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LEX BONA FIDE
With this thought, we hereby present to you

LEX BONA FIDE: LAW JOURNAL

ARTICLE 44 : A LONG PEREGRINATION'

(By : Chirag Yadav, Amity Law School, Gurugram)

“There is nothing non-secular or sectarian in demanding that the provisions of Indian civil laws should apply even-handedly to all.”

~ *Amartya Sen*

Uniform Civil Code, one of the most canvassed and debating topics of Indian framework in today's time and a universal predicament for the legal fraternity. It advocates the concept of 'One Nation and One rule' and lays down the idea of common personal law for all religions, subsequently, seeking abrogation of the plethora of personal laws that are in existence currently. Article 44 of the Constitution of India providing for a Uniform Civil Code in the country is enshrined in Part IV which is about Directive Principles of State Policy, meaning thereby, not legally enforceable in nature. Nonetheless, Directive Principles are considered to be fundamental in the governance of the nation.

The most deliberating expostulations associated with the Uniform Civil Code in the minds of the countrymen are about the efficacy of this principle and the obstacles associated with its execution. The *raison d'être* behind these thoughts is that the task of actually devising the set of rules that will collectively govern all the communities and religions is a very arduous one keeping into consideration the vast gamut of sentiments and opinions associated with the Uniform Civil Code.

The most common misconception that has invaded the minds of the minorities is that this code is nothing but a way to induce them and this misconception has turned out to be a major impediment due to which Uniform Civil Code has just remained a dead letter. Amongst various other reasons, the most evident cause of the non-implementation of this principle to date is the lack of political will. Considering the sensitivity and complexity of this issue and fear of hampering the vote bank, political parties have remained reluctant. And the fact that the existing veracity of personal laws has led to politicization is not what worries the government. Nevertheless, a coin has two sides and so does this issue. Till the time the religious groups don't take initiative and deliberate on the topic as responsive citizens and bring out an amicable solution this issue can't see daylight. The rightful execution of this code without hurting the

sentiments of the religious communities who will be subject to this code is possible only if it's drafted keeping away all kinds of bias and considering the best interest of all. To ensure this, a committee comprising of renowned jurists and experts from the associated fields should be formed to ensure uniformity and due care in the process. Simultaneously, another vital aspect of turning this code into a successful one, attempts should be made to help the citizens to develop a broadminded attitude along with a progressive outlook that will help them realise the essence of UCC. This sensitization can be done via electronic media, awareness campaigns and advertisements to name a few.

India is a sui generis blend of diversity but the diversity of the laws is not good and therefore, it is not rightful to form a conception that the introduction of UCC in our country would shadow its diversity in any way rather it will help turn the existing disparity into parity. The UCC will help cater for those sections of society who consider themselves in a state of disadvantage over the others especially the women. As at the beginning of the twentieth century, for the first time ever the demand for a Uniform Civil Code was put forth by women activists only. Looking at the brighter side and larger good that this code can bring to this nation it can be deduced that it is not an encroachment of religious freedoms guaranteed by the Constitution. Favouring the concept of UCC, the Delhi High Court has also expressed its views and held that "The modern Indian society was gradually becoming homogenous, the traditional barriers of religion, community and caste are slowly dissipating" and thus UCC "ought not to remain a mere hope." "The youth of India belonging to various communities, tribes, castes or religions who solemnise their marriages ought not to be forced to struggle with issues arising due to conflicts in various personal laws, especially in relation to marriage and divorce," it further held. A similar view was expressed in the historic judgement of Shah Bano Case^[1] of 1985 which is intricately associated with this and it reminded the legislative authorities of the need to secure a Uniform Civil Code for the citizens of the country and it is a step to ensure national integration. Apart from this, Goa's Uniform Civil Code has proved to be an admirable step taken up and can be considered as a good start before the introduction of the Uniform Civil Code on a national level.

It has been rightly said that for a nation's burgeoning not only economic advancement but social advancement is also needed. But despondently, the concept of social development seems to be non-existent to some extent and even in the 21st century, we are still struggling for social development. Due to this, we have come to a position where we can neither be considered modern nor be considered traditional. Till the time, the gaps and cracks of discrimination exist in the walls of the social structure it is not possible for us to thrive to our fullest. If we adopt a

unified code it will help us in drifting away from caste centric and religious politics. Our Preamble clearly provides for secularism, but it would not be wrong to say that there doesn't exist complete secularism rather it can be termed as 'selective secularism' because being secular is some aspects and being non-secular in other can't be termed as complete secularism. Seeing with a process-oriented outlook, keeping in consideration the interlinkage of personal laws with religious sentiments, it has become cardinal that the Uniform Civil Code must be framed with transparency and an opaque approach would take it towards the failure. Also, the legislators need to keep in view the veracity of opinions that exist, therefore, it must be done only after extensive consultations and discourse with representatives of all the communities of the country. Hence, it cannot be in a manner of a high-handed majoritarian process. It can work out well till the time the recommendations of each community is accommodated and it is not used as a political tool.

India faces a drastic issue with its personal laws due to their bias towards the upper-class patriarchal conceptions of society in all religions. As it may be observed, panchayats continue to issue verdicts that violate our constitution, and no action is taken. Human rights are in breach across the country. By legalising personal laws, we have established a parallel court system based on thousands of ancient values. By eliminating all the loopholes, the universal civil code would tip the balance in favour of society.

Uniform Civil Code if implemented timely will not be a mere law but will be a turning point in the lives of the suppressed classes. This concept is already born with women demanding UCC in the 20th century, UCC being tabled by the National Planning Commission appointed by the Congress, several leaders raising voices to enshrine UCC in the ambit of fundamental rights, then later on it being debated in the constituent assembly, passing of the reformist bill, Dr B.R Ambedkar resigning from the cabinet after his draft for Hindu Code Bill being put to halt, the historic Shah Bano case and judgement of Sarla Mudgal v. Union of India^[2] case and ever since then the debate goes on and on.

It has been 74 years since India got independent but our transition from a 'developing nation to a 'developed' still stands incomplete. And it will continue to remain incomplete till the time there will be divide in the society on account of gender, caste and religion. In order to aim at larger aspects of development, it is vital to address the issues of the ground level so that the journey becomes smoother and hiccup-free. Not only this but the introduction of the Uniform Civil Code will be a medium to bring vote bank politics to an end. Political parties are using

religious sentiments to meet their selfish ends and the continuation of the plethora of personal laws will increase the resentment amongst various classes and nothing else.

As the Uniform Civil Code would help in establishing laws that will regulate individual situations affecting all people irrespective of faith, this is the backbone of genuine secularism. This swift shift would not only assist in halting the existing gender bias but would also strengthen the nation's mainstream fabric and work towards the enhancement of unity. It is a heaven-sent moment to alter our social framework, which is rife with inequalities, divisions, and other factors that are conflicting with the rights guaranteed by Part III of the constitution. With the passage of time, the desideratum for a unified civil code for all citizens regardless of caste, gender or religion, has arisen, ensuring the protection of vital constitutional rights. It cannot be denied that the lack of a standard civil code is defeating the whole idea of true democracy. After years-long deliberation, all it needs is a green flag from its subjects and it will surely turn out to be a success and will gather support over time without which this long peregrination will never come to an end.



REFERENCES:

[1] AIR 1985 SC 945

[2] AIR 1995 SC 1531

