

APPLICATION OF UNIFORM CIVIL CODE THROUGH AN INCLUSIVE APPROACH

Written by *Vanshika Kasturi*

B.A. LLB 4th Semester , Damodaram Sanjeevayya National Law University (DSNLU)

ABSTRACT

Bharatiya Janata Party (BJP) in its manifesto for the 2019 Lok Sabha election mentioned resolve for a Uniform Civil Code (UCC) which has long featured on its agenda. The issue is not novel for the BJP or for Indian politics: it has been at the core and spinoffs of political and legislative deliberations for well over one and half century. The BJP was the principal party in India to assure the application of UCC if it were to be chosen to power. It may be a matter of days before the subject shoot ahead from the sequence of deliberations to real law as now BJP is at the helm of political power. However, is not a new debate? The crusade for the formation of a UCC for the nation is almost 180 years old.

The cultural and legal fabric of India represents a unique blend of codified personal laws of Hindus, Muslims, Christians and Parsis. In the absence of a single statute book for all Indians which are acceptable to all religious communities who co-exist in India, many Indians believe that UCC is definitely desirable and would go a long way in consolidating and amalgamating the Indian nationhood. Ofcourse there are varied opinions which are on its timing and the method in which it should be comprehended.

The political and academic leaders should try to find out agreement as an alternative of using it as a poignant issue to gain political benefit. The question is not of shielding the minority, or even stimulating national harmony, it is basically one of treating each human person with dignity, something which personal laws have so far futile to do.

INTRODUCTION

"I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations and other things, which conflict with our fundamental rights."

- DR. B.R. Ambedkar

Bharatiya Janata Party (BJP) in its manifesto for the 2019 Lok Sabha election mentioned its resolve for a Uniform Civil Code (UCC) which has long featured on its agenda. The issue is not novel for the BJP or for Indian politics: it has been at the core and spinoffs of political and legislative deliberations for well over one and half century. The BJP was the principal party in India to assurance the application of UCC if it was chosen to power. It may be a matter of days before the subject shoot ahead from the sequence of deliberations to real law as now BJP is at the helm of political power. However, is not a new debate? The crusade for the formation of a UCC for the nation is almost 180 years old.

The Uniform Civil Code (UCC) come from Article 44 of the Constitution, which lays down that, the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India. The Uniform Civil Code is pertinently a call for the formulation of one law for India. To ensure social justice the protagonists of Uniform Civil Code, insistent on an expeditious legislation for the formulation of one law for India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption etc.

ORIGIN OF UNIFORM CIVIL CODE

The Second Law Commission, instituted by the British Government, which presented its report in 1835, has emphasized the need for uniformity in codification of Indian law relating to crimes, evidences and contracts. It unambiguously suggested that personal laws of Hindus and Muslims should be kept outside such codification.

A seven member law commission was appointed on Nov, 9, 1853 for a period of three year under the chairmanship of Sir John Romilly and Sir John Jervis, Sir Edward Ryan, Lord Sher Brooke, C.H. Cameron as the other members of the commission.

The Second Commission examined the problems of Lex Loci and codification and came to the inference that, *'what India wants is a body of substantive civil law, in preparing which the law of England should be used as the basis, but which, once enacted, should be the law of India on the subject it embraced. And such a body of law, prepared as it ought to be with a constant regard to the condition and institutions of India, and character, religions, usages of the population, would, we are convinced, be of great importance to that country.'*ⁱⁱ The Commission also proposed that the personal laws of the Hindus and Mohammedans which derived their authority from their respective religions should not be taken into consideration at the time of codification.

UCC is arguably an indispensable push in the course of equity and free will particularly to contemplate gender equality has been a long-pending matter. Though he was accord with such move Ambedkar advised carefulness while carrying it out to diverse people with capricious points of religious susceptibilities. According to him it should not be forced on an unwilling people but to follow the mid-way of voluntary acceptance.

B.R. Ambedkar, the Chairman of the Drafting Committee of the Constitution of India and the country's first Law Minister stated:

"It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary."

Diverse laws with their diverse prerogatives for different ethnic groups, without commenting on the intrinsic ambiguities between them, may also give rise to Gordian knot to the unity and integrity of a country that is sturdily democratic and secular in nature.

In this regard Ambedkar had distinct grumbles against the Prime Minister Nehru, who had committed his government to the goal, but still had to make compromises in the end. In his emotional speech he said:

"To leave inequality between class and class, between sex and sex, which is the soul of Hindu Society untouched and to go on passing legislation relating to economic problems, is to make a farce of our Constitution and to build a palace on a dung heap; this is the significance I attached to the Hindu Code. It is for its sake that I stayed on notwithstanding my differences."ⁱⁱⁱ

The Shah Bano case of 1985 provides us a possible historic opportunity to scrutinize the changes made by the Rajiv Gandhi government to make considerable reforms to the position and status of Muslim women.

Ambedkar himself had tried to calm the distressed minds when he had maintained in the debates in the Constituent Assembly.

"I quite realise their feelings in the matter, but I think they have read rather too much into Article 35, which merely proposes 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. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method."ⁱⁱⁱ

Before *Shah Bano*, two other Muslim women had up to that time received maintenance under the Criminal code in 1979 and 1980.

The relevant section of the Cr. P.C. reads as follows:

125. Order for maintenance of wives, children and parents:

"If any person having sufficient means neglects or refuses to maintain...his wife, unable to maintain herself... a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife... at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct."

A 73-year-old woman named Shah Bano took the courage to begin a lone battle seeking maintenance allowance from her husband, Muhammad Ahmad Khan, who divorced her after

40 years of matrimony by the triple talaq system as permitted under the Muslim personal law. He refused her claim for maintenance and the matter went into protracted legal proceedings. Initially Bano was conceded maintenance by the verdict of a local court in 1980, the matter was taken up to the Supreme Court, which eventually ruled in her favour under the provisions of Section 125 of the Code of Criminal Procedure, (CrPC) 1973, which is applicable to all citizens regardless of religion. It further endorsed that the long pending UCC be set be finally enacted.

The Shah Bano judgment observed thus:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because; it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."^{iv}

Very recently, in Civil Appeal 7378 of 2010 delivered on September 13, 2019, (Jose Paul Coutinho vs. Maria Luiza), the Supreme Court stated:

"Whereas the founders of the Constitution in Article 44 in Part IV dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for

the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard."^v

The 21st Law Commission In the opening paragraphs of its report dated August 31, 2018 wrote:

"While diversity of Indian culture can and should be celebrated, specific groups or weaker sections of the society must not be dis-privileged in the process. Resolution of this conflict does not mean abolition of difference. This Commission has, therefore, dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage. Most countries are now moving towards recognition of difference, and the mere existence of difference does not imply discrimination, but is indicative of a robust democracy."^{vi}

All Indian Muslim Personal Law Board (AIMPLB) which is in opposition to 'The Uniform Civil Code' says, *"Unity of nation will be under threat if UCC is brought in. One yardstick to guide the wide diversity of people is not viable and will harm the unity of the country. Prime Minister Narendra Modi has brought up this issue to divert attention from real issues faced by the people."*

Veerappa Moily, Former Law Minister and Congress leader says, *"In a country of this nature, implementation of Uniform Civil Code is next to impossible. There are 200-300 personal laws in India covering various communities."*

Ravi Shankar Prasad, Minister of Law and Justice of India says, *"Our focus is purely on gender justice, gender equality and gender dignity. The government will follow the Constitution and that it completely respects the freedom of religion and faith but every practice which is unfair and discriminatory cannot be integral to the Constitution."*

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^{iv} **'Supreme Court of India' 1985; Mohd Ahmed Khan vs Shah Bano Begum and Ors**, April 23 [<https://indiankanoon.org/doc/823221/>] accessed on 27th May 2020.

^v **Supreme Court of India 2019 Jose Paulo Coutinho vs Maria Luiza Valentina Pereira**, September 13; [<https://indiankanoon.org/doc/190351781/>], accessed on 27th May 2020.

^{vi} **Law Commission of India 2018 Consultation Paper on Reform of Family Law**, Government of India, August 31.