

UNIFORM CIVIL CODE "A CONSTITUTIONAL MECHANISM TO MAINTAIN EQUALITY"

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ABSTRACT

Law and society both are interrelated to each other. Society changes over the decades. The process to change the society is very steady. The changes which come in the society are the consequences of various adjoining factors as education, technology, industrialization, globalization etc. These all variations do not only transcend our society and its' social structure but also transform the law. Laws are changed by following the process composed under the Constitution of India. Law works in the context of the society. If the law, already prevailing in the society does not correlate and adjust with the requirements of the society then it can be held obsolete. It may be possible that something could not be grabbed by our society and nation before seventy years at the time of independence but that may be accepted in the present regime. Uniform Civil Code, though it is not enforced till the time when the rest of the provisions of the Constitution were enforced by taking into consideration the societal complexities in public policy but now the time has drastically changed and the code has become the need of the span for the survival of the society.

KEYWORDS: *Uniform Civil Code, Constitution, Religion, Personal Laws, Secularism, Gender Discrimination, Equality*

INTRODUCTION

The Indian Constitution declares it by its preamble a sovereign, socialist, secular, democratic republic and secures to its citizens the equality of status and opportunity. It is declared by the honorable Supreme Court of India that 'secularism' is the basic structure of the Constitution in India¹ which cannot be demolished even by the amendment of the Constitution. Uniform civil code is a pious mechanism to avail our constitutional goals and by the framing of this code, it is expected that our system will remain far from the politics and clutches of the religion. India is a country of religions. Though the features of secularism were made available in Indian Constitution from its inception as the right to religion under Article 25-28 but in spite of these provisions the word 'secular' was inserted expressly into the preamble of the Constitution.² The object of insertion was to establish high ideals of secularism to maintain the integrity of the nation. There is no state-recognized religion in India.³ The State is obligated not to give protection to one over any specific religion or its followers. It is also the responsibility of the State that no extra benefits will be provided to anyone else in name of religion.

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

² The 42nd Constitutional Amendment Act, 1976.

³ Indian Constitutional Law, M.P. Jain, Lexis Nexis Butterworths, Reprint 2011, page 15.

Uniform Civil Code (in short UCC) aims to work as a tool to maintain equality in the meaning of the Constitution among society. Uniform Civil code is supposed to be applied to all citizens without taking into consideration their respective religions, sex, caste or sects. The applicability of the code will go beyond the access of the religion. It is the manifestation of constitutional goals, a mirror of true democracy. It tries to mandate classless society. The purpose of the framing of the Code is to effect an integration of India by bringing all citizens of all communities on the common platform in those matters which are governed by their respective different personal laws⁴ and will also try to secure them with equality before the law and equal protection of the law. The Supreme Court of India has declared equality as a part of basic structure of the Constitution⁵ because of that no legislation can transgress it. The Uniform Civil Code does not even a bit expect to violate to right to conscience and profess, practice and propagation of their religion it will only create obstacles only on such conservative and colored activities which continue for centuries in name of religion in the partial interest of some religious and powerful groups. Religion is not considered the ground of discrimination among individuals under the Constitution of India.⁶

Article 44 of the Constitution of India declares that "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." This Article is included under Part 4 of the Constitution under the head of directive principles of state policy. According to the feature of Article 37 of Part-4 these principles are of non-enforceable nature and because of that the provisions enshrined therein cannot be enforced by the court of law. The framing of Uniform Civil Code has been suffered from the intense debate between secular and orthodox religious authority. The Constitution of India under Article 246(2) permits to the Parliament and State's Legislatures to frame the law about such matters which are covered under entry 5, list IIIrd (concurrent list) of the seventh schedule. In entry 5 of a concurrent list, such matters are identified in which, before independence personal laws were enforced as in marriage, divorce, inheritance.

Historical Aspect

In 1947, when the Constitution was framed by the Constituent Assembly the chairperson of the drafting committee Dr. B.R. Ambedkar advocated for the framing of uniform civil code but on the other side it was strongly opposed on the ground that it will infringe the right to religion under Article 25 of the Constitution of India as well as secondly, it would be a tyranny to the minority.⁷ Though the first ground was not supported because it does not really infringe the right to religion and Article 25(2) saves the secular activities. While introducing in 1954 Hindu Code Bill in the Parliament the first Prime Minister of India Pandit Jawahar Lal Nehru opined that the political and social situations of the country are not appropriate and relevant for the framing of uniform civil code. Nehru in 1954 in the Parliament mentioned, "I do not think at the present time the time is ripe for me to try to push it (Uniform Civil Code) through."⁸ The personal matters of Hindu law were however codified and such codification was an attempt to demolish the pillars of gender inequality.

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

⁵ Kesavanand Bharti vs. State of Kerala, AIR 1973 SC 1461p.

⁶ Article 15 of the Constitution of India.

⁷ The Constitution of India, V.N.Shukla, 2013, 12th Edition by Mahendra Pal Singh, Eastern Book Company, page 378.

⁸ Virendra Kumar, "Towards a Uniform Civil Code: Judicial Vicissitudes [from Sarla Mudgal (1995) to Lily Thomas (2000)]" 42 JILI 315 (2000).

In the Mughal period, The Hindus were left to follow their customs. In British India, Britishers did not interfere with the rules of personal laws though it was criticised.⁹ In the tenure of Governor Warren Hastings, till 1772 the individuals were treated with their personal laws in their personal matters. In 1793 Lord Cornwallis rephrased the Warren Hasting's rule of 1774. In this way, Hasting's policy of preserving Hindu and Muslim law was generally supported by the British. A similar provision was also enacted by an Act of 1797 and by the Government of India Act, 1915. Though in British India the Indians were allowed to follow their rules the court of law affected the law because the judges in courts were the English men, how so ever they were authorized to take the help of pandits and maladies. British empire approved the rights in favor of the government to enforce the personal law in their personal affairs. Through the application of personal law British empire introduced into the system the policy of divide and rule because of which English empire benefitted and communism, racism spread all over the India and Indians fought with each other. The English promoted the 'divide and rule' policy throughout India because of the ignorance, illiteracy, and poverty of the natives. As their powers were extended into India they did not only dominate to Indians but also tortured them and consequently, they were compelled to follow the English.

Uniform Civil Code as a Tool to Establish Equality

The framers of the Constitution realized that national integration would not be complete unless everyone in India is governed by uniform laws which do not establish difference on the ground of religion among persons.¹⁰ The freedom of religion guaranteed under Article 25 of the Constitution does not require that people should be governed by their personal laws. The fundamental rights are not a bar to achieve the uniform civil code throughout India.¹¹ Besides, being a part of concurrent list Parliament and state Assemblies both are empowered to make the laws relating to personal affairs. UCC is a part of directive principles under Article 44 of the Constitution of India, has not been enforced even after the seventy years of independence. UCC will be helpful in diminishing the problem of disturbance of law and order. It will be helpful in establishing successfully the uniformity and the equality among the individuals. When the Constitution was in the stage of framing the approach came that large reforms should be made in personal laws in order to manage better protection to women.¹² The UCC will not only maintain equality in the society among the individuals of different communities, religions, and sects but also will be helpful in establishing the equality of gender. Though to discriminate the persons on the ground of gender is against the norms of the Constitution but the discrimination on the ground of gender or sex still continues. Females are treated inhumanly almost more or less in every society not only out of their homes but moreover under the four walls of the home.

We are living in the patriarchally structured society the most of the laws are male dominated. Males are given undue advantages on the ground of their gender only in our country. In Hindu law and in Muslim law both the rules were biased for women. Though such rules were more rigid in Muslim law. Pandit Jawaharlal Nehru regarded that the British policy of non-intervention in matters of personal law and interpretation by judiciary left untouched the social rules. Pt. Nehru hold, "our laws, our customs fall heavily on the women folk...and men happen to enjoy the dominant position."¹³ Customs are hypocritical and unjust. Different standards are applied to men and women religious. Such laws, as well as the

⁹ Outline of Indian Legal and Constitutional History, M.P. Jain, Lexis Nexis Publication

¹⁰ Indian Legal System, *Joseph Minattur, Indian Law Institute, Second Edition 2006 at pp.19-20.*

¹¹ *ibid*

¹² Law & Social Transformation, *P. Ishwara Bhat*, Eastern Book Company, Reprint 2012, at page 716.

¹³ Nehru's Speeches, 16-9-1955, III at page 444 in Lok Sabha while discussing about divorce.

usage and conventional custom, exploit to women in name of religion. There are various instances of such customs because of which women suffer a lot. Though some are vanished by the laws as sati, child marriage, polygamy in Hindu law there are various problems which are prevailing in the society as four marriage in Muslims by the male, maintenance of wife, female foeticide, unilateral divorce. They are exploited and tortured at every step of the life. Women are the victim of society. To maintain the equality of gender the framing of Uniform Civil Code is essential. It will give strength to social equality.

METHOD AND METHODOLOGY

The purpose of the research paper is to analyze the utility of the codification of uniform civil code in the present scenario. It is aimed to analyze the code as a tool to establish and maintain equality in the society. The method used in the research paper is a doctrinal method of research. The materials of research are Bare Act, reference books, and case studies.

Hurdles in Framing of Uniform Civil Code

The framing of UCC in India has become the need of the hour. India became independent in 1947. When the uniform civil code was proposed then some members of Muslim community suggested that the idea of uniform civil code should be followed by a provision not to compel any community from giving its own personal law. Mohammad Ismail considered personal law as a part of the way of life, interference with which will similar to an interference with the way of life of people followed by generations.¹⁴ Various objections were raised by the members of the Muslim community for making changes in personal beliefs. K. N. Munshi countered these arguments and stated that by consolidating and unifying personal law, the way of life of the whole country would get a uniform character with the secular outlook.¹⁵ He also stated that it would bring emotional unity and uphold the image of the nation as a progressive country. One of the members Mr. Alladi Krishnaswamy Ayyar stated that if there is strong opposition by any section of the community then their opposition should not be ignored by the legislators. Dr. Abedkar also added thereto that the proposed policy is a directory.

Since 1947 we have faced many communal riots because of different reasons. Politicians cash individual's sophistication and over-reacting attitude without thinking over them. The one important factor is also a diplomatic attitude of politicians for the fulfillment of their personal interests by giving preferences to one over another. It causes differentiation and variations among them and causes destruction into society. In our country, the most of the percentage of the citizen is suffering from poverty, unemployment, and illiteracy. These are the basic reasons because of which they are easily manipulated by the influent persons. Their family problems and poverty compel them to do work against their wishes and they are easily manipulated by giving a little greed. A few Indians are less educated as well as there are also the totally illiterate persons because of such reasons they are irrations on various issues and are incompetent to make and express a logical view on any contemporary need. Influent persons take unfair advantages of their ignorance and need.

¹⁴ CAD, Vol. VII, 23-11-48, at p.540: referred in Law & Social Transformation, P. Ishwara Bhat, Eastern Book Company, Reprint 2012, at page 716.

¹⁵ Constituent Assembly of India Debates, Volume VII, 23-11-48, at p. 548

Judicial Attitude towards Framing of Uniform Civil Code

Judiciary is the guardian of individual's liberty as well as the interpreter of law. It tries to remove hurdles of the society by giving a positive interpretation of legal provisions which helps to society in moving forward. In *Jorden vs. S.S.Chopra*,¹⁶ the court viewed the need of uniform civil code in the matters of marriage and divorce. Afterward, the next issue which came before the court was of *Mohd. Ahmed Khan vs. Shah Bano Begum*.¹⁷ It was a very burning issue in the legal and social regime and have a considerable effect on the law. In this matter, a Muslim husband gave triple talaq to his wife in her old age. As in Muslim law, Muslim husbands are given unfettered right of giving talaq to his wife and there is no right of getting maintenance from her husband after the period of iddat. The Apex Court was very much sense on this issue in the view of pity condition of Muslim women. In this case, the Apex Court examined that whether the obligation of Muslim husband towards his divorced wife is confined only till the period of iddat according to the Muslim customary law or it would prevail also beyond iddat period for all the period of destitution under section 125 of the Code of Criminal Procedure, 1973. The court decided the case in the light of section 125 of Criminal Procedure Code, 1973 which applies on all married women without taking into consideration their respective religion for deciding maintenance from the husband after the period of iddat and stated the need of uniform civil code. The Court considered section 125 of the said Act a secular welfare measure prevailing independent of traditional law. The court was fed up with the fact that the UCC has remained dead letter till now. After the judgment of this case, the government under the pressure of various religious groups framed legislation "The Muslim Women (Protection of Rights on Divorce) Act, 1986"¹⁸ which nullified the effect of Shah Bano case. Though in *Danial Latifi vs. Union of India*¹⁹ the Supreme Court discussed the need for maintenance of Muslim divorced wife under Muslim law after iddat period.

In the leading case of *Sarla Mudgal vs. Union of India*²⁰ the Apex Court emphasized the urgent need of a uniform civil code for the sake of maintaining the prosperity, peace, and integrity of the nation. The court questioned to the loyalty of the governments by stating that governments came and gone also but no government took even a single step for the framing of the code. The UCC is never intended to infringe the right to religion in any way. Article 15 also vanishes the discrimination on the ground of religion. The discrimination on the ground of religion is not permissible in the country. There is no necessary relation between the right to religion and personal laws. In this case, a Hindu married husband converted into Muslim religion and secondly married with a Muslim lady because in Muslim personal law a male can marry till the four. The court held that the conversion of a Hindu husband into Muslim for marrying someone else does not suo moto dissolves his marriage with his Hindu wife. The court punished him for bigamy under section 494 of Indian Penal Code, 1860. The court also directed to frame uniform civil code.

The one other case of *Lily Thomas vs. Union of India*²¹ in which the Supreme Court once again focussed on the need of uniform civil code to demolishing the gender inequality from the society but also stated that the government is not bound for the framing of the UCC because it is a part of directive principles and the court did not direct to frame the

¹⁶ AIR 1985 SC 935 p.

¹⁷ AIR 1985 SC 945 p.

¹⁸ Act No. 25 of 1986.

¹⁹ AIR 2001 SC 3958p.

²⁰ AIR 1995 SC 1531p.

²¹ AIR 2000 SC 1650 p.

uniform civil code in *Sarla Mudgal case*²². In this matter also a Hindu husband converted into Muslim religion for the second marriage. The court held his conversion null and void because of his malice intention. The court stated that the relation of marriage is a pious institution. The Apex court also held that values of religions are not subject to exploitation. Religion should not undergo exploitation. Though, in *Ahmedabad Women Action Group vs. Union of India*²³, it was requested by the court to declare polygamy null and void in Muslim law but the court denied declaring the same by stating that it should be done by the framing of legislation. In *Savitri Pandey vs. Prem Chandra Pandey*²⁴ the Supreme Court held that for the disposal of cases relating to marriage, divorce the uniform civil code should be framed so that the individuals of all religions can get equal justice.

The only attempt made by the government is the codification of Hindu law while the codification of Muslim law still remains. The women are suffering from the centuries. To divorce the law from the religion is necessary. However, there are challenges in the framing of UCC before the government but the step should be taken now. In its recent historic judgement *Shayara Bano and others vs. Union of India and others*²⁵ (triple talaq case) the Supreme Court once again tried to keep free Muslim women 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. It is against the gender equality. The Apex Court directed to the government to frame the law on this subject within six months from the judgement. In a Parliamentary session of 2017 after coming to the said judgement the Bill was proposed and passed in Lok Sabha but it could not be passed in Rajya Sabha and left for next sitting.

CONCLUSIONS

Uniform Civil Code is an attempt to propose the human rights values into personal law system. It will confer the equal rights to women and will be helpful in social transformation by the implementation of social engineering. Whether UCC is a part of directive principles of State policy through these principles are to implement the positive impact upon society and various provisions of Part 4 have been recognized and protected under the umbrella of Part 3rd of the Constitution. Article 44 of the Constitution of India along with Article 14, 15(3), 21 and 51-A is aimed to solve the problems of the diversity of usages, custom in different parts of India and gender discrimination.²⁶ The temperament of the Parliament and its' government towards framing of UCC has been misconceiving which came to it on the back foot. This is the unwillingness of the government that it is not framed till now. The Supreme Court has regretted that Art.44 has so long remained a 'dead letter' and recommended early legislation to implement it.²⁷ The Supreme Court has repeatedly focussed on the necessity of framing the UCC. Article 44 is based on the concept where no necessary connection exists between religion and personal law. It will cause no harm in any way to the right to religion. It will successfully help in removing the contradictions based on different ideologies.²⁸

Uniform Civil Code is very important for the protection of oppressed women, to protect their human rights, to remove discrimination against them irrespective of their religion or community they belong and, lastly to make our

²² supra noted at 14.

²³ AIR 1997 SC 3614 p.

²⁴ AIR 2002 S.C. 591 p.

²⁵ Writ Petition (C) Nos. 118, 288, 327, 665 of 2016, decided on 22nd August, 2017

²⁶ Law and Social Transformation, P. Ishwara Bhat, Eastern Book Company, Reprint 2012, page 746

²⁷ Jorden Diengdeh vs. S.S. Chopra, AIR 1985 SC 935 p.

²⁸ John Vallamattom vs. Union of India, AIR 2003 SC 2902p.

national laws in accordance with the international instruments which are legally binding on India through various international conventions and international Human Rights instruments which are ratified by India. Its framing should be treated as the positive step on the path of democracy to protect social and distributive justice on the common platform. The framing of UCC is urgently needed and to maintain the human dignity of every individual. It must be framed now without causing any delay. The decision of Apex Court in the matter of triple talaq is though highly appreciated but now the time has come to take hard and major steps to establish social balance. The piecemeal judicial attempt is no substitute for comprehensive code.²⁹ The framing of uniform civil code is desirable to foster a sense of equality and national unity without undue delay.

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