

SPECIAL MARRIAGE ACT: A STEP TOWARDS UCC

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India is a secular country incorporating a diverse population. In regard to civil matters such as marriage, divorce, inheritance, maintenance, and adoption, India adheres to the personal laws of various religions. But a secular country requires a common civil law in these regards, hence Uniform Civil Code was proposed by the constitution framers, but could not be implemented into law due to the rigidness among the religious people in regard to their personal laws. Hence it was incorporated under Directive Principles of State Policy and made a positive obligation on the upcoming governments for its implementation. Special Marriage Act was a step towards this but is not mandatory and is left at the discretion of the parties whether they want to solemnize their marriage under the act or according to the personal laws. The aim of this act was to bring in a common law regarding civil matters, cutting through the barriers under the personal laws of the different communities. It aims to provide validity to inter-religious and inter-caste marriages and curb the hindrances faced under personal laws.

Keywords: Uniform Civil Code, Special Marriage Act, Article 44.

INTRODUCTION

The civil code is a set of laws that govern the civil affairs of citizens in the country, such as marriage, divorce, adoption, child custody, inheritance, succession to property, and so on. The common civil code deals with the personal laws of all the communities in regard to the above-mentioned matters. It is a secular code governing all the citizens of a country irrespective of religion. India is a very diverse country comprising people from different religions. And each religious community has its own set of laws. Not only that, but there are differences in laws based on sex, sect, domicile, and the type of marriage undergone by the parties. Aside from these, there are still a large number of customary laws that apply to various communities. A uniform civil code is required for national unity and secularism. The plurality of personal laws is a direct threat to national integrity and solidarity. A uniform civil code refers to equal laws for all members of our society. All Indians must be governed by the same set of rules.

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Uniform Civil Code has been included under the directive principles of state policy under Article 44 of the Constitution of India. The constituent assembly was divided in its views regarding the implementation of the Uniform Civil Code at the time; many thought that it will be met with a lot of criticism by the people of the country and was not the right time to implement it at the time. Hence, it was added to the directive principles of state policy and laid down as a positive obligation on future governments to implement a uniform civil code. Though not enforceable in a court of law, it is pivotal to the country's governance. The makers of the Constitution set no time limit for implementing the directive principles of state policy. This was done because the members wanted the wounds of partition to heal and the country to be ready for a change in personal law. The Special Marriage Act, of 1954 governs the marriages of the people and applies to all persons irrespective of their religion. It allows people belonging to different religions to intermarry and cuts through the barriers to such marriages under the personal laws under which only the people belonging to that particular religion can marry and register their marriage. Special Marriage Act allows the solemnization and registration of any two individuals irrespective of their religion.

UNIFORM CIVIL CODE

Uniform Civil Code suggests bringing about uniformity in civil matters and solving a plethora of problems, it also aims at abolishing certain personal arbitrary and regressive laws which have prevailed for years in our country. Article 44 of Part IV of the Constitution of India provides a positive obligation on the state to enforce UCC. It states “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”¹ While the aims of the aforementioned policy are in abundance, its implementation still remains a challenge among the masses due to the huge backlash it receives. Many religious groups still see UCC as a threat rather than a step in the right direction as it violates and throws away their ancient personal laws, which have prevailed for ages. The primary reason for such strong opposition is the fear of domination by the majority and religious chauvinism which remains high amongst minorities.

UCC does not aim to target a specific religion or promote bigotry but to promote uniformity in the civil matters of the country and also to bring about a positive change in the country. Famous cases throughout the history of the Indian judicial system have often acted as a reminder that

¹ The Constitution of India, art 44

the UCC is not only the right thing to do but also the absolute need of the hour, which also has been long due.

In the case of *Mohd. Ahmed Khan v. Shah Bano Begum*² the question before the court was whether a husband was liable to pay maintenance to his divorced wife after the iddat period under section 125 of CrPC. If Muslim women were to be provided with basic human rights or were they to follow their regressive past customs? The Muslim personal law does not provide for maintenance to a divorced wife after the expiration of the iddat period. Our legal system was faced with the tough challenge of whether to grant an old woman and her helpless children some sort of relief by interpreting laws of the state or were they to uphold a particular set of personal laws which were outdated and weren't even capable enough to protect the self-respect of a woman. The judiciary opined that Shah Bano did deserve to get compensation throughout the life of her former husband.

Years later the same question echoed throughout the country when our system was faced with the same problem, whether the customs were to prevail over a law that was interpreted by the sovereign. It was in 2017 when the judicial system along with the help of the people quashed the practice of Talaq-e-biddat, after hearing the case of *Shayara Bano v. Union of India*³. The bench of the apex court opined that customs can not always prevail over the laws. In a landmark judgment, on August 11, 2020, the Supreme Court held that daughters will have coparcenary rights on their father's property, even if the latter died before the Hindu Succession (Amendment) Act, 2005, became effective.

Personal laws are influenced by the old customs and practices of that particular community, they fail to accommodate the changes taking place with time like heterosexual couples, and are also strongly against these changes, UCC, on the other hand, could prove to be a game changer and thus enhance and improve inclusivity amongst the masses, thus truly upholding and strengthening Article 14 of our Indian Constitution.

SPECIAL MARRIAGE ACT

The main objective of The Special Marriage Act is to provide a special form of marriage under which any two people can marry each other irrespective of the religion of the individuals. The parties solemnizing their marriage under this act are free to perform any ceremony as they may

² *Mohd. Ahmed Khan v Shah Bano Begum And Ors* [1985] AIR 945 (SC)

³ *Shayara Bano and ors v Union of India and ors* [2017] AIR 4609 (SC)

deem fit, this act does not provide for an obligation of any specific ceremony it only requires a few formalities to be performed by the Marriage Officer to register a marriage under this Act.

The Special Marriage Act, of 1954, assumes special significance because it enables people belonging to different religious groups to inter-marry by cutting across all barriers. Thus, while a Hindu and a Muslim cannot marry under their respective personal laws, they may marry under the provisions of the Special Marriage Act. This Act, in fact, is an important milestone toward national integration and the attainment of the constitutional goal of a Uniform Civil Code.⁴

In 1872, the British Government in India for the first time introduced the Special Marriage Act. After independence, the Government of India realized that the Act of 1872 was not adequate in view of the changing scenarios and circumstances and thus a new Act was introduced along the lines of the previous Act but with the desired changes. Section 15 of this act provides that the people who have celebrated their marriage in any other form can also get their marriage registered under this act if they fulfill the conditions mentioned under this section and hence avail of the provisions under this Act. Religious marriages can be converted to secular marriages after they are registered under this act, for this, there are some conditions that need to be fulfilled mentioned under sections 15 and 16 of the Act. Under the said law, in the event of a marriage breakdown, both spouses are entitled to all matrimonial reliefs upon application to a court of competent jurisdiction. It is a secular law and does not discriminate on the bases of creed, religion, sex, and so on.

SMA is different from the other personal laws of the country, some of the reasons that make it special are; it cuts across all barriers of caste, creed, community, and religion and permits any two persons to marry under the provisions of the Act (subject to fulfilling essential conditions and requirements); marriage is monogamous without exception; marriage is not an indissoluble union which cannot be dissolved even if its continuance is utterly agonizing; thus divorce is permissible on certain grounds but not arbitrarily granted; government is a party to the solemnization of marriage under the Act; the Marriage Officer functions on behalf of the Government; and registration of marriage is compulsory.⁵

⁴ Kumud Desai, *The Indian Law of Marriage and Divorce* (Part 1, 10th edn, Lexis Nexis)

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STEP TOWARDS UCC

At the time of the formation of the Constitution of India, the framers believed that it was not the time for UCC to be enforced so they placed it under the DPSPs but also to take a step towards it the Special Marriage Act was enforced. The concept of UCC is secular in its nature and on the lines of the same SMA is also secular, it cuts through religious lines and allows inter-caste or inter-religious marriages among any two Indian Citizens or Indian Nationals living abroad. UCC comes into force will be a code that is to be compulsorily followed by all the citizens of the country and hence forms a bigger umbrella whereas SMA is optional, the people who do not want to register their marriage under the personal laws or if they are not able to register their marriage under the personal laws due to the specific conditions of the personal laws can get their marriage registered under the SMA, making it a part of the bigger umbrella.

The UCC shall incorporate the rules, regulations, code of conduct, duties, obligation, and so on, it shall be a law consisting of everything making it a Substantive Law. Hence it covers a broad area whereas when it comes to SMA it covers a smaller area. SMA tells the procedure to be followed for marriages, divorce, etc. it is a Procedural Law. SMA allows inter-religious marriages between two parties without the need for conversion by one party, unlike the personal laws which allow the marriage between two people who belong to that religion only.

SMA cuts through the bias and disparities in personal law and provides a law that provides equality and uniformity. It does not recognize any customs or practices followed by any particular religion but only requires conditions such as the parties to the marriage are both sane-minded, major, do not have a living spouse, etc. SMA does not cover all the aspects of the civil matters mentioned before like the inheritance of property, the marriages solemnized under SMA follow The Indian Succession Act, of 1925 in this regard but if UCC comes into existence it will not only cover the marriages and divorce but also the inheritance of property.

CONCLUSION

The Preamble of the Indian Constitution states that India is a secular nation, which means it has a common law for all the citizens of the country but the personal law is a hindrance in this regard. The personal laws not only are different for the different religions but they also differ on the bases of gender as they are formed based on old customs and practices. These are some

of the reasons that make UCC the need of the hour, but all religions are still not ready to adopt and accept the UCC.

For UCC to be implemented small steps need to be taken and one such step is SMA. It is a common law for all the citizens of the country in regard to the marriage and divorce of two individuals. It is not an obligation to solemnize a marriage under this act but it is optional. The people who wish to get their marriage solemnized and registered under a secular law can get it done under SMA while others can solemnize and register their marriage under personal laws.

No government since independence has been able to implement UCC which also forms a part of the DPSPs. SMA was enacted a few years after independence and has since been in place. The SC has time and again in many landmark cases directed the government to implement UCC for the smooth and uniform working of the laws in regard to marriage, divorce, inheritance, adoption and so on but the government has been unable to do so. Goa is the only state in India that has implemented UCC and has smooth working in this regard.

There is no doubt that SMA is a step towards the implementation of UCC but provided the limited aspects of civil matters covered under it; it is certainly not a sufficient step towards UCC. If UCC has to be implemented in India it will require a lot of discussions, debates, and suggestions keeping in view the deep-rooted religious beliefs among the people.