

UNIFORM CIVIL CODE: A STEP TOWARDS GENDER JUSTICE

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INTRODUCTION

The founding father of our constitution Dr. B. R. Ambedkar once visioned and argued persuasively on introduction of concept of Uniform Civil Code which was supported by other eminent nationalists of that time during draft of Constitution but same was aggressively opposed by particularly a minority segment, on ground of interference in personal laws and also quoting that time is not ripe for same, a dynamic idea which otherwise would have been a bedrock for national integration as also gender parity justice was confined to just idea alone by adjustment of said provisions in chapter of Directive principles of state policy.

The present paper endeavours to examine how the relevancy of introduction of uniform civil code in our constitution in binding form is need of hour even after lapse of more than 70 years primarily on three fold facets:-

1. Gender parity justice law
2. National integration
3. Secular state

Article 44 of the Indian Constitution clearly states a uniform civil code for its citizens. It states: "The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". What is the meaning of Uniform Civil Code in this context here? We already had a common criminal code that was applicable to everyone in the Indian subcontinent. Additionally, we had a number of uniform civil laws, including the Civil Procedure Code, the Transfer of Property Act, and the Contract Act. So, this uniform civil code actually referred to personal laws, also known as family laws.

The introduction of Uniform civil code (hereafter referred to as the UCC for brevity) in chapter of Directive Principle of State Policy was primarily opposed by the Muslim members of the Constituent Assembly, who were all male. With the exception of Tajmul Hussain from Bihar, they all fought hard to keep Muslims out of this Article. Three strong advocates for social change and gender equality—the Parsi Minoos Masani, the Christian Raj Kumari Amrit Kaur, and the Hindu Hansa Mehta—at the other end of the spectrum wanted it to be made a Fundamental Right. Both points of view were rejected, and it became a guiding principle of state policy, deferring resolution to a future administration. Unfortunately to this day none of the democratically elected government so far have been able to come with the political guts to implement them and by far BJP, which is an allegedly right wing party though openly vouched for introduction of UCC have not been able to implement them even with an absolute majority in the parliament. It is also worthwhile to mention that some persons of eminence who stake claim to be representative of such minority community whose interest would be mostly affected by introduction of the UCC have claimed that such change which is proposed to be brought by way introduction of UCC should be first brought within the personal laws are required to be reformed from within of their own will which is gradual process and might take time, but sadly even after lapse of considerable time no change on own volition has been witnessed till now and what has come to sight is frequent cases of disparity meeting out to women in name of personal law.

The Shah Bano case of 1985 was a landmark judgment as it showed the progressive character of Muslim women and other sections of Muslim society while highlighting their plight and challenging religious orthodoxy but even same was cornered by enactment of The Muslim Women (Protection of Rights on Divorce) Act, 1986 which shows that the political will of the country can be put to ransom by whims of minority. The Hon'ble Supreme Court after the said landmark judgement not only times without number reiterated the essentiality of the UCC but also harped upon binding nature of provisions of directive principles of state policy which serves as a framework to achieve the will of constitution as enumerated in the preamble.

UCC, THE NEED OF HOUR

In absence of the UCC the ever existing disparity in personal law of all communities bring to fore the unequal treatment met out to women in particular who are exposed to constant gender injustice to different flora and fauna of rights attributed to them. It is stated that right to have a dignified life which is very basic tenet of human existence is somewhat more theoretical than existential reality in our country where all personal laws are governed by patriarchal structure of the society. And though the Hindu personal laws have undergone considerable change partly by way of political will and majorly by judicial interference, said change is yet to be witnessed in other religions especially Muslim population which is largest minority of the country. Whilst other Muslim nations of the world keeping in pace with the evolution of human race have brought considerable change in their perspective towards law affecting women, the status in India is far away from being progressive. Ironically, Islamic nations such as Syria, Morocco, Pakistan, Tunisia, Iran, etc. have codified their personal laws to prohibit or severely restrict polygamy in order to prevent the misuse and abuse of this abhorrent practise. The plight of women in terms of succession to the properties, maintenance and other societal rights specially belonging to Muslim community is yet to witness evolution owing to plea of religious interference which leads to quieter voice of gender justice being dispelled, resulting in uncertainties and continued discrimination and it not only adds to plight of gender injustice but also affect the secular fabric of our country which in turn also affect national integration.

The words of Congressman Acharya Kripalani, which he said when the Hindu personal laws were being drastically changed in 1955 and 1956, despite the violent opposition of a conservative president and Hindu religious leaders, have a lot to do with this situation. He said:

“We call our state a secular state—A secular state goes neither by scripture nor by custom. It must work on sociological and political grounds. If we are a democratic state, I submit we must make laws not for one community alone. Today the Hindu community is not as much prepared for divorce as the Muslim community is for monogamy. Will our government introduce a Bill for monogamy for the Muslim community? Will my dear law minister apply the part about monogamy to every community in India? ... I tell you this is the democratic way. It is not the Mahasabhaites alone who are communal; it is the government also that is communal, whatever it may say. It is passing a communal measure. You shall be known by your acts, not by your

profession. You have deluded the world so often with words. I charge you with communalism because you are bringing forward a law about monogamy only for the Hindu community. You must bring it also for the Muslim community... the Muslim community is prepared to have it but you are not brave enough to do it.”

Society as whole can never evolve and progress unless one of its essential part, women are not met with equality and thus nation as whole will continue to suffer and will remain disintegrated on the lines of discriminatory civil laws which though takes adequate care of men but forget to look into even essential needs of women. A large stratum of women feels disconnected owing to their varying rights which emanates from their personal laws and they can never be put on same platform unless the concept of the UCC is adopted in its entirety and effectivity.

In all communities, laws about marriage, guardianship, inheritance, divorce, adoption, and property rights are unfair, especially to women. There arises an ambiguity when there are different laws about a social institution like marriage, especially when it comes to polygamy and divorce. Also, Possibility of a Muslim Law to support child marriage based on Shariat as a separate law for Muslims.. When some people are given special status on the basis of their religion, it leads to an uncomfortable division. It gets harder to preach equality among citizens in India when even the law of the country does not apply equally to everyone. As a result, the idea of national integrity is constantly in danger.

Adherence to secularism principle which propounds religious neutrality further gives rises to inequality met out to women which goes unchecked and thus minority women which forms an important part of nation is left out. In true sense, secularism can be applied only when there is level playing field in all religion which can be only be done by way of introduction of the UCC.

CONCLUSION

The desire to end discrimination, empower women, and restore their dignity and self-worth are at the core of the call for a uniform civil code. A uniform civil code will aid in eradicating those cultural practises that are demeaning and toxic to women and give them their own sense of identity as independent Indian citizens.

Article 44 calls for just family laws for all. It is not just a matter of national integration but also a reminder that every Indian women need to have their rights improved and protected by a single civil code. It is important and urgent to implement UCC because it has to do with social reform and laws that are fair to both men and women. A draft of a uniform civil code should be made, which will oust religious fundamentalism and pave way for socio and economic justice to not only muslim women but also other women who will be ensured of basic human rights with dignity and quality and will put an end to incessant exploitation in name of religion.

