**Analysis for introduction of Uniform Civil Code in India**

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**Abstract: -**

Analysis for introduction of Uniform Civil Code narrates what are all the personal Laws available in India. Further, this article explains almost all personal laws in short. Despite all those laws, some of the people who were lurch in availing remedy with regard to their personal relieves unless the Madras High Court has delivered judgment recently as to their relieves under the Family Courts Act, 1984. At this juncture, in considering all personal Laws applicable in India and in considering the benefit of all citizens in respect of their personal relieves, whether Uniform Civil Code is necessary which is the main theme of this Article.

**Key words:**

Constitution of India, Uniform Civil Code, Personal Laws, Muslim Law, Article 44, Supreme Court, Marriage, Divorce, adoption, Succession.

**I. Introduction:-**

Laws are generally of two types:- one is Public Law and another one is Personal Law. Examples for the public laws are the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Contract Act, 1872 etc. Examples for the Personal Laws are the Divorce Act, 1869, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1955, the Mohammedan Law, etc. While the laws are stood thus, our Constitution makers have drafted the Constitution of India which was adopted and enacted in the Constituent Assembly on 26th November, 1949. It is pertinent to mention here that the Constitution of India is the basic Law of India which is also supreme in considering other Authorities in India. The Constitution of India, 1950 has specifically required the State to secure for the citizens a Uniform Civil Code throughout the territory of India which is Article 44 of the Constitution of India which is the topic of this Article.

**II. Various Personal Laws in India before Independence:-**

**i) The Divorce Act, 1869:-**

This Act is applicable only for the Christians. This Act deals with dissolution of Marriage, Judicial Separation, Restitution of Conjugal Rights, Alimony, custody of child, etc.

The object of the Act is to amend the law relating to Divorce and Matrimonial Causes.

**ii) The Indian Christian Marriage Act, 1872:-**

This Act deals with persons by whom Christian Marriages may be solemnized, Registration of Marriages, Marriages in the presence of a Marriage Registrar, etc.

The object of the Act is to consolidate and amend the law relating to solemnization of marriages of Christians in India.

**(iii) Muslim Personal Law (Shariat) Application Act, 1937:-**

This Act was enacted to make provision for the application of the Muslim Personal Law (Shariat) to Muslims. Therefore, it is clear that before passing this Act, the Indian Muslims had followed their personal Law viz. Muslim Personal law (Shariat). In order to approve above Muslim Personal Law (Shariat), the above Muslim Personal Law (Shariat) Application Act, 1937 was enacted.

Section 2 of the Act says that questions relating to intestate succession, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trust shall be governed by the Muslim Personal Law (Shariat).

**iv. Dissolution of Muslim Marriage Act, 1939:-**

This Act was enacted to consolidate and clarify the provision of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie. On reading the object of the Act, it is seemed that at that time married Muslim women were not entitled to get divorce from the court. In order to get rid of this lacuna, the above Act was enacted. This Act has provided various grounds to obtain decree of divorce through the Court of Law by the married Muslim women.

**v) Mussalman Wakf Validating Act,1913:-**

This Act was enacted to declare the rights of Mussalmans to make settlements of property by way of “Wakf” in favour of their families, children and descendants. According to Shabdkosh website, Mussalman means Muslim.

**vi)The Hindu Disposition of Property Act, 1916:-**

This Act has been given assent by the Governor-General of India on 28th September, 1916. The Act is for the purpose of removing certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition.

Section 2 of the Act says that subject to the limitations contained in Section 3 of the Act, no disposition of property by a Hindu shall be invalid on the reason that any person for whose benefit it may have been made was not in existence at the date of such disposition.

**vii)The Hindu Inheritance (Removal of Disabilities) Act, 1928:-**

The Act is to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs and to remove certain doubts.

This Act is not applicable to persons governed by the Dayabhaga School of Hindu Law. Section 2 of the Act says that no person shall be other than a person who is lunatic or idiot form his birth excluded from any right or share in joint family property on the grounds of any disease, deformity or physical or mental defect.

**viii) Mohammedan Law/Muslim Law:-**

This Law is the basic Law for the Muslim. It is believed by the Muslim that the above Law has been dictated by Allah to Mohammed, the Prophet of Islam. This Law deals all aspects viz. inheritance, Hiba, Mahar or dower, Nikah or marriage legitimacy and parentage, guardianship, maintenance , Waqf, Will, etc.

**III. Various personal Laws in India after independence:-**

**i) The Hindu Marriage Act, 1955:-**

This Act was enacted by the Parliament with an object to amend and codify the law relating to marriage among Hindus. This Act narrates conditions for a Hindu Marriage, ceremonies for a Hindu Marriage, void and voidable marriages and remedies for matrimonial disputes. Remedies are Restitution of Conjugal Rights, Judicial Separation, Divorce, Maintenance, Custody of child, etc.

**ii) The Hindu Succession Act, 1956:-**

This Act was enacted by the Parliament. The object of the Act is to amend and codify the law relating to **intestate** succession among Hindus. This Act deals with order of succession, law of inheritance and share of the legal heirs.

**iii) The Hindu Minority and Guardianship Act, 1956:-**

This Act was also enacted by the Parliament. The object of the Act is to amend and codify certain parts of the law relating to minority and guardianship among Hindus. This Act deals with natural guardian for a Minor to deal the minor’s property.

**iv) The Hindu Adoption and Maintenance Act, 1956:-**

This Act was enacted by the Parliament to amend and codify the law relating to adoption and maintenance among Hindus. This Act deals with Adoption of child, maintenance, capacity of the parties to take a child in adoption, adoption by widow, conditions for a valid adoption.

**v) Muslim Women (Protection of Rights on Divorce) Act, 1986:-**

This Act was enacted by the Parliament to protect the rights of Muslim women who have been divorced. This Act provides a reasonable and fair provision and maintenance to a divorced woman by her former husband within the iddat period. If such amount is not paid by her former husband, the divorced women may invoke Section 4 of the Act or Section 125 of the Cr.P.C. for maintenance if she has not remarried and is not able to maintain herself after the iddat period.

**vi) Muslim Women (Protection of Rights on Marriage)Act, 2019:-**

This Act was enacted by the Parliament to protect the rights of married Muslim and to prohibit divorce by pronouncing talaq by their husbands.

It is pertinent to mention here that the above Act has been enacted on the line of Supreme Court judgment in Shayara Bano Vs Union of India reported in 2017(9) SCC1.

This Act declares any form of Talaq by a Muslim husband upon his wife as void and illegal. Further, this Act provides subsistence allowance to a Muslim women upon whom Talaq is pronounced.

**IV.Despite all laws, there is a lacuna:-**

**K.Shanmugha Raja @ Raja Vs Shanthakumari (2019(1)LW97)**

In this case, the Division Bench of High Court of Madras held that those who could not invoke the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, the Indian Christian Marriage Act, 1872 and the Divorce Act, 1869, can invoke the jurisdiction conferred with the Family Court Act, under Section 7 of the Family Court Act.

**Example:-**

When there is no valid marriage, suit for declaration invoking Section 34 of the Specific Relief Act, to declare that there exists no relationship of husband and wife between the plaintiff and the defendant in as much as there is no valid marriage held between them.

**V.Judicial Pronouncements:-**

Article 44 of the Constitution of India says that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

The Supreme Court in several cases referred to the mandate of Article 44 and the need for its implementation and indicated in some of them that a Uniform Civil Code could promote national integration.

**Mohd. Ahmed Khan Vs Shah Bano Begum (1985) 2 SCC 556**

In this case, the Supreme Court urged the State to take initiative in making a Uniform Civil Code to effectuate the principle enunciated under Article 44 of the Indian Constitution.

**Sarla Mudgal Vs Union of India (1995) 3 SCC 635**

In this case, the Supreme Court stressed on the need for a Uniform Civil Code in the matters of marriage, inheritance, succession, etc. The Supreme Court held that Article 14 is based on the concept that there is no necessary conection between religion and personal Law in a civilized Society. Marriage, Succession and like matters are of a secular nature and therefore, they can be regulated by Law.

**John Vallamattom Vs Union of India (2003) 6 SCC 611**

In this case, the three judges Bench of Supreme Court regretted that Article 44 was not given effect to and observed that “Article 25 guarantees religious freedom. Article 44 divests religion from social relations and personal law, marriage, succession and like matters of a secular character can not be brought within the guarantee enshrined in Articles 25 and 26”.

**Shabnam Hashmi Vs Union of India (2014) 4 SCC 1**

In this case, the 3 judges Bench of Supreme Court observed that personal laws can not dictate the operation of provisions of an enabling Statute like the Juvenile Justice Act, 2000. It is a secular law and a small step in reaching the goal of Uniform Civil Code under Article 44 of the Constitution.

**ABC Vs State (NCT of Delhi) (2015) 10 SCC 1**

In this case, the Supreme Court remarked that It would be apposite for us to underscore that our directive principles envision the existence of a Uniform Civil Code, but this remains an unaddressed Constitutional expectation.

Thus, from 1985 onwards, the highest forum of our country has been also concerning about Uniform Civil Code to be enacted by the Union government.

**VI. Suggestion:-**

The Union Government shall enact Uniform Civil Code for the citizens throughout the territory of India to achieve one of the aims and objectives contained in Part IV of the Constitution of India, forthwith.

**VII. Conclusion:-**

On studying the above, it is seemed that after independence, our law makers have enacted several personal laws particularly for the Hindus by overlooking Article 44 of the Constitution. It might have been enacted by oversight and anxiety. Therefore, in considering the thinking of our Constitution makers and in considering the welfare of all citizens of our country irrespective of their religions. Uniform Civil Code is a need of time . Therefore, the present law makers shall take all effective steps to enact Uniform Civil Code in the Parliament at once.

The upcoming Uniform Civil Code will certainly repeal pre-independence as well as post – independence personal laws considerably. Uniform Civil Code will be definitely useful for the entire citizens of this country as this Code will cover all matters viz marriage, adoption maintenance, inheritance, dissolution of marriage, succession of the property, etc. In enacting the above law, the India will once again prove that the people of India is unity in diversity to the entire world.

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