

“UNIFORM CIVIL CODE- A DEAD LETTER”

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INTRODUCTION

‘Secularism, properly understood, is not a bad word. Our Government should not be hostile to religion, but it must remain religiously neutral’.

- Sir Stephen Wall

The concept of Uniform Civil Code is one of the most arguable issues since decades. It is contended that UCC is an act of modern legal development with national integration. Women in the Hindus, Muslims and Christians suffer from all form of discrimination on the ground of marriage, divorce and inheritance from the inception of codified laws. Though it remained a dead letter under the ambit of ‘Article 44’ Directive Principles State Policy of the Indian Constitution. As it states that “The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India¹”. It is imperative for the constitutional makers that these will be taken care by the state. Article 44 of the constitution provides Uniform Civil Code in India. It states that “The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India”. Currently, we do have civil code and laws in the form of Contract Act, Transfer of Property Act and Civil Procedure Act etc. The state has been entrusted with voluminous tasks; however no significant step has been taken by the government despite the injustice against gender in numerous ways has been done by haters among different religions. Post-Independence India the issue of Uniform Civil Code has been politicized. In initial years, the constituent assembly witnessed debates in favour of and against Uniform Civil Code. The Indian Constitution makers deferred the implementation of Uniform Civil Code to the next generation but the Supreme Court is incessant in reminding the legislature. In the recent case of Shayara Bano, the petition has been filed by 35 year old women to ban the draconian practice of Triple Talaq and as recently it declared as unconstitutional. The bill has been passed in Lok-Sabha recently and we can witness here the victory of upcoming new equal world. Here the question remains the same that what change UCC can make and whether it will be a magic solution in weeding out such practices which are being considered as oppressive and anti-women not only by people belonging to other religion but even group of people belonging to the same religion. The principle of UCC is both glorified and criticized by different communities. As they perceived it as anti-secular while others regard it as a harbinger of communal harmony and secularism. In another case of *Mohd. Ahmad Kahn v. Shah*

¹ INDIA CONST. art 44

*Bano*², where again the issue of UCC has been debated and come up as a major reform in the pretext of rights of Muslim women. The personal law comes under Article 13 of the Constitution of India or if indeed they are protected under Articles 25- 28 and has been disputed in a range of cases the most notable being *Narasu Appa Mali*³ in 1952⁴. Since the beginning there is skepticism with regard to personal laws on Uniform Civil Code and at the name of preserving the diversity of personal laws, the code is never enacted. The sanctity of constitution lies in the fundamental rights and in order to achieve this, it is desirable that there shall be uniform codified law to make the system way more robust.

HISTORY OF UNIFORM CIVIL CODE IN INDIA

The debate on Uniform Civil Code has been started since the inception of Constitution. It witnessed much strong opposition from the Muslim fundamentalists like Pocker Saheb and Members from other religions. Though it did get support from the Chairman of the Draft Committee and father of our Constitution Dr. B.R. Ambedkar along with some prominent journalists like G.S. Iyengar, K.M. Munshiji and Alladi Krishnaswamy Iyer amongst others to name a few. Though the Congress had promised it would allow Muslims to practice Islamic laws, there was a fear, among Muslims, of a possible interference with the Muslim personal laws and they contended that India would not be the same again if UCC was to be introduced⁵. India is a land in which various religions are followed like Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, Christianity, Sikhism, etc, to name a few. India follows secularism. It is enshrined in our Constitution and was included in the preamble after the 42nd Amendment in 1976⁶.

CONSTITUTIONAL PROVISION VIS-À-VIS UNIFORM CIVIL CODE

The main provision lies in the fact that instead of a secular nation as stated in the preamble of the constitution there is still conflict of interest when it comes to making an integrated nation by enacting a uniform code. The directive principles of state policy contained in the part IV (Art. 36-51), as the name suggests are mere directions to the State. That means they need not to be mandatorily followed and are not enforceable by the Court. They are merely positive obligation on the state which will help in good governance⁷. However here the conflict of opinion among jurists, that from one perspective objection has been raised that it is violation of Article 25 and 26 of the Constitution, which provide right to practice and profess any religion. However, Article 15 of the Constitution states about the “right to

² Mohd. Ahmad Khan V. Shah Bano Begum AIR 1985 SC 945

³ State of Bombay v. Narasu Appa Mali AIR 1952 Bom 84

⁴ Law Commission of India, Refoms of Family Law, Consultation Paper, 31(August 2018) available at, <http://www.lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf>

⁵ Sattwik Shekhar, Has the Time Come For a Uniform Civil Code in India?, first published at www.mightylaws.in, available at <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=77d942f9-1b04-4418-9c7b-78d495455b3d&txtsearch=Journal:%20www.mightylaws.in>

⁶ S. Sadhana and Mrs. S. Bhuvanewari, A Contemporary Study on Uniform Civil Code, 120 IJPAM 5, 2018, available at <https://acadpubl.eu/hub/2018-120-5/4/383.pdf>

⁷ *Supra* note 4

equality” and to fix the hole so as to give precedence to which of the fundamental rights to the Constitution of India. In pretext of protection of essence of constitutionality, another pros is having this code would ensure national unity and integrity to strengthen the secular nature and at the same time putting an end on the gender bias. It is to be noted that the emphasis has been laid only on personal laws by making it more gender neutral by declaring the maintenance under Sec. 125 of Cr.PC. for Muslim women in the case of Shah Bano to Shayara Bano case by declaring Triple Talaq an unconstitutional practice. It can be summed up as that the liberals are demanding this code to govern the nation on equal foot despite of any religion, race, caste, sex, creed and tribe etc. to protect the fundamental right and Constitutional right.

INTERNATIONAL CONVENTIONS AND UNIFORM CIVIL CODE

India is a signatory to a number of international covenants and conventions which defines equality and defines gender justice for instance the Article 16 of the ‘Universal Declaration of Human Rights, 1948’ and ‘Convention of Elimination of All form of Discrimination against Women, 1979’.

Article 16 of UDHR-

- (i) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (ii) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (iii) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State⁸.

However, In India, primarily women under Hindu, Muslim and Christine laws undergo and continue to suffer inequalities, discrimination as per the codified personal laws in the matter of marriage, succession, divorce and inheritance. Hence, a step towards a gender equality not only in compliance with the Constitution, but also with international conventions. On the other hand, Almost all the traditional Muslim countries such as Turkey, Egypt, Syria, Morocco, Tunisia, Algeria, Iran, Iraq, Indonesia and Pakistan have effected changes in Quranic law and abolished polygamy and restricted the right of unilateral divorce granted to the Muslim husband. Yet India continues the evil practices of polygamy and divorce at will of the husband⁹.

ROLE OF INDIAN JUDICIARY AND UNIFORM CIVIL CODE

In the post- colonial India, the role of judiciary is truly appreciable; recently numerous judicial interpretations paved the way towards Uniform Civil Code. Here the few landmark cases are-

⁸ Supra note 4

⁹ Uniform Civil Code- A Challenge to Minority Rights?, XV CULR LJ, 198-205 (1991).

*State of Bombay vs. Narasuappa Mali*¹⁰- This case is related to Bombay Prevention of Hindu Bigamous Act, 1946, the legislative provisions modifying the old Hindu Law were challenged on the ground of violating Article 14, 15 and 25 of the Constitution. The aforementioned Act was intra vires to the Constitution. "Article 14 does not lay down any legislation that the state may embark upon must necessarily be of an all-embracing character. The State may rightly decide to bring about social reform by stages, and the stages may be territorial or they may be community wise, and that the discrimination may be by the Act between the Hindus and the Muslims does not offend the equality provisions of the Constitution."¹¹ In another case of *Mohd. Ahmad Khan vs. Shab Bano Begum*¹², where the question was pertaining to the responsibility of Muslim husband to maintain his divorced wife. *Makku Rawther's Children vs. Manapara Charayil*¹³- In this case, Justice Krishna Iyer opined that there shall be a parallel relation between personal law and the Constitution. They must run in accordance with the provision of constitutional mandate. It is high time to read the personal laws in the light of the philosophy contained in Article 44. *Sarla Mudgal vs. Union of India*¹⁴- In this case, Hon'ble Supreme Court touched the personal laws of Hindu, Muslims and judgment was in favour of the Uniform Civil Code. The Court interpreted that Uniform Civil Code is opposed to secularism and will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion¹⁵. *Shayara Bano vs. Union of India*¹⁶. The Supreme Court in its judgement, held the practice of Talak-ul-Biddat (triple talaq) to be unconstitutional. After a lot of deliberation, it was concluded that triple talaq is not an essential religious practice and therefore not protected under the provisions of Article 25. This judgement was not about religion, but about rights of individual. This recent judgement is often seen as a gateway to UCC¹⁷. The Muslim Women and Protection Bill 2019 which makes the practice of instant 'Triple Talaq' amongst Muslims a punishable offence with three-year imprisonment, the offence is cognizable and non-bailable.

WHY UNIFORM CIVIL CODE IS NEED OF THE HOUR?

In India, people belonging to different races, innumerable castes and religious beliefs but still living together, by enacting Uniform Civil Code can be a robust step towards national integration. The code should apply to all irrespective of the differences. As Article 44 of UCC and Article 37 of the Indian Constitution states that it is the duty of the state to apply these principles in making laws. After 70 years

¹⁰ *Supra* note 3

¹¹ Varuna Chakraborty, *Challenging Aspect of Uniform Civil Code in India*, 9 *IJSER*, 1756, 1757 (2018)

¹² *Supra* note 2

¹³ *Makku Rawther's Children vs Manapara Charayil* AIR 1972 Ker 2

¹⁴ *Sarla Mudgal v. Union Of India* AIR 1995 SC 1531

¹⁵ *Supra* note 9

¹⁶ *Shayra Bano vs Union Of India* Writ Petition (C) No 118 of 2016

¹⁷ Dhiraj Yadav, *Uniform Civil Code: Need of the hour*, RMLNLU Constitutional Law and Public Policy Blog, 23.07.2019, available at <https://seclpp.wordpress.com/2019/07/23/uniform-civil-code-need-of-the-hour/>

of independence there is no positive effect, as recently Article 370 has been removed as nation is moving towards integration but the challenges are still there to make the country unified in real prospects. As intolerance of towards each others can never attain the goal of a common code. The social status of women still suffers from inferiority complex even after codification of personal laws. The issues of succession and marriage affect women and girl children of all religions equally¹⁸. To achieve the true spirit of democracy a uniform code is need of the hour.

SUGGESTION

According to the pre-existence of personal laws, it is not possible to adapt and bring the change within a day or two but over the years pondering on the same issue is not rational. To draw a framework towards next generation laws initially an enactment of a Special Act where all communities inspite-of any race- religion, case, creed and gender can seek and render justice simply as a human being not any labeling. Here, no one is coercing any person to adapt certain laws nor snatching away the core beliefs towards their religions and here sentiments can be protected. As the proposal of Uniform Civil Code is pending and per se a dead letter since decades.

CONCLUSION

As said by “Martin Luther King” Jr., ‘injustice anywhere is a threat to justice everywhere’. By coming up Uniform Civil Code, India can set a precedent for true leadership and egalitarianism for all. To give people of a democratic country their inalienable rights, such as irrespective of gender there shall be equality, dignity and gender justice for all sects of women, can be a robust step to integrate India more than it has ever been since independence. India secularism can be maintained by enacting personal laws outside the religion’s purview. The recently outlawed instant Triple-Talaq is a progressive step towards oneness. Religion should be given importance but it must not overpower the fundamental human right and cover the life by putting up robust walls upon legislature from encroaching upon that field. Women still facing the day to day discrimination due to old biased principles and if not active then passive discrimination is still at par not only at home but outside. To develop the scientific thinking women should be considered as equal and so what religion says. Developing hate towards one another religion can never bring justice, peace and harmony.

¹⁸ *Ibid*
