

UNIFORM CIVIL CODE: DREAM OF EVERY INDIAN

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ABSTRACT

At times, in India the question of relevancy of the Uniform Civil Code has been raised. The demand was made by the opponents to bring all personal law within the reform process. The question of Uniform Civil Code became topic of discussion in 1970 when attempts were made to introduce an Indian Adoption Bill on secular lines. The Judicial pronouncements have brought the question of Uniform Civil Code to the fore. In the light of these developments the questions arise, why Uniform Civil Code is relevant? Is there immediate need of it? Whether incorporation of Uniform Civil Code in Article 44 of Constitution was itself a mistake? Uniform Civil Code has been regarded as an important means to achieve constitutional objectives but, at the same time there have been some genuine and practical problems for its adoption. There has been apprehension, confusion, fear and distrust within the community and between the communities. With the passing of each year the problem to enact a Uniform Civil Code is becoming more difficult in comparison to 1950s. Now, the Indian society is less prepared to sacrifice their vested interests which are necessary condition for adoption of Uniform Civil Code. In order to remove the fear and distrust relating to Uniform Civil Code, there is a great need to educate the people. The right thinking people in general and academics in particular have constitutional duty to educate the public opinion for adopting Uniform Civil Code in India.

INTRODUCTION

India is a country of multi-religions and multi languages. Range of individuals is ruled by their personal laws. It leads to totally different treatment administered to different categories of people in their personal laws. There are totally different codes for various communities like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act, Hindu Guardianship Act. Muslims and Christians are ruled by their personal laws. There are also many different sects and they are governed by their customs, traditions etc.

There is difficulty in distribution of justice; hence decisive steps were taken towards national consolidation in form of idea of uniform civil code which was for the first time mooted seriously within the Constituent Assembly in 1947. The uniform civil code as envisaged within the Article 44 of the Constitution includes inter-alia, entire gambit of family laws. There is no uniform civil code of law applicable to the marital relation of all, irrespective of ethnic or non-secular affiliations. Therefore through Article 44, the modern State is called upon to perform its heavy responsibility of giving uniform civil code on the above subject, applicable to all or any the citizens of India.

The term uniform civil code and its meaning itself came under intense scrutiny throughout the Constituent Assembly debates. Muslim members were terribly vocal against this provision in Article 44. Mr. B. Pocker Sahib Bahadur wished to understand what the term uniform civil code stood for and which specific law of which specific community were the framers of the provision going to take as the standardⁱ.

The Muslim member's opined that the word civil code did not cover strictly personal law of a citizen. Allowing the fears of the members who questioned the connotation of the word uniform civil code and the object of having such a provision in the Constitution. The Chairman of the Drafting Committee, Mr. B.R. Ambedkar while replying to the queries on the provision of the uniform civil code in the Constituent by the minority community it was intended to have a code which provided for uniformity of law in matters of marriages, divorce, succession etc. irrespective of religion, community etc.

Mr. M.C. Chagla, a former Minister while making a vehement plea for uniform civil code wrote, Article 44 is a mandatory provision binding the government and it is incumbent upon it to give effect to its provision. The Constitution was enacted for the whole country, and every section and community must accept its provision and its directivesⁱⁱ.

From Narsu Appa Mali's caseⁱⁱⁱ to the latest John Vallamatom case^{iv}, the Supreme Court and the various other High Courts in numerous cases emphasised that the steps be initiated to enact the uniform civil code as envisaged by the Article 44. The law relating to the judicial separation, divorce and nullity of marriage is far from uniformity. Surely, the time has now come for a complete reform of the law of marriage and makes a uniform law applicable to all people irrespective of religion or caste; I suggest that the time has come for the intervention of the legislature in these matters to provide for the uniform code of marriage and divorce.

A futile attempt was made in the direction of uniform civil code by the judiciary through the Shah Bano^v verdict. But the Government of India went ahead in passing the Muslim Women (Protection of Rights on Divorce) Act, 1986 making sections 125-127, Criminal Procedure Code optional to divorce, Muslim Women muted law can't be far ahead of the society which would lack social legitimacy. And for this, the mandate of Article 44 is that The State shall endeavour to secure which recognizes the fact that the different personal laws do exist in the country which needs to be uniform in its applicability.

The Constitution of India in Article 44 enjoins, the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. It is 60 years or more, yet we have not able to attain that level of sophistication to accept and adopt the Constitutional mandate. It is crystal clear that the term uniform civil code was used in relation to the personal laws of different communities.

NECESSITY FOR A UNIFORM CIVIL CODE

Ours is a country with several different religions and belief systems. The accepted principle of law is that personal belief systems and laws must be in conformity with the Constitution and not the other way round. Article 25 of the Constitution guarantees to every person the freedom

of conscience and the right to profess, practice and propagate religion. Article 26 of the Constitution guarantees to every religious denomination the right to manage its own affairs in the matters of religion. No set of laws can violate these Articles, which essentially protect the religious freedom of different person or communities. We are thus presented with a situation that seems somewhat contradictory; how can there be a uniform set of laws which protects religious freedom at the same time?

The implementation of a uniform set of laws calls for discarding certain personal laws which go against society's general outlook as a whole, and this may amount to violation of the above mentioned Articles of the Constitution. With multiple belief systems, come multiple ideological conflicts. To live together in concurrence with such diversity, we need to have uniformity at some level so as to avoid such conflicts. What we need is a Uniform Civil Code in the form of a sophisticated, harmonized system of legal regulation that maintains and skillfully uses the input of personal laws and yet achieves a measure of legal uniformity. As long as the code does not go against the essence i.e. the core or fundamental belief of any particular religion, it will not go against the religious freedom guaranteed by the Constitution.

VIEW OF THE LEGISLATURE

The question of implementation of a common Civil Code has been raised mainly with regard to matters where, the personal laws of a religious community have been challenged in the court of law as being violative of the Constitution or against general public interest. Our law makers have generally shied away from legislating on such points of personal law as are considered to be of controversial or sensitive nature, for fear such legislation being labelled as an intrusion on the above rights thereby resulting in strong backlash. This became evident from the reaction to the judgment of the Supreme Court in the Shah Bano case which gave a divorced Muslim woman the right to claim maintenance even after the period of iddat. If the amount known as meher, paid to her on divorce was not sufficient for her livelihood, she could claim maintenance under S.125 of the Criminal Procedure Code.

There was great agitation against this decision, led by Mullas and Maulvis and other fundamentalist sections, as being against the tenets of Islam. Succumbing to the pressure of vote-bank politics and in order to appease the Muslim fundamentalists, the Rajiv Gandhi government enacted The Muslim Women (Protection of Rights in Divorce) Act to undo this decision. This Act exempted Muslims from the general law regulations of the Cr.P.C, including S.125. It tried to restrict the divorced Muslim woman's right to maintenance up to the iddat period only and provided that under section 3(1)(a) a divorced women is entitled to reasonable and fair provision and maintenance within the iddat period.

Similarly in case of the Adoption of Children Bill 1972, the Muslim community opposed a uniform law regarding adoption applicable to all communities since Islam does not recognize adoption. Due to this opposition, the bill was subsequently dropped and reintroduced in 1980 with an express clause of non-applicability to Muslims. This was again opposed, this time by the Bombay Zoroastrian Jashan Committee, which formed a special committee to exempt Parsis from the bill. The Adoption of Children Bill, 1995, was passed by both Houses of the Maharashtra legislative assembly, but is still awaiting presidential assent.

What needs to be understood is that 'the religion of an individual or denomination has nothing to do in the matter of socio-economic laws of the State.' The freedom of religion conferred by the Constitution is not absolute and by no means does it allow religion to contravene the secular rights of the citizens and the power of the State to regulate the socio-economic relations. Basically, a Common Civil Code will override only those personal laws which do not form the essence of any religion. The key word here is 'essence.' Personal laws which form the fundamental basis or the core of any belief system are ideally, excluded from the purview of the Common Civil Code.

VIEW OF THE SUPREME COURT

The Supreme Court seems to have a divided opinion on the introduction of a Uniform Civil Code. On one hand, it has rejected attempts to do so through public interest litigation but on the other, it has recommended early legislation for its implementation. In Pannalal Bansilal v.

State of Andhra Pradesh^{vi}, it held that a uniform law though highly desirable, the enactment thereof in one go may be counter-productive to the unity and integrity of the nation. Gradual progressive change should be brought about. Similarly, in *Maharishi Avadhesh v. Union of India*^{vii}, the Supreme Court dismissed a writ petition to introduce a common Civil Code on the ground that it was a matter for the legislature and in *Ahmedabad Women Action Group v. Union of India*^{viii}, the Supreme Court showed reluctance to interfere in matters of personal law.

But in *Sarla Mudgal v. Union of India*^{ix}, the Supreme Court directed the then Prime Minister P.V. Narsimha Rao to take a fresh look at Article 44, which the Court held to be imperative for both protection of the oppressed and promotion of national integrity and unity. It instructed the Union Government through the Secretary to Ministry of Law and Justice to file an affidavit, enumerating the steps taken and efforts made by the Government towards achieving a common civil code for the citizens of India. The Division Bench of Kuldip Singh and R.M. Sahai said that since 1950 a number of Governments have come and gone but have failed to make any efforts towards implementing the constitutional mandate under Article 44. It is based on the concept that there is no necessary connection between religion and personal law in a civilized society. No religion permits deliberate distortion. Marriage, succession and the like are matters of a secular nature and therefore can be regulated by law. Unfortunately, it was later clarified in an appeal that the direction issued by the Court was only an obiter dicta and not legally binding on the Government.

In *John Vallamattom v. Union of India*^x, it was held that Articles 25 and 26 of the Constitution protect only those rituals and ceremonies which form an integral part of a religion, and that matters of a secular character cannot be brought under the guarantee enshrined under them. The Chief Justice of India firmly emphasized that enactment of Uniform Civil Code would end all such problems arising out of ideological conflict.

In *Danial Latifi v. Union of India*^{xi}, a very controversial question of political significance (in the background of a secular constitution and the concept of welfare state) was revisited i.e. whether or not a divorced Muslim woman after divorce post iddat period is entitled to maintenance by her husband. Here, the Supreme Court adopted a middle path and held that reasonable and fair provisions include provision for the future of the divorced wife (including maintenance) and it does not confine itself to the iddat period only.

CONCLUSION

Between the Supreme Court's mixed response and the legislature's wariness, the implementation of a national common Civil Code seems to be a distant dream. It is only enlightened public opinion that will help fulfill it. Communal divides, vote-bank politics, staunch fundamentalism are currently barriers to its realization but with time and tolerance they can be overcome. What must be perceived as a matter of defining an individual's rights deteriorates instead, into a "majority versus minority" issue. The welfare of the community as a whole must be considered instead of a particular class or sect. No doubt, the realization of a common Civil Code is a tough job, given the vast ideological diversity. But a uniform civil law is necessary in order to be truly secular. It is our collective duty as a modern society to rise above cultural and religious differences and give effect to this constitutional mandate which is more than 67 years overdue. NDA Government tried to implement it but received the same Nehruvian argument; the Muslim community is not ready. Muslim communities are also ready but some political parties, who believe in dirty caste politics to secure their vote bank at the cost of public, still call themselves secular party, are not ready. I consider U.C.C based Indian civil code for the uniform authentic India, only with the implementation of U.C.C secular will purely spread throughout our nation. Then all Indians come in a same circle irrespective of religion & caste then it is applicable to the persons who reside in India and people of India also responsible for this implementation of Uniform Civil Code.

ENDNOTES

ⁱ Constituent Assembly Debates, Vol. VII, (1949), p. 543.

ⁱⁱ M.C. Chagla, Plea for Uniform Civil Code, Weekly Round Table, March 25, 1973,p.7.

ⁱⁱⁱ AIR 1952 Bom 84.

^{iv} AIR 2003 SC 2902.

^v AIR 1985 SC 945.

^{vi} (1996) 2 SCC 498.

^{vii} 1994 SCC Suppl (1) 713.

^{viii} AIR 1997, 3 SCC 573.

^{ix} AIR 1995 SC 1531.

^x AIR 2003 SC 2902.

^{xi} AIR 2001 (SC) 3958.