutional provision to enact a Uniform Civil Code equally applicable to citizens of India irrespective of the religions being practised and propagated by them.

V. PARLIAMENTARY EFFORTS

In fulfilment of objective of Art. 44 of the Constitution, Bill for UCC was introduced in Parliament twice by different members- first in 2009 and secondly in 2020. But on account of huge protest against the Bills, these were withdrawn and no formal debate was made. It is to be noted that whenever voice is raised for UCC to deal with all the family matters of all the citizens in the nation, it is strongly opposed by Muslims, orthodox Hindus and sizeable members of other communities mainly on the ground that it is violative of their personal laws. Muslim scholars argue that it would infringe a part of Sharia Law, some Hindus suggest that it would not be in consonance with the law of Shastras and other traditional laws. So is the argument advanced by Christians and persons related to other sects because they opine that their personal laws and religious sentiments would be hurt if a UCC is enacted.

It is worth mentioning that introducing Hindu Code Bill in the Parliament was a glaring step at the behest of legislature to unify Hindu laws covering all the subjects related to family matters such as marriage, maintenance, adoption, guardianship, divorce, inheritance, monogamy, rights of widow to inherit, etc. Initially, the Bill was supported by many prominent Parliamentarians including Pt. Jawaharlal Nehru, the then Prime Minister, Dr. Bhimrao Ambedkar, women members. Nevertheless, later on it was opposed by a large number of members and could not be passed in its original shape. Thereupon, it was thought that on different family matters distinct legislations may also serve the purpose of codification of Hindu law. Consequently, the Hindu Marriage Act, 1955, the Hindu Adoption and Maintenance Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Succession Act, 1956 were

³ A.I.R. 2003 S.C. 3176.

enacted by the Parliament which are governing the family matters of Hindus and are suitably amended from time to time to meet the new challenges and adhere to standards of compatibility in society.

Again, the Special Marriage Act, 1954, passed by the Parliament can undoubtedly be treated as a uniform law on marriage between Indians practicing any religion because it provides a form of civil marriage between citizens irrespective of their religions.

VI. JUDICIAL RECOGNITION

When we study certain decided cases, it is found that the judiciary has expressed its opinion in favour of enactment of Uniform Civil Code in pursuance of Art. 44 of the Constitution. The opinion of the Court with regard to enacting a common civil Code is based on protection of those people who are oppressed by the action of others and such Code will also help in promoting national unity and integrity.

For example, in **Sarla Mudgal v. Union of India**,⁴ the landmark judgment of the Supreme Court is worth quoting. The Supreme Court directed the Union Government headed by the Prime Minister Mr. Narsimha Rao through the Secretary to the Ministry of Law and Justice for filing affidavit by August 1995 clarifying the steps taken by it and efforts made by the Government in the area of securing a Uniform Civil Code for the citizens of India. The Court was basically focussing on a question as to whether a Hindu husband married under Hindu Law can perform a second marriage after converting to Islam without getting the decree of divorce of the first marriage. Deciding the issue of validity of the second marriage the Court held that the second marriage was illegal and the husband was liable to be prosecuted for bigamy under S. 494 of the Indian Penal Code, 1860 (I.P.C.).

To explain in some detail, it is logical to mention that in the present case there were four petitions. Among them *Sarla Mudgal v. Union of India* was the main petition. The **first petition** was filed by Sarla Mudgal who was President of registered NGO Kalyani as a Public Interest Litigation. This NGO primarily worked for welfare of women especially the needy and distressed one. The **second petition** was filed by Meena Mathur. Her contention was that she married to Jitendra in 1978 and had three children out of the marriage. But her husband performed second marriage with another lady Sunita Narula in 1988 and they embraced Islam. After

⁴ A.I.R. 1995 S.C. 1531.

conversion to Islam, Sunita Narula became Fatima. The **third case** was filed by the petitioner Gita Rani. She contended in the petition that in 1988 she got married a person namely, Pradeep Kumar. Both were Hindu and the marriage was solemnised according to Hindu rituals and sacraments. Her allegation was that Pradeep Kumar embraced Islam in 1991 and married another lady Deepa. The **fourth petition** was filed by Sushmita Ghosh. Her plea was that G. C. Ghosh solemnised marriage with her in 1984 according to Hindu rituals and laws. She contended before the Court that her husband had told to her in 1992 that he was going to solemnise second marriage with Vineeta Gupta after adopting Islam. Her prayer was that her husband should be restrained from solemnising the second marriage with Vineeta Gupta.

Clubbing all the aforementioned cases and deciding them, the Supreme Court held that there is no automatic dissolution of Hindu marriage. It can only be dissolved by a decree of divorce on any of the grounds stated in S. 13 of the Hindu Marriage Act, 1955. A Hindu Marriage continues to exist even after one spouse is converted to Islam. The Supreme Court further held that even after conversion to Islam by husband, the Hindu marriage was void in the light of S. 494 of I.P.C. and the husband was liable to be prosecuted for bigamy. These cases were decided by a Division Bench of the Supreme Court comprising Hon'ble Mr. Justice Kuldeep Singh and Mr. Justice R. M. Sahai.

With regard to the question of Uniform Civil Code the Court observed that since 1950 a number of Governments have come and gone but they have failed to make any effort towards implementing the Constitutional mandate under Art. 44 of the Constitution. Consequently, the problem today is that many Hindus have changed their religion and converted to Islam only for the purpose of escaping the consequences of bigamy. The opinion of Mr. Justice Kuldeep Singh was that Art. 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Marriage, succession and like matters are of a secular nature and therefore, they can be regulated by law. The Court said that many Islamic countries like Syria, Tunisia, Morocco, Pakistan, Iran and other Islamic nations have codified their personal law to check its abuse.

It is pertinent to mention that the direction of the Supreme Court for taking immediate step to implement mandate of Art. 44 of the Constitution regarding Uniform Civil Code, Mr. Narsimha Rao, the then Prime Minister of India had said to the Muslim Ulemas of Rampur, U.P. that the Government would not implement the Constitutional mandate of Art. 44 of the Constitution.⁵ Further, it can be pointed out that in one of

⁵ Dr. J. N. Pandey, Constitutional Law of India 452 (52nd ed. 2015).

the above cases, Hon'ble Mr. Justice Kuldip Singh clarified that the direction of the Supreme Court was an obiter dicta and not legally binding on the Government. The result of such clarification was that the Government did not make any effort to enact a Uniform Civil Code.

Again, in **Lily Thomas v. Union of India**⁶ it was held by the Supreme Court that where a Hindu husband marries a second wife after converting to Islam during subsistence of first marriage and the first wife files a complaint for the offence of bigamy under S. 494 of the I.P.C. and S. 17 of the Hindu Marriage Act, 1955, the husband is guilty of the offence of bigamy under these provisions. Conversion of Hindu husband to another religion will have no effect of dissolving the Hindu marriage under the Hindu Marriage Act though the second marriage may be ground for judicial separation under S. 10 of the Hindu Marriage Act. It is therefore, clear that conversion of religion by a party to Hindu marriage does not ipso facto dissolve the Hindu marriage. Thus, the law laid down by the Supreme Court in the present case will have great impact on those persons who have bad intention and ugly motive to fulfil their nefarious design of marrying another lady during subsistence of the first marriage.

Mohd. Ahmed Khan v. Shah Bano Begum⁷ is a significant case in which a landmark judgment was delivered by five Judges Bench of the Supreme Court in 1985 by holding that S. 125 of the Code of Criminal Procedure, 1973 (Cr.P.C.) providing for maintenance is applicable to all the citizens irrespective of their religion. In the present case, Shah Bano was divorced by her husband after 40 years of marriage and consequently she claimed maintenance under S. 125 of the Cr.P.C. It was held that she was entitled to maintenance from her husband who has sufficient means to maintain her. S. 125 of the Cr.P.C. provides for maintenance to children, divorced wife and parents. The Supreme Court observed that religion professed by a spouse or spouses has no place regarding S. 125 of the Cr.P.C. as it provides measure based on social justice for an obligation of an individual. It is to be noted that before this judgment the Supreme Court had expressed similar view in some earlier cases⁸.

However, the judgment delivered by the Supreme Court in Shah Bano's case caused a great stir, controversy and nationwide debate among Muslim community expressing their resentment against it. Consequently, with a view to avoiding any kind of controversy, the Parliament enacted

⁶ A.I.R. 2000 S.C. 1651.

⁷ A.I.R. 1985 S.C. 945.

⁸ Bai Tahira v. Ali Hasan Fassali, A.I.R. 1979 S.C. 362; Fuzlunbi v. K. Khader Ali, A.I.R. 1980 S.C. 1730.

a distinct legislation known as Muslim Women (Protection of Rights on Divorce) Act, 1986 providing that maintenance of a divorced Muslim woman is governed by this Act and not by S. 125 of the Cr.P.C. It can thus, be stated that the verdict of the Supreme Court given in Shah Bano's case can be looked from the angle of establishing uniformity of law of maintenance by applying the provisions of S. 125 of the Cr.P.C. equally to all the citizens of India despite different religions being practised by them.

By virtue of opinion of the Supreme Court expressed in **Noor Saba Khatoon v. Mohd. Quasim**,⁹ it is clear that S. 125 of the Cr.P.C. is of superseding nature over S. 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. S. 3(1)(b) of the Act provides that a divorced wife is entitled to claim maintenance for children living with her only for a period of two years from the date of their birth. Setting aside the judgment of the Patna High Court, the Supreme Court held that the right to claim maintenance by a divorced wife for her children is not restricted. The obligation of the father to pay maintenance to the children living with the divorced wife is absolute both under the Muslim personal law and under S. 125 of the Cr.P.C. A divorced Muslim woman is entitled to claim maintenance for her children for the period till they attain majority or till they are able to maintain themselves, whichever is earlier and in case of female children the Muslim divorced wife can claim maintenance till the children get married.

It is significant to point out that the Sharia Law i.e. Muslim Law in totality is not applicable completely in India to govern matters relating to Muslims. It is because it applies only to cover family matters of Muslims and further it has been modified or restricted by passing other legislations having uniform application. These are, for example, the Wakf Validating Act, 1913, the Shariat Act, 1937, the Dissolution of Muslim Marriage Act, 1939, the Indian Contract Act, 1872, the Indian Evidence Act, 1872, the Indian Penal Code, 1860, the Code of Civil Procedure, 1973 and so on.

Application of Muslim Law especially with regard to triple talaq (talaq-e-biddat) was restricted by the Supreme Court in the light of constitutional provisions and Quranic text. It so happened in **Shayara Bano v. Union of India**¹⁰. A number of writ petitions including the present one were filed in the Supreme Court drawing its attention to consider validity of triple talaq declared by a Muslim husband against his wife as it was provided by S. 2 of the Shariat Act, 1937 a valid divorce. After examining various Quranic verses, Muslim laws in other

⁹ A.I.R. 1997 S.C. 3280.

¹⁰ (2017) 9 S.C.C. 1.

Islamic countries, relevant constitutional provisions, opinions of Muslim scholars and contentions from both the sides, a Constitution Bench of the Supreme Court decided the matter by 3:2 majority. It held that triple talaq is arbitrary because it leaves no hope for reconciliation between the parties to save marriage tie. It is declared capriciously and whimsically. Therefore, it is violative of Art. 14 of the Constitution. The Court further observed that S. 2 of the Act, 1937 is struck down to the extent it provides that triple talaq is valid.

It is evident from this judgment that though it is not directly related to the concept of Uniform Civil Code yet it can be considered that any law of any community is compulsorily required to be in consonance with the constitutional provisions and rules of natural justice so that it can suit to changing societal setup of the country.

Likewise, in **Pragati Varghese v. Cyril George Varghese**,¹¹ the Bombay High Court declared S. 10 of the Indian Divorce Act, 1869 invalid. In this Section, it is provided that when a Christian wife seeks divorce on the ground of cruelty or desertion, she had also to prove adultery along with either of these two grounds. The Full Bench of the Bombay High Court held that S. 10 of the Indian Divorce Act, 1869 is invalid as it violates the Fundamental Right of Christian woman to live with human dignity under Art. 21 of the Constitution. The Court observed that S. 10 of the Act compels the wife to live with a man who has deserted her or treated her with cruelty. There is denial to dissolve the marriage when the marriage has broken down irretrievably.

The judgment of the Bombay High Court aims at protecting human dignity of a Christian woman under Art.21 of the Constitution and provides honour to her while living with her husband and seeking divorce on the ground of desertion or cruelty inflicted by the husband.

Danial Latifi v. Union of India¹² is another case worth quoting here as the five Judges Constitution Bench of the Supreme Court held that a Muslim divorced wife has a right to maintenance even after the period of iddat under the Muslim Women (Protection of Rights on Divorce) Act, 1986. In the instant case, the Supreme Court held that the Act is Constitutional. But in the light of S. 3(1)(a) of the Act, a Muslim husband is liable to maintain his divorced wife even beyond the period of iddat

¹¹ A.I.R. 1997 Bom 349.

¹² A.I.R. 2001 S.C. 3262.

provided she has not remarried or is not able to maintain herself after the period of iddat.

It is therefore, significant to mention that the judgment delivered by the Supreme Court in *Danial Latifi's* case recognises the honour and dignity of the divorced woman by directing the husband to pay her maintenance even after expiry of period of iddat.

Again, in ***John Vallamattom & Anr. v. Union of India***¹³ the Supreme Court reiterated its view for enactment of common Civil Code. The judgment was delivered by three Judge Bench. The validity of S. 118 of the Indian Succession Act, 1925 was challenged by the petitioners on the ground that it was discriminatory under Art. 14 and it also violates Arts. 25 and 26 of the Constitution. S. 118 of the Act is in respect of power of a Christian to bequeath his property for religious or charitable purposes. This Section imposed restriction on a Christian on his power to make bequeath who has nephew or a niece or any other relative. The term relative includes an adopted son but not the wife of the testator. The Court held that S. 118 of the Succession Act is unconstitutional as it violates Art. 14 of the Constitution. The Court further said that Arts. 25 and 26 are not applicable in this case because disposition of property for religious and charitable uses is not an integral part of Christian religion. These Articles protect only those rituals and ceremonies that are integral part of religion.

On the strength of judgment delivered by the Court in the aforementioned cases at different intervals of time, it can be stated that the judiciary is in favour of enactment of a common civil Code so that differences based on religious ideologies can be removed, abuse of personal laws can be prevented and national integration can be promoted.

In ***Seema v. Ashwani Kumar***,¹⁴ a landmark judgment was delivered by a Division Bench of the Supreme Court comprising Hon'ble Mr. Justices Arijit Pasayat and Mr. S. H. Kapadia especially dealing with the question of consequences of non registration of marriage. The Court laid down that all the marriages be compulsorily registered irrespective of religion of the parties. The Court directed the Centre and State Governments to amend the law or frame rules and notify them within three months. Rules so framed could be formalised after inviting public response and considering them. The Court further observed that rules so framed would continue to operate till the respective Governments framed proper legislations for the compulsory registration of marriages.

¹³ A.I.R. 2003 S.C. 2902.

¹⁴ A.I.R. 2006 S.C. 1158.

The aforementioned judgment of the Supreme Court is dynamic step towards enacting a Uniform Civil Code. Cases are usually heard where many husbands desert their respective wives, deny marriages to fulfil their evil motive of escaping from liability to maintain wife and children and also to deny them rights to inheritance of their properties. The judgment of the Supreme Court has wider consequences to prevent such evil motive of irresponsible husbands because as a result of this judgment i.e. due to registration of marriages several good things can happen which may maintain healthy family relations. For example, fraud likely to be committed by either spouse at the time of marriage by concealing or misrepresenting his or her age can be prevented. Likewise, bigamy and polygamy can be checked, desertion of wife by husband can be prevented, child marriages can be deterred, a wife can enforce her right to inheritance, right to maintenance of wife can be claimed by her, custody of children cannot be denied by the husband and if they are in custody of the wife, the husband cannot escape his liability to provide proper maintenance to them and so on.

It would not be out of point to mention that all the verdicts of the Supreme Court delivered in all the above-mentioned cases make it amply clear that unhealthy, unethical and unconstitutional practices, customs and laws cannot be allowed to exist no matter that they are coming down from the time immemorial. It is because in modern civilized society there is no place for any kind of evil practice or ugly law which can only fulfill false ideologies of some orthodox persons and can never serve good to society as a whole. Therefore, it is necessarily required that all such practices and laws should be abolished and legislations promoting welfare of individual and society should be substituted for them.

It is worth mentioning that the Law Commission of India in its Report No. 270 submitted to Government of India in July, 2017 as regards Compulsory Registration of Marriages has recommended that if Registration of Births & Deaths Act, 1969 is amended so as to include registration of marriages also, there would be no need to make separate legislation in registration of marriages. It is because such Act with amendment including registration of marriages would be acceptable and would provide better implementation of the existing rights under family laws instead of providing new rights.

Again, the Law Commission of India on 31 August, 2018 while considering the reforms in family laws and addressing the issue of Uniform Civil Code considered various personal laws regarding Marriage and Divorce, Custody and Guardianship, Adoption and

Maintenance, Succession and Inheritance and made suitable suggestions for amending several provisions of the legislations related to these issues. With regard to issue of Uniform Civil Code the Commission expressed its opinion that a Uniform Civil Code is not required to reconcile conflicts in personal/family laws in the light of Indian Constitution.

VII. MERITS OF UNIFORM CIVIL CODE

No doubt, India is a multi-religion, multi-cultural and multi-language country but it is also a secular country which has no religion of its own and does not provide any kind of special favour to any religion or religious community rather it provides equal respect to all the religions practised and propagated by members of every community and sect. However, if a Uniform Civil Code is enacted by the Parliament, its advantageous aspects can be realised to be as follows-

1. Uniformity in law would be ensured to all the citizens of India irrespective of their distinct religions. Such uniformity would not have any adverse effect on Fundamental Right to Religion guaranteed under Arts. 25 to 28 of the Constitution. For example, family matters of all the communities like marriage, maintenance, custody of children, divorce, succession, etc. can be dealt with by uniform law.
2. Certainty of law with uniformity regarding family matters may be the result of such Code. People of all the communities would become sure that law is certain and there is little scope to distort it by any person according to his whims and fancies.
3. It is sure that the law of compulsory registration of marriage would prevent many evils e.g. child marriages, bigamy, polygamy, denial of marriage by husband, etc. and the legally wedded wife with registration of her marriage would be sure that such evils will not happen in her marriage life.
4. Ideologies of different religions and right to practise and propagate religions of any person would not come in the way of framing of Uniform Civil Code because religious ideologies and right to religion stand on different footing than a Uniform Civil Code because a Uniform Civil Code is completely a secular matter.
5. The concept of national integrity is bound to be enhanced with a Uniform Civil Code coming into effect as the secular character of the country would be promoted and welfare of all the

communities would be brought within a single domain of law i.e. Uniform Civil Code.

6. Law will be simplified with the Uniform Civil Code being enacted. All the provisions of it would be lucid and free from ambiguity.
7. The concept of gender justice would be ensured and promoted. Married women would have a sense of equality in their mind while living with their respective husbands. A married woman would be free to a large extent from ugly behaviour of her husband and absolute dependence on him as she would not live on mercy of her husband. She would have every right to live with human dignity.
8. A wife will surely feel that she is not living in a patriarchal society. She may feel that she is living in such society where no male member including her husband can oppress her or inflict torture on her because in all the respects she lives at par with her husband.

VIII. CHALLENGES

There are multi facet challenges which can be faced by the Parliament before moving towards enacting a Uniform Civil Code. The reason lies in the logic that India is such a country where Hindus practise their own religion, Muslims are free to practise their own religion. Similarly, Christians, Persians are liberty to follow their own religions ideologies and tenets. The question is not only of practising and propagating the different religions by various communities respectively living together in India but more important issue is that several family matters like marriage, maintenance, adoption, guardianship are finalised by religious sacraments in addition to existing rules and laws governing them. There are religious gurus in every community whose preaching and precepts are being followed by their followers with great sense of faith, belief and devotion because the followers have sacred belief that their gurus would enable them to fulfil their noble goals in their lives including attainment of salvation. Such belief along with the religious ideologies also heavily figure in day to day life of the followers affecting their family matters as well. Besides, it is a difficult task for the Parliament to convince each and every person of every community to bring them on such ideological single platform where every person can be happily ready to accept the Uniform Civil Code.

IX. CONCLUSION AND SUGGESTIONS

Despite cultural-religious diversity and plurality, our unity is a rich heritage for the national integrity and promotion of secularism with basic objective to ensure welfare and wellbeing of every citizen of India. Guaranteeing Fundamental Right to Religion in the Constitution of India under Arts. 25 to 28 is another laudable step to strengthen integrity and unity of the country. Nevertheless, different legislations e.g. the Hindu Marriage Act, 1955, the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Muslim Personal Law (Shariat) Application Act, 1937 are there to deal with family matters differently. Certain religious sacraments are also required to supplement these laws and in one way or another they have been incorporated in such legislations. To illustrate, it can be said that conditions and laws relating to marriage, divorce, adoption, guardianship, and maintenance are not similar. Again, rules relating to inheritance in all the religious communities stand on different footings. Rules in respect of bequeath are also different. Fundamental Rights to Religion available to all the persons in India as enshrined under Constitution are the same but religious ideologies are distinct for them. Incorporation of provision regarding Uniform Civil Code under Art. 44 of the Constitution by framer of the Constitution under DPSP is a constitutional mandate for enactment of a Uniform Civil Code. Expression of opinion by the Supreme Court in several cases for treating the Uniform Civil Code as a secular matter and not a religious matter is indicative of framing a Uniform Civil Code in India. Further, the opinion of the Supreme Court that framing a Uniform Civil Code would be a step to strengthen national integrity is extremely relevant on the issue. Protection of equality in matrimonial status, eradication in gender inequality and sense of security are such other issues which are common to all the religious communities.

In view of the above discussion, it is submitted that enacting a Uniform Civil Code by the Parliament of India should not be an imposing endeavour on various religious communities in India. In case it is enacted, it should be enacted in high consultation with and opinion sought from all corners of society including religious gurus, legal experts, NGOs, social activists and politicians from every community so that a harmonious environment is created to promote welfare of members of every community along with noble concept of national integrity.