

“Uniform Civil Code”

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ABSTRACT

India has gone through various tragic and victorious moments in last seventy years after Independence and is claimed to be a secular country and every citizen secures its right to practice any religion in the country. But due the secularism, there has been a misuse of the personal laws for selfish purpose in the country. From time to time the court and the politicians have laid down the importance of the uniform civil code in the country but no one has been successful to influence the lawmakers or the legislative assembly who is empowered to make laws for the same. This paper will try to understand the need of the Uniform Civil Code in India given under the Article 44 of our Constitution. India is having the largest democracy in the world with having highest level of diversified population, so to resolve this issue India requires a flexible law rather than a rigid law. This paper will try to analyze and evaluate the entire dialogue around Uniform Civil Code and the arguments on its necessity and the various doubts on its nature. It will touch the controversies of Uniform civil code with other articles of the Indian Constitution and will study the various aspects of the Uniform Civil code. This paper will also throw a light on the application of Uniform civil code and how it helps in strengthening the national unity and will try to evaluate application of Uniform civil code globally and domestically in India.

INTRODUCTION

India is a secular state which means that it does not follow any particular religion and it does not have any official religion for the country. It is a land where many religions are followed like Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, Christianity, Sikhism, etc. In the 42nd amendment of our Constitution in 1976, the term “secular” was added in our preamble which means that the state will not follow any particular religion and people will have the freedom to practice any religion. This is given as a fundamental right under Article 25¹ and Article 26² of our Constitution. The Supreme Court has declared that “secularism is a part of fundamental right and an unalienable segment of the basic structure of the country’s political system³”

Religion is being used as a weapon by the political institutions and is used as a source for conflict since ages. Different personal laws are governed by different religions. “Hindus, Sikhs, Jains and Buddhists are governed by the Hindu Marriage Act” of 1956 in cases relating to

¹ Art. 25. Freedom of conscience and free profession, practice and propagation of religion.

² Art. 26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

³ State of Karnataka v. Praveen Bhai Thogadia, AIR 2004 SC 2081

marriage, divorce, maintenance, etc. Christians are governed by the laws relating to Christianity and Muslims by the Islamic Law.

“The Uniform Civil Code as envisaged in the Article 44 of the Constitution includes inter alia, entire gambit of family laws. As far as the uniform legislation is concerned, it has covered every aspect of law except the laws related to marriage. There is no uniform civil code of law applicable to the marital relation of all, irrespective of ethnic or religious affiliations. So through Article 44, the modern State is called upon to perform its onerous responsibility of giving uniform civil code on the above subject, applicable to all the citizens of the country.”

PERSONAL LAWS IN INDIA

People living in India follow different religion and faiths and are governed by different sets of personal laws in respect of their family affairs. They are statutory and customary laws which are applicable to particular religious or cultural groups within the national jurisdiction. Hindu and Muslim personal laws are the oldest part of the Indian legal system. There has been continuous process of codification in the Hindu personal law. Hindu law not only applies to the Hindu caste but also includes Sikhs, Jains and Buddhists. Initially women were not having equal rights as compared to men in the family matters. After the amendment in section 4⁴, section 6⁵, section 23⁶ and section 30⁷ of the Hindu Succession Act, 1956 in 2005, women were given coparcenary rights in the joint family property. The number of shares were equally distributed between the daughters and the son of the family. The Muslim personal law has been comparatively left untouched by the legislation. Muslims follow what has been written in the Quran. Quran is not a complete code in itself and has been formed over the period of 23 years from 609 to 632 A.D. “Study of different religions indicates that they have philosophical depth, spiritual intensity, vigour of thought and human sympathy. Holiness, Purity and charity are not the exclusive possessions of any religion in the world.⁸” Some of the personal laws are:

- The Indian Divorce Act, 1869
- The Indian Christian Marriage Act, 1872
- The Kazis Act, 1880
- The Anand Marriage Act, 1909
- The Indian Succession Act, 1925
- The Child Marriage Restraint Act, 1929
- The Parsi Marriage and Divorce Act, 1936
- The Dissolution of Muslim Marriage Act, 1939
- The Special Marriage Act, 1954

⁴ The Hindu Succession (Amendment) Act, 2005.

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Radhakrishnan, Recovery of Faith 204 (George Allen & Unwin Ltd.)

- The Muslim Women (Protection of Rights on Divorce) Act, 1986
- The Hindu Marriage Act, 1955 and
- The Foreign Marriage Act, 1969

NEED FOR THE UNIFORM CIVIL CODE

It was stated that a common civil code will help to break down the practices which are harmful for women and will give them an individual identity. Hence, the uniform civil code means unifying all the personal laws to have a one set of laws which are secular in nature dealing with the aspects that will to all the Indian citizens irrespective of their community they belong to. If uniform civil code is fully implemented it would help in strengthening the national integration and can handle the private laws of all religious and spiritual communities concerning the matters that are secular in character to reinforce fraternity & unity among them by providing them with a collection of non-public laws which includes the fundamental values of humanism. All the modern countries have a common civil code for their citizens. The basic principle behind the formation of a uniform civil code is to end the discrimination based on the religions and every citizen should be treated equally. Personal laws of all the religions have oppressed the women citing religious and social obligations and played a big role in causing in the rise of gender discrimination. In India, different sets of personal laws for different religions go against the principle of equality which has been enshrined in the constitution. It also challenges the concept of unity and is against the secular credentials of the republic. The laws which deals with the disputes of marriages, divorce, custody, adoption, inheritance should be same for the religions or caste. When the reforms for strengthening the position for women in the society are being given the utmost significance, there is an urgent need for a new civil code to remove the discrimination against the women. With the enactment of the uniform civil code, secularism will be strengthened and separation between various religions in the country will disappear and India will become more cohesive nation. In a nutshell, uniform civil code is necessary to improve the integration of the country by bringing all the communities into a common place which does not form any essence of a single religion.

VIEWS AGAINST UNIFORM CIVIL CODE

Women have been treated far subjugation and suffered full of gender inequalities. The history of legislative reforms in India shows that gender equality is frequently subordinated and if one wonders then the unity and integrity of India is going to be affected if Hindu, Muslims, Christians and Parsis marry, divorce in accordance to their personal laws. The common civil code is against the word “ secularism”

“The center point of controversy revolving around uniform civil code has been the secular character of the nation and the freedom of religion enumerated in the Constitution of India. The idea of common civil code is also against the secularism which is one of the essential features of Indian Constitution. The preamble of the Constitution states that India is a secular democratic

republic. This means that there is no State religion but State equally respects all religions. Secular State shall not discriminate against anyone on the ground of religion and also not interfere in the religious affairs of the communities. Even in the triple talaq case, Supreme Court had held that freedom of religion is subject to restrictions under Article 25 & 26. The right to follow personal law has been elevated with highest status of fundamental rights.”

Basically gender-based discrimination has been inherent in the mindset of present male dominated society not in the religious texts. Further no religion permit any kind of discrimination, violence and subjugation against women. Gender impacts the lives of the women most intensely, it relegates them to a subordinate the status and makes them vulnerable to a large number of social ills like infanticide, foeticide, child marriage and gender biases in the rights of coparcenary property etc.

Further, Supreme Court held in the **Minerva Mills** case in 1980⁹, reiterated the principle of the basic structure of constitution advocated in the Kesavananda Bharati case. It added two more features of the constitution under the ‘basic structure’ category.

1. “Limited power of Parliament to amend the constitution”
2. “Harmony and balance between fundamental rights and directive principles.”

JUDICIARY’S ROLE

- **Mohammed Ahmed Khan v. Shah Bano Begum**¹⁰

In this case, Shah Bano Begum claimed maintenance under Section 125¹¹ of Code of Criminal Procedure, 1973 and her claim was accepted by the Court. The then Chief Justice of India , Y.V. Chandrachud, said that , "A typical common code will help the cause for national coordination and integration by expelling different loyalties to law which have clashing belief systems and conflicting ideologies." This provoked the incumbent Rajiv Gandhi government and passed the “Muslim Women (Protection on Divorce) Act, 1985” which banned the Muslim ladies from maintenance under Section 125.

- **Sarla Mudgal v. Union of India**¹²

In this case, the husband had did his second marriage while converted into Islam but did not dissolve the first marriage. If the legal interpretation of the Section 5 and Section 11 of Hindu Marriage act is done then the husband cannot be held liable. Supreme Court of India resolved this issue by stating that “if there is a conflict between two personal laws then the law which is

⁹ AIR 1980 SC 1789

¹⁰ AIR 1985 SC 945

¹¹ S.125 - Order for maintenance of wives, children and parents

¹² AIR 1995 3 SCC 635

serving the purpose best will prevail. It was held that the conversion to Islam does not amount to automatic dissolution of the marriage which has been performed under the Hindu law.”

- **John Vallamottam v. Union of India**¹³

In this case, Christian Priest, John Vallamattom questioned the sacred legitimacy of Section 118¹⁴ of the Hindu Succession Act, 1925. A three judge bench of the Supreme Court of India struck down this provision as it was violating Article 14 of the Constitution of India. Chief Justice Khare commented: “We would like to State that Article 44 provides that the State shall endeavor to secure for all citizens a uniform civil code throughout the territory of India...It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies”

- **State of Bombay v. Narasu App mali**¹⁵

The Hindu Bigamous Marriages Act had imposed severe penalty on Hindu for contracting a bigamous marriage. In this case, the validity of the abolition of polygamy was challenged. The then Chief justice of Bombay high court J.M.C Chagla stated that one community might be prepared to accept the social reforms, another community may not be prepared for it. It was challenged particularly on two grounds. It was first stated that the personal laws applicable to Hindus and Mohammadans are subject to the provisions which are there in Part III of the Constitution of India and would be void to the extent to the provisions which are inconsistent with the Fundamental Rights. These personal laws allow only polygamy and not the polyandry. So in this case, the Supreme Court of India did not only uphold the validity of the legislation but also emphasized that the said legislation was a step to secure the Uniform Civil Code.

APPLICATION OF UNIFORM CIVIL CODE

- **Global perspective**

In other countries like USA, the concept of secularism is very much different. India is having secularism in which government protects and promotes different religions but the other countries think of religion as a sphere distinct from the sphere of the state. All countries have a uniform civil code or uniform law – civil or criminal. The European nations and USA have a secular law which applies equally and uniformly to all citizens irrespective of their religion. Islamic countries have their laws based on shariah which is applicable to all the individuals irrespective of their religion.

¹³ AIR 2003 SC 2902

¹⁴ S. 118 - Bequest to religious or charitable uses

¹⁵ AIR 1952, Bombay, 84

- **Indian perspective**

India is governed by different religious laws which are diverse in nature for the population of country. Goa is an exception to the fact as there is single code in Goa which governs all the Goans, irrespective of their religion or linguistic. Aspects which are given in Goan civil code are different from the Indian laws in the following ways: -

1. If a married couple has a joint ownership of assets then in the case of the divorce the assets are divided equally amongst the couple.
2. Parents residing in Goa cannot disinherit their children. Half of the property has to be transferred to their children.
3. Muslim men in Goa are not allowed to practice polygamy and there is no concept of verbal divorce.
4. Goan civil code allows bigamy for Hindu men under some circumstances.

RECOMMENDATIONS AND CONCLUSION

India has a unique blend and mergers of codified personal laws of Hindus, Muslims, Christians and Parsis. However there is no law which is acceptable to all the religions in India. The personal laws have failed to respect and treat each and every human being with dignity which he deserves. Uniform Civil Code can be of help when drafted in agreement with the heads of all the personal law makers. It will eliminate gender inequality and will help in protecting the rights of the people. But in India, it would be huge task to implement the Uniform civil code as people are not yet ready. It looks good on paper but its actual implementation will be a big challenge. With uniform civil code, it brings the fear of communal riots and unrest in the country. Furthermore, minority communities such as Zoroastrian have started to marry within themselves so as to protect and preserve their community. It has failed to put the feeling of protection amongst the minorities.

But times have changed, societies have changed and it is high time that laws should also change. Uniformity in cases of criminal law has been always readily accepted when needed. By bringing Uniform civil code, fundamental rights that have been guaranteed to it citizens under Article 25 to 30 will be fenced. Justice Y.V. Chandrachud, rightly said, “a common civil code will also help in strengthening the cause of national integration by removing conflicting interests”