A BOOKLET ON

UNIFORM CIVIL CODE

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MUSLIM PERSONAL LAW

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UNIFORM CIVIL CODE AND MUSLIM PERSONAL LAW

Introduction

s rightly stated by Ms. Flavia Agnes, A feminist legal scholar and a women's rights lawyer in her article- "Uniform rights not a uniform law", that enforcement of a Civil Code cannot be viewed in a simplistic manner as outlawing polygamy and triple Talāq, It is much more complex than that. To have or have not uniform civil code in India for utmost satisfaction of all communities belonging to various religions is a hillarian task and nothing short of opening pandora's box. The supremo of DMK party of Tamil Nadu in a letter to his party men said-"Centre taking up the Uniform Civil Code (UCC) amounted to "Stirring up a Hornet's nest" and claimed that it was not easy to implement such a code in a country of diversities. In order to bring a uniform civil code, "A consensus must have to be created" among political parties and various other stakeholders in the country, He said that it was not easy to bring about such a code.

Mr. K Kannan, Former Judge of Punjab and Haryana High court in his article captioned as- "Now is not the moment". Published in The Hindu Daily expressed his view on Uniform Civil Code as follows-

"The Uniform Civil Code, if brought in now, will be perceived as an apology for hegemony of the Hindu Laws over the personal laws applicable to Muslims and Christians".

A call for Uniform Civil Code was no doubt given at the threshold of 20th Century, but it was not answered by one and all except few. The British feared opposition from community leaders and refrained from further interfering within this domestic sphere. The demand for a uniform civil code was first put forward by women activists in the beginning of the 20th Century, with the objective of women's rights, equality and secularism. Till Independence in 1947, a few law reforms were passed to improve the condition of

http://www.thehindu.com/opinion/lead/k-kannan-on-uniform-civil-code-now-is-not-the-moment/article8840401.ece (accessed on 02nd October, 2016).

women, especially Hindu widows. In 1956, The Indian Parliament passed Hindu Code Bill admit significant opposition. Though a demand for a Civil Code was made by Prime Minister Jawaharlal Nehru, his supporters and women activists but it was not supported by the other members of the Parliament. They had to finally accept the compromise of it being added to the directive principle because of heavy opposition.

After attaining independence till the end of the era of Congress Raj, No serious attempt was made to enact Uniform Civil Code. Even though BJP led NDA Government also tested the power twice but in their regime also they did not choose to have a common Civil Code despite the fact that it was included in their election manifesto.

In the year 2014, When the BJP got the absolute majority by overwhelming mandate of public; they got the keys of Delhi Darbār and starting ruling the country. With this absolute majority, they started showing their true colours by polarising Indian society on different issues. One of such issues is enactment of Common Civil Code.

On 1st July, 2016, news was published through PTI, according to which, the government has asked the Law Commission to examine the issue of Uniform Civil Code, an issue that is dear to BJP and the Sangh Parīvār. The department of Legal Affairs has asked the commission, a recommendatory body, to submit a report on the issue. The move assumes significance as the Supreme Court had recently said it would prefer a wider debate in public as well as in court before taking a decision.

Soon after this news became the table talk in Political, Religious and Social circles, the chairman of the Law Commission of India in his statement said,

"Considering to put in place a Uniform Civil Code (UCC) for the entire country has nothing to do with any religion or faith as it a secular concept."²

Thus, the chairman of The Law Commission has clearly asserted that Uniform Civil Code will have nothing to do with any religion or faith. In view of the above discussion,

² English Daily Chronicle. Dated 7Th July, 2016.

it is manifestly clear that the proposed Uniform Civil Code will be a secular Code without religious laws in its fold. Let's study whether religious laws in India, particularly Muslim Law will be of no significance in articulating uniform civil code.

Definition-

The term Uniform Civil Code has not been defined in the constitution of India nor in any book of statute so far. Generally speaking, it would take into its sweep the laws relating to Marriage, Divorce, Maintenance, Adoption and Inheritance. Uniform Civil Code is not yet drafted. It is at the stage of proposal. But we are sure that it would replace personal laws of religious communities, Particularly of Muslims based on Sharī'ah Law, Sources of which are The Qur'an, Sunnah, Hadīth, Ijmā' and Fiqh. Goa is the only state in India which has accepted Common Civil Code, which is also termed as common family law. Civil code denotes the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance.

Presently, in India there are different laws governing these aspects for different communities. The laws governing inheritance or divorce among Muslims, based on Shari'ah, are completely different from those pertaining to Hindus and / or Christians and so on. Uniform Civil Code (UCC) administers the same set of secular civil laws to govern different people belonging to different religions and regions. This supersedes the right of citizens to be governed under different personal laws based on their religion or ethnicity. Normally, these common areas, which get covered by a civil code include:

- Personal status a)
- Rights related to acquisition and administration b) of property
- Marriage, Divorce and Adoptions

Historical Background

History contains many instances of pluralistic legal systems in which multiple sources of law existed. Even today we find no uniform provisions governing the personal domains of marriage and divorce in the states of Goa and of Jammu and Kashmir. There was no Common Civil Code or Uniform Civil Code when India was ruled by Hindu Kings. Muhammad bin Qāsim (76-96/695-715)was the

first among the Muslim warriors who conquered Sindh and ruled it. Even though Sindh was dominated by Hindus, but Muhammad bin Qāsim never ventured to command the people of Sindh to follow Islamic Laws in their personal lives. Instead, He promised not to interfere into their religion and religious affairs, non-Muslim enjoyed freedom of worship and status on par with the Muslims.3 During the period of Delhi Sultanate, Muhammad Shihāb al-Dīn Ghorī (544-602/1149-1206) continued to inscribe the figure of goddess 'Lakshmi' on his coins. 4It is mentioned in Tāj al-ma'āthir which is considered as one of the most reliable accounts on the career and reign Qutb al-Dīn Aibak (509-606/1150-1210), founder of Mamluk Dynasty in Delhi, that he allowed Rajput princes to rule over Delhi, Ajmer and Gwalior even after the conquest of those regions. 5According to Ziā al-Dīn Baranī (684-758/1285-1357), non-Muslims performed their religious rites without any restriction during the reign of Jalāl al-Dīn Fīroz Khiljī (r. 758-695/1290-1296) who founded the Khiljī Dynasty in Delhi. He appointed non-Muslim on key

³ Alī bin Hāmid al-Kūfī, Chach Nāmah, ed. U.N. Daupota, Delhi, 1939, p. 209,

⁴E. Thomas, Chronicles of Pathan Kings of Delhi, London, 1871, p. 172.

⁵Hasan Nizāmī, Tāj al-ma'āthir, 1217, pp. 110-184.

posts and this policy was also adopted by his successors, 6 Tara Chand, the famous historian of Bengal informs us that Muhammadbin Qāsim was a "Secular ruler" and his kingdom was completely a "Secular State". The other Muslim rulers such as Tughlaqs (1320-1414), Sayyids (1414. 1451), Lodhis (1451-1526) and Mughals (1526-1857) ruled this country for over Eight hundred years but they never thought of compelling their Hindu and other non-Muslim subjects to follow Islamic laws while deciding their personal and civil disputes. Indian model of secularism is very distinct from the Western one. Thus, pluralism in legal sources and rules is inevitable, especially in a multicultural democratic republic like India.

During the British period the Lex Losi report of October 1840 emphasised the importance of Indian Law relating to crimes, evidence, contracts etc., but strongly recommended to keep the personal law of Hindus and Muslims outside such codification. The British rulers have rightly understood that laws which would be governed by religious scriptures and customs should not be touched, if

⁶Ziā al-Dīn Baranī, *Tārīkh-i Fīrorshāhī*, edt. Sayyid Ahmad Khān, Calcutta, 1862, pp. 216-217.

⁷Tara Chand, Influence of Islam on Indian Culture, Allahabad, 1936, pp. 117-118.

their government was to be run smoothly. During the British regime, throughout the country there was a variation in preference for scriptural and customary laws and such instances were present in the Jats and Dravadians communities. The Shudras allowed widow remarriage which is contrary to scriptural Hindu law. Personal laws were first framed during the British Raj, mainly for Hindu and Muslim citizens. The British feared opposition from community leaders and refrained from further interfering within the domestic sphere. The British government through Queens Proclamations made it clear that the government will not interfere into the religious affairs of Indians belonging to any religion.

Legislative Reforms

Before the dawn of Independence era at the request of Muslim elites the British government enacted The Muslim Personal Law Sharī'at Application Act of 1937 for the first time in India, which stipulated that notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate

succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage including Talāq, īlā,zihār, li'ān, khula' and mubārat, maintenance, dower, guardianship, gifts, trust properties and waqf (other than charities and charitable institutions and charitable and religious endowments). The rule of decision in cases where the parties are Muslims shall be The Muslim Personal Law (sharī'at). Thus it is clear that even during the English period, the then government completely secured the Muslim Personal Law by enacting the said Act which is still in force.

Likewise The Dissolution of Muslim Marriage Act of 1929 came into force in order to enable a Muslim woman to get her marriage dissolved by filing an application under Section 2 of the said Act on various grounds. To protect the waqf properties spreading throughout India, waqf Act was enacted. Under the provision of this Act, if they are rightly invoked, used and implemented, the waqf properties of Muslims worth of millions of Rupees can be protected. There

is also a provision under this act to recover the waqf properties from the illegal occupiers and trespassers. Limitation Act was not made applicable to this Act so that there should not be any legal impediment in filing suits for any relief relating to waqf properties while executing orders of the court/tribunal.

As the government has failed to bring a Common Civil Code because of the stiff opposition of Muslims it has started injecting various secular Acts into the body of Muslim Personal Law, so that it can be replaced by the such enactments, hoping that as a result of such systematic approach, one day or other there will be no Muslim Personal Law in the books of Statute. In The Indian Majority Act of IX of 1875, Section 3 was amended, thereby enhancing the age limit to attain majority was fixed as 18 years and 21 years if the minor is subjected to any court litigation. At the same time Child Marriage Restraint Act was promulgated under which child marriage was prohibited and liable to be punished. The above said two provisions are quite contrary to Muslim Personal Law since the age of majority under

Muslim Law is 15 years. The government of Andhra Pradesh enacted The Land Ceiling Act in the year 1976, in which Section 4 prohibits the application of Muslim Law of Hiba (Oral Gift).

The Muslims who have joined The Army, the Indian Air Force, the Navy and any other job under The Central Government or State Government were restrained for marrying a second wife while his first wife is alive and under his wedlock. The Government of Andhra Pradesh has also taken a step ahead bringing amendment in the MCH Act declaring that any candidate, irrespective of his religion participating in the Municipal elections shall not have more than 2 children on the date of filing nomination paper.

The provision of Guardianship and Ward's Act of 1890 are quite contrary to the Muslim Law of Guardianship. If a Muslim father/ mother wants to get himself/ herself appointed as the guardian of his/ her minor child, he/ she has to invoke the provision of this Act but not Muslim Law as held by Supreme Court and other High Courts in their judgements. The Muslims did not raise their little finger

against such enactment and coolly accepted the same. But it is quite clear that these enactments were purposely and deliberately brought into existence to make the Muslim Law a moribund Law.

Likewise, Various Legislative reforms were brought in the Hindu Law. The Hindu Law discriminated against women by depriving them of inheritance, remarriage and divorce. Their condition, especially that of Hindu widows and daughters was poor due to this and other prevalent customs. The British and social reformers like Ishwar Chandra Vidyasagar were instrumental in implementing in outlawing such customs by getting reforms passed through legislative processes. Since the British feared opposition from orthodox community leaders, only the Indian Succession Act 1865, which was also one of the first laws to ensure women's economic security, attempted to shift the personal laws to realm of civil. The Indian Marriage Act 1864 had procedures and reforms solely for Christian marriages. There were law reforms passed which were beneficial to women like the Hindu Widow Remarriage Act of 1856, Married Women's Property Act if 1923 and The Hindu Inheritance (Removal of Disabilities) Act, 1929, which is a significant move, permitted a Hindu woman's right to property.

The passing of The Hindu Women's right to Property Act of 1937, Also known as the Deshmukh bill, led to the formation of the B.N Rau committee, which was set up to determine the necessity of common Hindu laws. The committee concluded that it was time of a Uniform Civil Code, which would give equal rights to women, keeping with the modern trends of society. But their focus was primarily on reforming the Hindu Law in accordance with the scriptures. The committee reviewed the 1937 Act and recommended a Civil Code of marriage and succession; it was set up again in 1944 and sent its report to the Indian Parliament in 1947.

The Special Marriage Act, which gave the Indian citizens an option of a civil marriage, was enacted first in 1872. It had a limited application because it required those involved to renounce their religion and was applicable only to Hindus. The later Special Marriage (Amendment) Act, 1923

permitted Hindus, Buddhists, Sikhs and Jains to marry either under their personal law or under the Act without renouncing their religion as well as retaining their succession rights.

The Indian Parliament discussed the report of the Hindu law committee during the 1948-1951 and 1951-1954 sessions. The first Prime Minister of the Indian Republic, Jawarharlal Nehru, his supporters and women members wanted a Uniform Civil Code to be implemented. As Law Minister, B.R. Ambedkar was in-charge of presenting the details of this bill. It was found that the orthodox Hindu Laws were pertaining only to a specific school and tradition because monogamy, divorce and the widow's right to inherit property were present in the Shashtrās. Ambedkar recommended the adoption of a Uniform Civil Code. Ambedkar's frequent attack on the Hindu Laws and dislike for the upper castes made him unpopular in the parliament. He had done research on the religious texts and considered the Hindu structure flawed. According to him, only law reforms could save it and the Code bill was this opportunity.

Nehru later supported Ambedkar's reforms but did not share his negative view on Hindu society.

The Hindu bill itself received much criticism and the main provisions opposed were those concerning monogamy, divorce, abolition of coparcenaries (Women inheriting a shared title) and inheritance to daughters. The first president of the country, Rajendra Prasad, opposed these reforms; others included the Congress Party president Vallabhai Patel. a few senior members and the Hindu fundamentalist parties. The fundamentalists called it "Anti-Hindu" And "Anti-Indian"; as a delaying tactic they demanded a Uniform Civil Code. The women members of the parliament, who previously supported this, in a significant political move, reversed their position and backed the Hindu Law reform; they feared allying with the fundamentalists would cause a further setback to their rights.

Thusa lesser version of this bill was passed by the parliament in 1956, in the form of four separate Acts, The Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act. It

was decided to add the implementation of a Uniform Civil Code in Article 44 of the Directive Principles of the Constitution specifying- "The state shall endeavour to secure for citizens a uniform civil code throughout the territory of India". This was opposed by women members like Rajkumari Amrit Kaur and Hansa Mehta. According to academic Paula Banerjee, This move was to make sure it would never be addressed. Aparna Mahanta writes, "Failure of the Indian State to provide a Uniform Civil Code, consistent with its democratic, secular and socialist declarations, further illustrates the modern state's accommodation of the traditional interests of a patriarchal society. Indian Divorce Act was enacted under which a Christian is entitled for dissolution of his/her marriage. Indian succession act was made applicable to Christians to get a share in the property of their ancestors. Under the Indian Adoption Act Christians are entitled to adopt a child.

Judicial Activism

Dissatisfied with all legislative reforms, the Supreme Court and other High Courts have rendered such judgements which would pave the way for enactment of Common Civil Code. The Supreme Court of India in its numerous judgements strongly criticised the Central Government on its failure to usher Common Civil Code particularly on the premise that Muslim Law of Polygamy and Triple *Talāq* would offend Article 21 of The Constitution of India under which equal treatment of law is guaranteed to one and all. Rajasthan High Court, Allahabad High Court and Supreme Court in their different judgements, in different cases ruled that "Where personal laws are in conflict with the law of the land the later will prevail.8

These verdicts which still hold the field and became law of the land under Article 144 of The Constitution of India has almost settled the conflict between The Personal Law and The Law of the Land. According to these judgements, there arises no question of taking shelter under the umbrella of Personal Law if the same is against the law of the land. The significance or importance of personal laws in a dispute based on personal law or on issues related to Personal laws as

^{*} AIR 1965 Rajasthan 239, AIR 1985 Allahabad 27, AIR 1972 Supreme Court 2379.

against the Law of the land is of no legal consequences. The above referred judgements were delivered in a child custody case under The Guardian and Ward's Act.

Under the Muslim Personal Law the mother is entitled to the custody (Hizānat) to her male child until he has completed the age of seven years and of the female child until she has attained puberty, i.e., 14 or 15 years. Where the provisions of the personal law are in conflict with the provisions of the Guardians and Wards Act, the latter will prevail over the former. Where the father of a Muhammadan minor girl was living and there was nothing to show that he was unfit to be guardian of the minor, he was entitled to retain the custody of the minor as against the preferential right under Muhammadan Law of the maternal aunt of the minor's mother. In other words, the provisions of S.19 of the Act would prevail over the provisions of S.17.9

In the case of Akhter Begum vs Jamasheed Munir, the petitioner (Mother) moved a petition firstly under S. 25 of the Act for custody of her minor daughter and then filed an

⁹Rafiq vs. Smt. Bashiran ('63) A. Raj. 239.

application under S. 12 of the Act for temporary custody by invoking personal law of the parties. The petitioner and the respondent (Her husband) were Sunni Muslims governed by the Hanafi Law of Sunni Muslims. The S.12 application was dismissed by the trial court which was influenced by the general principles of law of guardianship and lost sight of the personal law of the parties.¹⁰

In the case of Radha Krishna Laxmi vs Sridhar which was a case of property dispute, Supreme Court ruled that, "The transfer of property, where the transfer of property act applies has to be under the provisions of that Act only and Muhammadan Law cannot override the statute. 11 The law of pre-emption, which is a Muslim law and is defined under S.No. 226 in Mulla's principles of Muhammadan Law a right which the owner of an immovable property possesses to acquire by purchase another immovable property which had been sold to another person. This law was declared as "Dead Law" by The Supreme Court. 12

¹⁰ I.L.R. 1979 II Del. 249, A.I.R. 1979 Delhi 67.

¹¹ A.I.R 1960 Sc. 1368.

¹² A.I.R. 1960 Sc. 1368.

In the case of State vs Narsu Mali, Hindu bigamous marriage Act was discussed by Bombay High Court and held that this Act is a right step towards Uniform Civil Code and it is rightly enacted in accordance with the provision of The Constitution of India. 13 In another case of Zehra Khatoon vs Mohd Ibrahim, Allahabad High Court declared a Muslim divorcee woman entitled for maintenance even though such woman is not entitled for maintenance under Muslim Law.14 The High Court not paid any attention to Muslim Law in this regard.In the case of Sarla Mudgal vs Union of India, His lordship Justice Shree Kuldeep singh strongly criticized the Union of India in not implementing Common Civil Code. 15 In the case of Olga Telis, The apex court interpreting the article 21 of the Constitution of India ruled that it guarantees a respectable and dignified life but Muslim women are deprived of the same. Ref. Needed

So also same view was expressed in the case of Prakash vs. Phoolwathi, Civil appeal num. 7217 of 2013 which was filed for the partition of Hindu joint family property, even though there was no whisper of Muslim law in that case but the Supreme Court expressed its displeasure on

¹³ A.I.R. 1950 Bombay 84. ¹⁴ A.I.R. 1981 S.C 1243.

¹⁵ 1995 (3) S.C.C 635.

the "Plight" Of Muslim women and held that women are subjected to unequal treatment because of their personal law which is against the constitutional provision. In the case of Jaweed vs State of Haryana the court held that if polygamy is not abolished as the practise of *Sati* was abolished, it would be highly immoral act. ¹⁶In the case of Shah Bano, the Supreme Court has declared that a divorcee Muslim woman is entitled for maintenance ignoring the Muslim Law which disentitles such women from claiming maintenance. Thereafter in the case of Danial Latifi, same view was retreated.

In the case of Shameem Ara vs Govt. of Uttar Pradesh declared the triple *ţalāq* under Muslim Law as illegal and void. The case of Shabana vs Imran Khan criminal appeal num. 2309 of 2009, the apex court retreated its earlier views on Muslim Women's Right to maintenance and once again directed the central government to enact Uniform Civil Code or Court. Expressing serious concern over discrimination meted out to Muslim women who face arbitrary divorce, a two-judge bench of the Supreme Court has called for re-

^{16 2003 (8)} S.C.C 369.

^{17 2002(7)} S.S.C.

visiting the Shah Bano judgement to ensure formulation of a Uniform Civil Code. A bench of Justices Anil R. Dave and A.K. Goel said that arbitrary divorced and second marriages denied Muslim women dignity and security was no reason as to why they should be subjected to gender discrimination despite the constitutional guarantee of equality to women under our Constitution.

The bench issued notice to the Attorney General Mukul Rohtagi seeking his assistance to ensure that Muslim women are treated on par with women of other religions in the country. Thus it is clear that the Supreme Court is of the view that Muslim women who are facing arbitrary divorce and second marriages denied Muslim women dignity and security. Such view of the Apex court of India is no doubt runs contrary to the principles of Muslim Law based on The Qur'an, Sunnah and Hadīth. And for this reason the Muslims are opposed to Uniform Civil Code and not willing to accept the same. The above discussion would lead us to conclude without fear of contradiction that the attitude of judiciary is quite clear on the controversial issue of Uniform Civil Code.

Let us examine as to why Uniform Civil Code is not acceptable to Muslims. The first and foremost objection of the advocates of Uniform Civil Code is that the marriage law should be in tune with the secular law of India. The secular laws of India are the laws which are not the Muslim laws. It is pertinent to mention here that Muslim law which is wrongly termed as Muhammadan law is a divine law. It is not enacted by the parliament of India. So whether the Parliament of India being the Law maker body has got the jurisdiction to amend the Qur'ānic laws so as to be on par with the secular laws?!

Let us first take up the marriage law under the Muslim law.

Muslim law on Marriage

Marriage law under Muslim law is a *sunnah*. The prophet (PBUH) has said, النكاح من سنتى or marriage is a part of my *sunnah* and every Muslim is bound to follow this sunnah of prophet. It is no doubt a civil contract which has for its object the procreation and legalising of children. Under

¹⁸Muhammad bin Yazīd, *Ibn Mājah*, Hadīth No. 1846. See also Nāsir al-Dīn al-bānī, *Silsilatus Sahīhah*, vol. v, p. 97.

Muslim law a Muhammadan may have as many as 4 wives at a time but not more. Now to refrain a Muslim from performing more than 1 marriage will amount to an injunction restraining him from following religious mandate as it goes against the Qur'anic verse, i.e., اطيعوا الله و اطيعوا or follow the Almighty and follow His messenger. 19 Now the next question arises whether the parliament can make a law prohibiting the Muslims from following their religion even though the same is guaranteed under Article 25 and in contravention of Article 37 of the constitution of India. At this juncture one can urge that why the Muslims working in army etc., are following polygamy. The answer is very simple; the jobs in Army, Navy etc are optional and not compulsory. So also marrying more than 1 wife is not compulsory in Islam but at the same time it is not prohibited and cannot be restricted by a law.

¹⁹Qur'ān, chapter 4, verse 59.

Marriage with whom?

Hindu law prohibits a Hindu from marrying the daughter of his mother's sister (Aunt). It also permits a girl to marry her own maternal uncle whereas The Qur'an mandates that "Forbidden to you are your mothers and your daughters and your sisters and your father's sisters and your mother's sisters and your brother's daughters and your sister's daughters and your foster-mothers and your fostersisters and your mothers-in-law and your step-daughters who are under your protection (born) of your women to whom you have gone in- but if you have not gone in to them, then it is no sin for you (to marry their daughters)- and the wives of your sons who (spring) from your own lions. And (it is forbidden to you) that you should have two sisters together, except what has already happened (of that nature) in the past. Allah is ever forgiving, merciful.²⁰

All the married women are forbidden to you except those (captives) whom your right hands possess. It is a decree of Allah for you. Lawful to you are all beyond those

²⁰Qur'ān, 4:23.

mentioned, so that you seek them with your wealth in honest wedlock, not debauchery and those of whom you seek content (by marrying them), Give to them their positions as a duty and there is no sin for you in what you do by mutual agreement after the duty (Has been done). Allah is even Knower, Wise.²¹

Muslim foster sister cannot be married by a foster brother. A man is prohibited from marrying (1) His mother or his grandmother how high so ever; (2) His daughter or granddaughter how low so ever; (3) His sister whether full, consanguine or uterine; (4) His niece or great niece how low so ever; and (5) His aunt or great aunt who high so ever, whether paternal or maternal. A marriage with a woman prohibited by reason of consanguinity is void. A man is prohibited from marrying (1) His wife's mother grandmother how high so ever; (2) His wife's daughter or Grand-daughter how low so ever; (3) The wife of his father or paternal grandfather how high so ever; and (4) The wife of his son, of his son's son or daughter's son how low so ever. A

²¹Qur'ān 4:24.

marriage with a woman prohibited by reason of affinity is void.

Whoever is prohibited by consanguinity or affinity is prohibited by consanguinity or affinity is prohibited by reason of fosterage except certain foster relations, such as sister's foster-mother's mother, or foster-son's sister mother or foster-son's sister or foster-brother's sister with any of whom a valid marriage may be contracted. A marriage prohibited by reason of fosterage is void. A man may not have at the same time two wives who are so related to each other by consanguinity, affinity or fosterage that if either of them had been a male they could not have lawfully intermarried as for instance, two sisters, or aunt and niece.

Dower

Dower is a sum of money or other property which a Muslim wife is entitled to receive from her husband in consideration of marriage. As mentioned in the Qur'ān, The almighty commands thus, "And give the women their dowers willingly, but if they, of their own accord, remit any part of it to you, you may make use of it with pleasure and

goodwill.²²The question that arises is whether under the Uniform Civil Code a Hindu/ Christian/ Parsi/ Jew will be directed to pay dower amount to their wives or the dower will be abolished. If the dower is abolished or a Muslim will be allowed to marry without a dower amount, will he not defy the following Qur'ānic injunctions? "O you who believe! Obey Allah and His messenger, And turn not away from Him when you hear (Him speak)."²³A Muslim who defies the Qur'ānic verses will be the owner of the hell-fire. As the Allah ordains "But those who disbelieve and deny our revelations, they are owners of Hell-fire".²⁴

Talāq (Divorce)

Triple *Talāq* has become a bone of contention and much controversial but this controversy was already brought to an end by the Supreme Court in its judgement in the case of Shameem Aravs The state of UP, where in triple *Talāq* was declared as void. Surprisingly Muslims have coolly accepted the judgement. The Supreme Court has laid down some guiding principles in accordance with the Qur'ānic verse,

²²Qur'ān 4:4.

²³Qur'ān 8:20.

²⁴Qur'ān 5:86.

which runs as under "If you fear any breach between a man and his wife, appoint one arbiter from his family and one arbiter from her family. If they both want to set things right, God will bring about reconciliation between them: He is all knowing and all aware." Despite this judgement if a Muslim man is compelled to file a suit for dissolution of his/her marriage as against the Qur'ānic verses, he will forced to say goodbye to his religion and follow the Hindu law or special marriage Actand one who does not obey Allah and His messenger, Hell is sufficient for his burning. A Muslim will never want to defy the injunctions of The Qur'ān.

Halālah

It is highly regretted that Muslim women have challenged the Qur'ānic principle of *Halālah*, alleging that it is against the constitutional spirit. There is every doubt that under Common Civil Code, *Halālah* will be declared illegal. Such a provision will be totally against the Qur'ānic verse, which says "And if he has divorced her (The third time), then she is not lawful to him after that until she has wedded another husband. Then if he (The other husband) divorce her it is no sin for both of them that they come together again if

²⁵Qur'ān 4:35.

they consider that they are able to observe the limits of Allah. He manifests them for people who have knowledge."²⁶

So those who are making hue and cry against the *Halālah*, they either don't know that it is a Qur'ānic Law or they purposely want to get rid of such a harsh punishment. The law makers and advocates for Uniform Civil Code may not know the Qur'ān. Under the Muslim personal law nothing is manmade and nothing can be amended, varied or changed.

Partition

So also a scheme of partition is laid down in the Qur'ān declaring the shares of every legal heir of the deceased. The Qur'ān says, "Thus, Allah charges you concerning (the provision for) your children: to the male the equivalent of the portion of two females, and if they are women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half. And to each of his parents a sixth of his inheritance, if he has a son; and if he has no son and his parents are his heirs, then to his mother belongs the third; and if he has brothers, then to his mother belongs the sixth, after any legacy he may have left behind, or debt (has been paid).

²⁶Qur'ān 2:230.

Your parents and your children: You know which of them is nearer to you in usefulness. It is an injunction from Allah. Allah is Knower, Wise."²⁷

On the other hand mother is a class I heir but the father has no place in the presence of the widow and children under the Hindu succession Act. On the other hand Christians are entitled to invoke Indian succession Act for the partition of the property of the deceased, which says that in the absence of lineal descendants the father is an heir along with the widow but not the mother. But the Muslim law in the light of the Qur'anic revelation stated supra both parents of the deceased are entitled to a share. Can these three laws of succession of 3 different religions can be knot together and how? Which law will be made applicable to which community and which community will be deprived of its personal laws.

Adoption

Adoption is permitted under Hindu law and Christian law but it is strictly forbidden under Muslim law. If a Hindu

²⁷Qur'ān 4:11.

is not allowed to adopt a child, will his community accept the same? And if on the contrary Muslims are allowed to adopt a child and if such child is treated just like a real child then will it not amount to transgression of Muslim Law?, which will never be accepted by the Muslim community. We also question the supporters of the Uniform Civil Code that whether the ritual of *kanyadan* (an essential condition of Hindu marriage) will be abolished? Or will it be made applicable for the Muslims and the other communities also?

The Uniform set of laws in Goa:

It is interesting to note here that in the state of Goa, a similar law is in effect. The law, known as 'Goa Family Law' can find its origin in a Portuguese era Civil Code of 1867. It is the set of civil laws that governs all the Goans irrespective of the religion or the ethnicity to which they belong. The Uniform Civil Code in Goa is a progressive law that allows equal division of income and property regardless of gender between husband and wife and also between children. Every birth, death and marriage has to be compulsorily registered and for divorce there are severe provisions. Muslims that

have their marriages registered in Goa cannot take more than one wife or divorce by pronouncing "Talāq" thrice. During the course of marriage all the property and wealth owned or acquired by each spouse is commonly held by the couple. Each spouse in case of divorce is entitled to a half share of property and if one dies the ownership over half of the property is retained by the other. According to the Uniform Civil Code even if the children (both male and female) have got married and left the house, the other half has to be divided equally among them. Thus the parents cannot disinherit the children totally as they can dispose only half of the property in a will and the rest has to be compulsorily and equally shared amongst the children. The presence of the set of law in one particular state makes it important to look into the significance of UCC.

SIGNIFICANCE OF UCC

The inference that can be drawn from the 'Goa Family Law' the perceived UCC in India can be instrumental in achieving a number of objectives starting from:

- a) Achieving gender equality to equality among religions and castes.
- b) This equality before law in every aspect would in turn promote communal harmony.
- c) The equality would also result in integration of various section in the mainstream and would promote national integration.

Before I conclude my article, I would like to shed light on the question asked by the many non-Muslim scholars, that we have common criminal law, i.e., the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPc) in India, which are uniformly applicable to all citizens irrespective or caste, creed and religion. Muslims also have accepted the criminal laws in all matter. So what is the problem in accepting Common Civil Code? For this question I would like to clarify that Islam propagates theory of deterrent punishment while administering justice with cases under criminal laws.

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Qur'ān 5:45. Note: Qur'ān in the very next verse also explained that if, however, the victim chose to graciously forgive the criminal then this was considered as a kaffrah or expiation.

system has to be followed in the countries or states which are governed under *Sharī'ah* laws of Islam. For example Kingdom of Saudi Arabia, where thief's hand will be cut off as punishment after his guilt is proved. Such punishments cannot be inflicted in India under its legal system since it is not an Islamic State. So Muslims will have no objection and they have no right to agitate demanding implementation of Islamic laws to curb the crimes.

At the same time Muslims wherever they live will have to live like a Muslim following injunctions of the Qur'ān. Any law which does not offend their religious faith or which will not force them to follow any other law runs contrary to Muslim law will not be acceptable to them.

We have accepted civil laws as prevailing in India because it does not hurt our religious faith. Further most of the civil laws are based on Qur'ānic verses. For example the law of mortgage. Almighty commands us, "If you are on a journey and do not find any literate person, something should be handed over as security. If one of you entrusts another

with something, let the trustee restore the pledge to its owner", 29

Conclusion

In view of the discussions made above, I'm of the opinion that the Common Civil Code will not advance the cause of social justice nor will it satisfy the minority communities like the Muslims and the Christians. The Sikhs would fall within the teeth of the definition of the Hindu, so the Uniform Civil Code will not cause any serious threat to their religion. But one thing is sure that the Uniform Civil Code will disintegrate the society and will certainly shatter the religious principles of the Muslim law and the Muslims will never accept the same.

²⁹ Qur'ān 2:283.