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DOCTRINE OF INCONSISTENCY AND ITS APPLICABILITY TO PERSONAL LAW

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Abstract

The Indian Constitution, through Article 13, enshrines the Doctrine of Inconsistency, declaring that any law inconsistent with the fundamental rights guaranteed under Part III shall be void to the extent of such inconsistency. While this principle has been actively applied to invalidate pre- and post-constitutional statutory laws, a grey area persists concerning its applicability to personal laws rooted in religious customs and traditions that govern marriage, divorce, inheritance, and succession. This paper explores the doctrinal and judicial dimensions of the inconsistency principle, particularly its intersection with personal law regimes in India. Drawing upon constitutional provisions, landmark judgments, and academic critiques, the analysis questions whether personal laws both codified and uncodified should be subjected to constitutional scrutiny. The paper argues for a re-examination of the long-standing precedent laid down in *State of Bombay v. NarasuAppa Mali*, urging a more progressive interpretation that aligns personal law with constitutional morality and fundamental rights. The need for legal uniformity, gender justice, and the realization of a secular, egalitarian legal framework makes it imperative that personal laws evolve to meet constitutional standards.

Key Words: Article 13, Doctrine of Inconsistency, Personal Law, Fundamental Rights, Constitutional Morality, Judicial Review, Gender Justice, Secularism, Uniform Civil Code

INTRODUCTION

The Indian Constitution is a living document that enshrines the values of justice, liberty, equality, and fraternity. At the heart of these ideals lies Part III, which guarantees Fundamental Rights to all citizens, ensuring that every individual can live with dignity and without fear of arbitrary interference. In order to safeguard these rights, the Constitution incorporates a powerful tool in the form of Article 13. This Article declares that any law whether predating

the Constitution or enacted afterward that violates Fundamental Rights shall be void to the extent of the inconsistency. This forms the basis of what is known as the Doctrine of Inconsistency.

However, the doctrine's practical application has often run into complexities when it intersects with the realm of personal laws. These laws, based on religious customs and practices, govern aspects such as marriage, divorce, inheritance, adoption, and guardianship. The core question that emerges is whether personal laws, especially those not legislatively codified, are subject to the constitutional limitations imposed by Article 13. Can these personal laws, if found inconsistent with Fundamental Rights, be struck down by the judiciary? Or does their religious and customary nature grant them immunity from constitutional scrutiny? This debate lies at the intersection of constitutional supremacy, religious freedom, and individual rights, and has been a topic of intense academic and judicial examination.

MEANING AND SCOPE OF DOCTRINE OF INCONSISTENCY

The Doctrine of Inconsistency arises from Article 13(1) and 13(2) of the Constitution: Article 13(1): All laws in force in the territory of India immediately before the commencement of the Constitution, insofar as they are inconsistent with the Fundamental Rights, shall, to the extent of such inconsistency, be void. Article 13(2): The State shall not make any law that takes away or abridges the rights conferred by this Part (Part III), and any law made in contravention of this clause shall be void to the extent of the contravention.

This means that:

Any pre-constitutional law inconsistent with Fundamental Rights is rendered void from the moment the Constitution came into effect. Any post-constitutional law violating Fundamental Rights is unconstitutional and invalid from its inception. The doctrine ensures constitutional supremacy and seeks to uphold the Rule of Law by preventing outdated, colonial, or discriminatory laws from overriding fundamental protections.

PERSONAL LAWS AND FUNDAMENTAL RIGHTS- AN OVERVIEW

The interplay between personal laws and fundamental rights are complex, particularly in matters where it treads the fine line between gender equality and religious freedom. The inconsistencies between the rights guaranteed and personal laws may have been justified in the

pre-constitutional era, but the same cannot be applicable in the present due to the amount of discrimination propagated by them.

HISTORY OF PERSONAL LAWS

In India, most personal laws are guided and influenced by religion. In ancient times, personal laws were derived from Hindu religious texts called Shrutis and Smritis⁴ which were above the ambit of monarchy and were subject to the rules as laid down by the ancient texts and the sages.

In medieval India, the dominant religion was Islam, due to the advent of Muslim dynasties. As a result, the Quran became the most important source of Muslim personal law in India. This changed with the onset of British rule in India where even though the British maintained a non-interference policy with religious practices initially, they began to be codified through judgements, eventually diminishing the role of religious scholars.

Throughout the history of personal laws, Hindu Laws were codified and focused more on reforms to eradicate gender and community biases, while Muslim laws were left uncoded and directed towards the reinstatement of ancient practices. After India's independence, personal laws were codified into acts like the Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956, Special Marriage Act, 1954, etc. Despite this, the issue of whether Personal laws are compatible with fundamental rights has remained debatable.

UNDERSTANDING ARTICLE 13 AND THE DOCTRINE OF INCONSISTENCY

Article 13 of the Indian Constitution is both a sword and a shield. It operates retrospectively and prospectively by declaring void all pre-constitutional laws inconsistent with the Fundamental Rights and preventing the state from enacting future laws that infringe upon them. Specifically, Article 13(1) invalidates any pre-existing law to the extent that it violates Fundamental Rights, while Article 13(2) prohibits the State from making any such law at all.

The significance of Article 13 lies not merely in its declaration but in the doctrinal principle it enunciates the Doctrine of Inconsistency. This doctrine provides that any law, irrespective of its origin, that contradicts or undermines Fundamental Rights shall be considered null and void.

It establishes the supremacy of the Constitution over all other legal norms and reaffirms the commitment to a just and egalitarian order.

Article 13(3) provides a wide definition of "law", which includes ordinances, orders, by-laws, rules, regulations, notifications, customs, and usages that have the force of law. While this expansive definition appears to include religious and customary laws, the judiciary has historically interpreted the provision narrowly when it comes to personal law.

THE NATURE AND SOURCES OF PERSONAL LAW IN INDIA

Personal laws in India are derived from religious texts, community customs, and in some cases, legislations passed by Parliament or state legislatures. The personal laws of Hindus, Muslims, Christians, Parsis, and others govern matters such as marriage, divorce, succession, adoption, and maintenance. These laws are unique to each community and are rooted in religious doctrines and centuries-old traditions.

Broadly, personal laws may be categorized into codified and uncodified laws. Codified personal laws, such as the Hindu Marriage Act, 1955 or the Indian Christian Marriage Act, 1872, are enacted statutes and hence, undoubtedly fall within the purview of Article 13. On the other hand, uncodified personal laws—like many aspects of Muslim Personal Law—are derived from religious scriptures and customs and have not been formally legislated. It is the status of these uncodified laws under Article 13 that has been the subject of significant judicial and scholarly controversy.

THE NARASUAPPA MALI PRECEDENT

The legal understanding of whether personal laws fall within the scope of Article 13 is largely shaped by the *State of Bombay v. NarasuAppa Mali* (1952) decision. In this case, the Bombay High Court was faced with a challenge to the Bombay Prevention of Hindu Bigamous Marriages Act. The petitioner argued that the Act violated the right to equality because it only prohibited bigamy among Hindus and not among Muslims.

The High Court held that personal laws are not included within the expression "laws in force" as used in Article 13. The Court reasoned that since personal laws are not enacted or continued by the legislature, they cannot be considered "law" within the meaning of the Constitution. This

decision effectively insulated personal laws from constitutional scrutiny and has been relied upon for decades as the authoritative interpretation on the subject.

However, the NarasuAppa Mali judgment has also attracted strong criticism. Many argue that it is based on a narrow and literal interpretation of the Constitution that does not align with its spirit. By exempting personal laws from the ambit of Fundamental Rights, the judgment creates a zone where constitutional values may not apply particularly in matters affecting women and marginalized communities.

JUDICIAL RECONSIDERATION AND THE SHIFT IN JURISPRUDENCE

Despite the Narasu precedent, subsequent judgments of the Supreme Court and High Courts have progressively challenged the idea that personal laws are beyond the reach of the Constitution. One of the most important judgments in this regard is the ShayaraBano v. Union of India (2017), commonly known as the Triple Talaq case. The petitioner challenged the practice of instant triple talaq, arguing that it was discriminatory and violated her Fundamental Rights.

The Supreme Court held, by a 3:2 majority, that the practice was unconstitutional. While the court did not explicitly overrule NarasuAppa Mali, the decision marked a significant departure from earlier judicial reluctance to examine personal laws under the lens of constitutional rights.

Other important cases, such as C.MasilamaniMudaliar v. Idol of Sri Swaminatha swami Thirukoil and John Vallamattom v. Union of India, further established that personal laws could not be used to perpetuate inequality and discrimination. In these cases, the court reaffirmed that the Constitution, and not religious tradition, is the supreme source of law in India.

CODIFIED VS. UNCODIFIED PERSONAL LAWS – A LEGAL DISTINCTION

The classification between codified and uncodified personal laws is central to the debate on the applicability of Article 13. Codified personal laws are clearly statutory in nature and thus are subject to judicial review. This has allowed courts to examine and, where necessary, strike down provisions within such laws that violate Fundamental Rights.

Uncodified laws, however, present a unique challenge. Since they are not the product of formal legislative action, courts have been cautious in treating them as “laws” under Article 13. This has resulted in a paradox where discriminatory or unjust practices may continue simply because they are considered personal customs or religious tenets, rather than formal laws. Critics argue that such an approach contradicts the core constitutional promise of equality and non-discrimination.

FUNDAMENTAL RIGHTS VS. RELIGIOUS FREEDOM

Another aspect of the debate lies in the potential conflict between religious freedom under Articles 25 and 26 and the equality provisions of Articles 14 and 15. Proponents of religious autonomy argue that personal laws are an essential part of religious practice and thus should be protected from State interference. On the other hand, supporters of reform emphasize that religion cannot be used as a shield to justify discrimination, particularly against women and disadvantaged groups.

The judiciary has gradually moved toward recognizing that religious freedom is not absolute and is subject to constitutional limitations. In various cases, the courts have clarified that religious practices that are oppressive or in conflict with public morality and individual rights must give way to constitutional principles.

THE DEBATE ON UNIFORM CIVIL CODE

The question of personal law reform inevitably leads to the debate on the Uniform Civil Code (UCC), as envisioned under Article 44 of the Constitution. The UCC aims to provide a common set of secular civil laws for all citizens, irrespective of religion. Advocates argue that a UCC is necessary to ensure equality and secularism, and to eliminate discrimination inherent in some personal laws.

Opponents fear that the UCC may threaten cultural and religious diversity. They argue that personal laws are a matter of identity and that uniformity should not come at the cost of religious freedom. Nonetheless, the UCC debate highlights the underlying need to ensure that all laws religious or otherwise conform to the fundamental values enshrined in the Constitution.

INTERNATIONAL HUMAN RIGHTS AND INDIA'S OBLIGATIONS

India's position on personal laws is also subject to international scrutiny. As a signatory to various international treaties and conventions, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), India is under an obligation to eliminate discriminatory laws and practices. International bodies have repeatedly urged India to ensure that personal laws are reformed in accordance with principles of gender equality and human rights. The continued existence of discriminatory personal laws, therefore, not only raises constitutional concerns but also places India in a challenging position on the global stage.

CONCLUSION

The doctrine of inconsistency is a cornerstone of Indian constitutional jurisprudence, designed to ensure that all laws remain subordinate to the Fundamental Rights guaranteed by the Constitution. However, the historical exclusion of personal laws from the ambit of Article 13 especially uncodified religious laws has created a significant gap in the realization of constitutional ideals.

The judiciary has made important strides in recent years by testing personal law provisions against the standards of equality and justice. However, full clarity on the matter will require a revisiting of the NarasuAppa Mali judgment, preferably by a Constitution Bench of the Supreme Court. Simultaneously, legislative reform and wider public discourse are essential to ensure that personal laws evolve in alignment with constitutional morality.

Ultimately, the aim is not to abolish diversity but to ensure that individual rights are not sacrificed at the altar of tradition. A modern constitutional democracy must prioritize human dignity and equality, and this can only be achieved when all laws, including personal laws, are subject to constitutional review and reform.