



UNIFORM CIVIL CODE: A CONSTITUTIONAL MECHANISM TO MAINTAIN EQUALITY

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ABSTRACT

Progress of every society depends on law and order which prevails in that society. Law and society both are interrelated. If the law which is already prevailing in a particular society does not work parallel with the society's needs then it can be held obsolete. Now the time has arrived to enforce Uniform Civil Code, though it is not enforced till the time when other provisions of the Constitution were enforced by taking into consideration many societal complexities in public policy which were present at that time. But at present time the Uniform Civil Code has become the need of the span for the betterment of society's progress. The applicability of the code will go beyond the access of the religion. It is the manifestation of constitutional goals- democratic country in real. The purpose of the framing of the code is to bring all citizens of different communities on common platform in those matters which are governed by their respective personal laws. The framing of Uniform Civil Code now becomes indispensable to foster sense of equality and national unity without more delay.

Keywords: Uniform Civil Code, Society, Customs, Religion, Personal Laws, Secularism, Equality, Gender Discrimination.

INTRODUCTION

The preamble of our Indian Constitution declares India as a sovereign, socialist, secular, democratic, republic and to secure its citizens the equality of status and opportunity. Secularism is declared as a basic feature of Indian Constitution by our honourable Supreme Court and this cannot be amended.¹ The Uniform Civil Code (*Samana Nagarika Samhita*) is a proposal in India to originate and execute personal laws of citizens which apply on all citizens equally despite of their religion and gender. Article 44 is placed in Part IV of the Indian Constitution which deals with 'Directive principles of State Policy'. The provisions contained in this part are not enforceable by any court of law. But, these principles are nevertheless essential in the governance of country and the duty has been imposed on the state to apply these principles while making law. The provision of Article 44 is as follows: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".² In order to understand the meaning of the provision properly, now it becomes necessary to know the meaning of the expression i.e.; "uniform civil code". The term uniform means "not changing in form or character" which denotes equal application of same thing in similar manner. The term code means "set of laws or rules arranged in a system", or "a general collection of laws by public authority". The term civil in association with code denotes civil matters and civil matters include all matters other than criminal. Thus, the expression civil code denotes a code relating to civil matters.

Uniform Civil Code clearly implies that the state shall make an attempt for enactment of a civil code which will equally applicable to all citizens of India. It is the manifestation of constitutional goals- democratic country in real. Our principle is simply this-uniformity where you can have it-diversity where you must have it- but in all cases certainty."³ However, even after seventy-five years of independence, India has not reformed personal laws to the extent that it can ensure equality and non-discrimination. The main impediment is the non-inclusion of personal laws in the Constitution, as the same is often treated apart, sometimes forgoing and defeating fundamental rights. The diversity in different religions, personal laws do cause uncertainty and ambiguity sometimes. However, no matter how different these laws may be in their statutory language, but these laws somewhat similar in discriminating women. These discriminatory practices against women in different personal laws are violating the basic structure of our Indian Constitution. Moreover, these discriminatory practices have been accepted under the array of religion. Under Muslim laws, this kind of discrimination arises from polygamous marriages and extra-judicial divorce. Under Hindu Laws, we see restitution of conjugal rights or pre-act polygamous marriages being prejudicial to women. Thus, this patriarchal setup of society shows the poor condition of women. It is need of time for us to enhance the benefits of various constitutional provisions for women in their true nature and spirit, which were often obstructed by their personal laws. The purpose behind framing this code is to achieve an assimilation of India by bringing all communities on common policy in those matters which are governed by their respective personal laws.⁴ But the issue under consideration is

¹ S.R.Bommai v. Union of India, A.I.R. 1994 S.C. 1918.

² The Indian Constitutional Law, M.P. Jain, Lexis Nexis Butterworths, Reprint 2011, Page 102.

³ XIX Hansard's Debates, 3rd series, p.531-533.

⁴ The Shorter Constitution of India, D.D. Basu, Lexis Nexis Butterworths, Reprint 2011, Volume 1, Page 647.



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“whether a code of personal Law (which is a civil matter) equally applicable to all citizens of India is practicable or not”.

VIEWS OF FRAMERS OF THE CONSTITUTION

The Constituent Assembly Debate on draft Article 35 (Corresponding to Article 44) reveals that the Assembly was divided on the issue of a uniform civil code. The members of Muslim community argued to exclude the personal law from the ambit of uniform civil code while the member of Hindu community argued in favour of a uniform civil code including personal laws in it.

Mr. Mohammad Ismail Sahib moved following proviso to be added to Articles 35: "Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law". He justified his stand on the ground that the right to follow personal law is part of the way of life of those people who are following such laws. It is part of their religion and culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. On the idea of securing harmony through a uniform civil code, he expressed his views as under: for that purpose it is not necessary to regiment the civil law of the people including personal law. Such regimentation will bring discontent and harmony will be affected. But, if the people are allowed to follow their own personal law, there will be no discontent or dissatisfaction. Every section of people, being free to follow its own personal law will not really come in conflict with other.

Mr. Naziruddin Ahmad also moved a proviso to be added to Article 35 to exclude the personal law from the ambit of uniform civil code in the same sense in which previous proviso was moved and justified his stand on the following ground: "In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way"

Moving an amendment to exclude personal law from ambit of uniform civil code, Mahboob Ali Baig Sahib Bahadur expressed his opinion on the scope of civil code that the words civil code does not cover the strictly personal law of a citizen. The civil code covers the laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. He drew attention of the Assembly towards difficulty in the way of uniformly applicable code of personal laws in these words: "Personal law entirely upon religious tenets. If some communities have got their own way of dealing with their religious tenets and practices that cannot be imposed on a community which insist that their religious tenets should be observed". He justified also the exclusion of personal laws from the scope of uniform civil code on the following ground: "In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them".

About the difficulty in the way of uniform code of personal laws, B. Pocker Sahib Bahadur drew attention of the Assembly through this question: "By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard"? Mr. Hussain Imam tried to prove a uniform civil code impracticable on the ground of diversity of the country.

Shri K.M. Munshi observed religious diversity as a danger to national unity and considered a uniform civil code necessary in the interest of national unity. But, keeping in view the difficulty in the way of a uniform civil code, he clearly mentioned about the object of Article 44 in these words: "The whole object of this article is that as and when Parliament thinks proper... an attempt may be made to unify the personal law of the country". Shri Alladi Krishanaswamy Ayyar was also agree with the opinion of Shri K.M. Munshi and submitted to pass this Article leaving the issue of a uniform civil code on the wisdom of future legislatures.

Dr. B.R. Ambedkar, the chairman of the Drafting Committee, refrained from making any proposal to touch on the merit of the question as to whether this country should have a uniform civil code or it should not have. The motion to add proviso to this Article was not accepted and the Article was passed in the present form. But, the feelings of the Muslim community in this matter were realised by Dr. Ambedkar and an assurance to them was given in the following words:

Article 35, which merely purposes that the "State shall endeavour to secure a civil code for the citizens of the country". It does not say that after the code is framed the State shall enforce it upon all citizens' merely because they are citizens.

Evidently, the framers of the Constitution were well aware of the difficulties in the way of a uniform civil code of personal law for all citizens of India and left the issue on the wisdom of future Parliament. One thing is also clear that the framers did not intend total uniformity of personal laws in the sense one law for the whole country because personal law is placed in the Concurrent List of Seventh Scheduled on which both Parliament and State Legislature - can make laws.

HURDLES IN FRAMING OF UNIFORM CIVIL CODE



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India became independent in the year of 1947 and it is the need of the hour to implement Uniform Civil Code throughout the territory of India. Two main hurdles were put forward in the Constituent Assembly against making of Uniform Civil Code and applying it throughout India. *Firstly*, it would infringe the fundamental right to freedom of religion mentioned in Article 25 and *secondly*, it would be a tyranny to the minority.

The first objection was misconceived because Article 44 which is directive in no way infringes the freedom of religion guaranteed by Article 25. Clause (2) of Article 25 specifically saves secular activities associated with religious practices from the guarantee of religious freedom contained in clause (1) of Article 25.⁵

As regards the second objection, a further argument has been advanced that the enactment of the Uniform Civil Code would be a tyrannical to minorities. K.M. Munshi had countered in his speech many arguments which were raised by the members of Muslim community for making possible changes in personal beliefs and stated that by consolidating and unifying various personal laws, the way of life of whole country would get uniform character with secular outlook. He further stated that Uniform Civil Code would bring emotional unity and uphold the image of the nation as a progressive country.

JUDICIAL ATTITUDE TOWARDS NECESSITY OF FRAMING THE CODE

Judiciary as a guardian and interpreter of individual's rights many a times tried to remove hurdles in solving and giving positive interpretation of various legal provisions which help the society to move forward. The Supreme Court fills the lacuna in law created due to inaction of legislatures and executive by declaring the law of the land under Article 141 and by issuing such order as is necessary for doing complete justice in any matter under Article 142. Therefore, the approach of the Supreme Court also becomes relevant because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so probable. Many of these areas under:

Mohd. Ahmed Khan Vs Shah Bano Begum⁶

A five - judges Constitution Bench of the Supreme Court observed about Article 44 as follows : "It also a matter of regret that Article 44 of constitution has remained a dead letter. A common civil code will help cause of national integration by removing disparate loyalties to laws which have conflicting ideologies". But, the court also realised the difficulties in this regard as is clear from the following words: We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform, but nevertheless, the Court said that, a beginning has to be made if the Constitution is to have any meaning. India is State who is obliged for securing a uniform civil code for the citizens of the country and, undoubtedly, the legislature has the competence to do so.

Sarla Mudgal, President, Kalyani Vs Union of India⁷

The Supreme Court has stressed on the urgent need for uniform civil code in various matters- marriage, inheritance, succession etc. The judgement given in Shah Bano Case on the subject was referred to and a request was made to Government of India to have a fresh look at Article 44 and an attempt to secure the citizen of India should be made by introducing a Uniform Civil Code. The court also directed to the Government of India to file an affidavit of a responsible officer in the court indicating there in the step taken and efforts made towards securing a uniform civil code for the citizens of India.

Justice R. M. Sahai has observed that the desirability of the Code can hardly be doubted, but it can concretize only when social climate is properly built up by elite of the society; statesman amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.⁸ He further stated that while it is desirable to have a code, the time has yet not ripe and the issue should be entrusted to the Law Commission which may examine the same in consultation with the minorities Commission.⁹

Denial Latifi vs. Union of India¹⁰

In this case honourable Supreme Court discussed the issue regarding need of maintenance of divorced Muslim wife under Muslim Law. In this case the Court liberally interpreted Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, and stated that Muslim husband is liable to make arrangements for the future of his divorced wife even after iddat period expires.

⁵ John Vallamattom v. Union of India, (2003) 6 SCC 611: AIR 2003 SC 2902.

⁶ AIR 1985 SC 935.

⁷ AIR 1995 SC 1531.

⁸ Constitutional Law of India, Dr. Kailash Rai, Central Law Publications, Reprint 2017, Page 420.

⁹ *Ibid.*

¹⁰ AIR 2001 SC 3958.



Pannalal Banshilal Pitti Vs State of A.P.¹¹

In this case Honourable Supreme Court discussed about the difficulty in the way of a uniform code of personal laws as follows: “A uniform law, through is highly desirable, enactment thereof in one go perhaps may be counterproductive to unity and integrity of nation”.

Lily Thomas Vs Union of India¹²

The Court had not issued any direction for the codification of a common civil code and judges constituting the different benches had only expressed their views in the facts and circumstance of those cases. Near about two decades after, a Division Bench of the Supreme Court comprising justice Deepak Gupta and Aniruddha Bosa noted that there has been no attempt to frame a uniform civil code applicable to all citizens of the country.

Evidently, the judgement of the Supreme Court on the issue reveal that the difficulty in the way of a uniform code of personal laws was realised by the court and the court never issued direction for enactment of it. The court only expresses its view in context of facts and circumstances of cases filed for its judgement.

Shayara Bano and others vs. Union of India and Others¹³(triple talaq case), in this case the honourable supreme court once again tried to remove barriers from the unnecessary gripping of customs in name of personal law by deciding unconstitutional to triple talaq as it is not a part of Shariyat law.

Nevertheless the Court has tried to remove inequalities while interpreting personal laws but such piecemeal attempts to bridge the gap between personal laws cannot take the place of uniform civil code. The only solution for this problem is by making a law in conformity with the present day social and economic realities.

CONCLUSION

Uniform Civil Code is an important tool for the protection of various human rights values into different personal law system. It is an attempt to confer equal rights to women and will be helpful to remove discrimination against them irrespective of their religion. Uniform Civil Code as a part of Directive Principles of State Policy should be implemented and recognised in positive aspect under the umbrella of Part-III of Indian Constitution. In this paper we had studied that our judiciary many a time tried to remove inequalities in societies, the Supreme Court has regretted that Article 44 should no longer be remain as ‘dead letter’ and also recommended to the Government of India to implement it at preference. With the enactment of a Uniform Civil Code, secularism will be strengthened; much of the present-day separation and divisiveness between the various religious groups in the country will disappear, and India will emerge as a much more cohesive and integrated nation.

¹¹ (1996) 2 SCC 498.

¹² AIR 2000 SC 1650.

¹³ AIR 2017 9 SCC 1 (SC)