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Uniform Civil Code for Gender Justice

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ABSTRACT

The present paper is aimed at explaining the concept of “Uniform Civil Code towards Gender Justice”. A civil code may be a set of laws which governs the rights concerning to property also as in personal matters like divorce, marriage, adoption, inheritance etc. Article 44 of the Indian Constitution mandates implementation of uniform civil laws for personal laws. While the enactment of this civil code is restricted by virtue of it being a non-binding Directive Principle of State Policy and the jealous resistance of critics who cite the compromise of religious identities of minorities. This leads to overlooking objectivity and pragmatism during fervent deliberations on the code. The main issue of securing justice and equality to women is getting confined in many other recent issues like religion, secularism and freedom. However, gender issues in this respect required to be addressed more seriously. Though the Indian Judiciary has also done a lot but it is ground reality that there are some restriction on judiciary and it can't take over the functions of other organs of the state.

This paper is an attempt to co-relate the question of gender justice and equality to the issue of the adoption of uniform civil code, its need and relevance for enactment throughout the territory of India.

Keywords: Justice, Equality, Secularism

“Our right of interference is limited entirely to giving education. Women must be put into a position to solve their own way. No one can or ought to do this for them. And our Indian Women are capable of doing it as any in the world.”

- Swami Vivekananda

I. INTRODUCTION

The Indian democratic society, which is governed by the rule of law, in which it is predicted that all citizen are equal before law and entitled to get equal protection of law, irrespective of their caste, creed, religion, race and sex etc. In the pillar of humanity women are jeopardized in many ways and compel to face many problems of varied nature only because of being a woman. For their protection, no fruitful result is provided by any constitutional and statutory

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protection and safeguards. However, the Indian Judiciary has also done lot but in reality there are some restrictions on jurisdiction of judiciary and it can't handle the functions of other organs of the State. In this connection, the Uniform Civil Code, a constitutional mandate, is waiting the mercy of Indian Legislature to take the form of law to provide equal status to women, who are victims of diversities in personal laws. In India, it is harsh fact that women at the first instance, are not women rather they are Hindu, Muslim, Christian, Jew or Parsi. This type of mentality is the root cause of our backwardness, discrimination and various social evils. It is necessary to understand the utility of Uniform Civil Code which the prominent tool to harmonise the diversities of laws in personal matters which will ultimately achieve the goal incorporated in the gender justice. Indian Prime Minister Mr. Narendra Modi stated that in today's world, it is more important that women get equality, independence and the right to take life's decisions. If we are keeping pace with the time s in other things, we should also feel the aura of 21st century in such matters.² After all it is important that the ideas and traditions of one specific class or individual shouldn't be imposed on another specific class or individual. The main issue of ensuring justice and equality to women is getting trapped in many other contemporary issues like religion, secularism and freedom. Women empowerment in central areas like social status, gender bias, health, security and empowerment are of crucial prerequisite. Article 44 expects from the state to secure a Uniform Civil Code for all citizens in India. There is no Uniform Civil Code in India but a Uniform Criminal Code subsists. The Criminal law is equally applicable to all without any religious affiliation. Though, in the case of civil law particularly in the matter of personal laws there is no uniformity.

II. CONCEPT OF UNIFORM CIVIL CODE

The Uniform Civil Code synchronizes the similar type of secular laws to supervise all people equally irrespective of their religion, caste and tribe. It restores the right of the citizens who are governed under different personal laws based on their religion or caste. The major areas which takes place under civil code includes the acquisition and administration of property, marriage, divorce and adoption. It is incorporated as Directive Principles of State Policy in Article 44 under Indian Constitution, but unfortunately after all these problems it can't be enforced by courts it is regarded as non-judiciary rights.

This expression is combination of three terms i.e. Uniform, Civil, Code. Uniform means 'remaining the same in all cases at all times' or 'a form of things which differs from common';

²Narendra Modi: Uniform Civil Code does not mean a Uniform Civil Code, (May 07th, 2014), <https://www.rediff.com/news/report/ls-election-interview-slide-show-1-the-narendra-modi-interview-we-will-empower-minorities-with-education/20140506.htm> (Last visited on Apr 27th, 2020)

Civil derived from Latin word '*civilis*' means 'citizen'; Further the term Code has been derived from the Latin word '*codex*' which means 'codified laws' or 'a book consisting originally of wooden tables covered with wax and later of sheets of parchment of papyrus'³.

The Uniform Civil Code is considered as a part of secularization of personal laws without casting any religious identities. Uniform Civil Code of India is a term referring to the concept of an overreaching Civil Law Code in India⁴, de facto the concept of 'UCC' has two aspects firstly to provide and implement the uniform law for all communities; secondly, to have similar and equal laws as well as uniformity within communities viz. between men and women and for all regarding equality and gender justice.

III. CONCEPT OF GENDER JUSTICE

Gender Justice is generally deals with independent activity to set up liberty for women and to promote women's rights through legal changes and the participation of women in social and economic policy. Any material definition of gender justice is constructed on a exclusive political ideology, a groups of convictions about what is 'right' and 'good' in human relationships, and how these prudent results may be attained.

"Gender Justice is about more than simply questioning the relationship between men and women. It includes drafting strategies for proper action toward transforming society as a whole to make it more just and equal and it means 'a place in which women and men can be treated as wholly human'. Moreover, it implicits moving away from arbitrary to well-reasoned, justifiable and balanced that is, fair-social relations". Gender Justice is an instrument to reduce inequalities between women and men due to which women's subordination to men. It shows consequence of gender justice and also helps in differentiating between what is to be achieved and how is to be achieved.

IV. GENDER JUSTICE ON THE CONSTITUTIONAL BEDROCK

The preamble of the Indian Constitution commences "We the people of India....." which comprises men and women of all castes, religions etc. it persuades 'dignity of individuals' which also comprises dignity of women. According to this framework, several prominent enactments have been setup, pertaining to every walk of life, family, succession, guardianship and employment which directs at affording the protecting status, rights and dignity of women. Our empathetic Constitution, the fountain head of laws, is gender conscious. It not only allows equality to women but also empowers the State to adopt system of positive discrimination in

³ Dr. P.K. Pandey, Gender Justice and Uniform Civil Code : An Overview, Chapter 2, SSRN 17, Sep (2014)

⁴ Dr. Saroj Bohra, Uniform Civil Code, Women Empowerment and Gender Justice, vol 3, SJIF 2349-7858 (2013)

favor of women for nullifying the aggregate socio economic, education and political disadvantages suffered by them. There are certain constitutional provisions which play a prominent role in the field of women empowerment. Article 15(3) empowers the state to make special provision for women empowerment. Article 39(a) requires state to direct its policy towards securing that the citizens (including women also) equally have the right to an adequate means of livelihood. Article 39(d) requires that State shall direct its policy towards securing equal pay for equal work. This Article draws its support from Article 14 & 16 and the main aim is to build a welfare society and an equalitarian social order for both men and women in the Indian Union. It also imposes an obligation on state to make provisions for securing just and humane conditions for work and to provide maternity relief for all female workers. Under Article 243D(3)(4), 243T(3)(4) reservations are provided to empower women in political field.

In *Valsamma Paul v Cochin University & Ors*⁵, it has been held that human right of women encompasses gender justice and it is also accountable to the Convention for Elimination of All Forms of Discrimination Against Women. Human rights for women comprising girl child are inalienable, integral and an indivisible part of universal human rights. In *Kharak Singh v State of Uttar Pradesh & Ors*⁶, the court has recognized that under Article 21 the person has complete rights of control over his body organs. It also includes the absolute right of a woman over her reproductive organs. In *Vishakha v State of Rajasthan*⁷, the court throws light on the increasing menace of sexual harassment and observed “Each incident of sexual harassment of woman at workplace in violation of her fundamental rights of Gender Equality and the Right to life and liberty”.

Article 44 of Constitution recommends that the state shall endeavor to secure for citizens a uniform civil code throughout the territory of India. This article was framed as a recommendation so as to permit the State any time to integrate and unite the country after Independence before moving to civil reforms. All the familiar grounds covered by a civil code comprises laws connected to acquisition and administration of property, marriage, divorce and adoption. The above discussions generally establish that the framers of the constitution were aware of the gender injustice and sexual inequality of women and incorporated in Article 44 hoping that it be enacted and introduced in future at the appropriate time.

V. GENDER DISCRIMINATION UNDER PERSONAL LAWS

It is a well-known reality that in the personal laws of all communities gender injustice is

⁵ (1996) 3SCC545; 1996 SCC (L&S) 772

⁶ AIR 1963 SC1295

⁷ AIR 1997 SC 301

inherent. This is due to the result of socio-economic condition under which they evolved. Thus there is an urgent requirement for uniform civil code to assure not only equality between men and women but also to bring about gender justice. Women whose whole life is devoted for men in various forms like mother, wife, sister, daughter etc., are discriminated in personal law. In some specific community women are discriminated in the matters of marriage, divorce, inheritance, adoption, maintenance etc. and this is applicable to all personal laws. Some examples are:-

Under Hindu Law- Till the codification of Hindu Law in 1955 and 1956 the Hindu Women didn't enjoy equal rights along with Hindu men. Before 1955 polygamy was common among Hindus. The Hindu women couldn't hold any property as its absolute owner except in the case of Stridhan. J.L. Nehru said, "The British policy of non-interference with personal laws and mechanical interpretation or perpetuation of Hindu customs stopped the natural growth of Hindu customs stopped the natural growth of Hindu law and give rise to petrified rules"⁸. The Constitutional courts have led emphasis on many concepts and interpreted the provision to determine the status of women and to empower them. The mother can't be natural guardian of her children during the lifetime of her husband⁹ when the issue relating to mother as natural guardian was questioned, the court held that relegation of mother to inferior position to act as natural guardian is a violations of Article 14 and 15. In Gita Hariharan¹⁰ case, it was held that the guardianship right of women has undergone some modifications by this interpretation.

Again in Sarla Mudgal v Union of India¹¹, a division bench of Supreme Court advocated the introduction of Uniform Civil Code in India. In this present case it was held that conversion of a Hindu male to Islam only for the purpose of contracting bigamous relations. Under Section 494 of Indian Penal Code such marriages are declared as bigamous and void by the court. The court after referencing to various precedents on that matter, categorically held that till uniform civil code is acquired for all the citizens there would be an inducement to a Hindu husband who wants to enter in to second marriage is subsisting to become Muslim. Here the court throws light on the injustice to the legally wedded first wife. It was also noted by the bench that there is failure of successive governments, to implement the constitutional directive under Article 44 and also suggested that the personal laws of the minorities should be rationalized to develop religious and cultural amity preferably by entrusting the responsibility to the Law Commission

⁸ P.Ishwara Bhatt, Directive principles of State Policy and Social Change with reference to Uniform Civil Code vol.25, Banaras Law Journal 1989 pp. 75-96 at 76

⁹ Sec 6, Hindu Minority and Guardianship Act, 1956

¹⁰ AIR 1999 SC 1149

¹¹ AIR 1995 3SCC 635

and Minorities Commission. In *Lily Thomas v Union of India*¹², while dealing with the validity of second marriage performed by Hindu husband after his conversion to Islam, the Apex Court clarified that the court had not issued any guidelines for the codification of Common Civil Code and that the judges constituting the different benches had only expressed their views in the facts and circumstances under the case. It shows that the Apex Court in India which have great judicial activism initially with regard to uniform civil code has taken a backward step with this clarification.

UNDER MUSLIM LAW- In the Pre-Islamic Arabia, the women relished a peripheral status in all grounds when compared to men. The advent of Islam has attributed much for the amelioration of Muslim women and mitigation of their problems. The Holy Quran provides equal rights to men and women and places women in respectable position. The Muslim law allows polygamy (four wives at a time) to Muslim male but wife don't have same option. A Muslim husband can enunciate unilateral divorce but wife to remarry same husband has to go through 'halala'¹³ process is very inhuman and discriminatory, her status is inferior in customary divorce also as in all forms divorce depends on her husband consent. In the matter of maintenance also the divorced Muslim wife is not required to be maintained beyond 'Iddat' period. The Criminal Procedure Code imposes obligation on a husband to maintain his wife including divorced wife until she maintains herself is a secular law and is applicable to all. In case of *Danial Latif v. Union of India*¹⁴, it was held by the Constitution bench of Supreme Court that "where the constitutional validity of the Act of 1986 was challenged, and upheld that a Muslim husband is responsible to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well even beyond the Iddat period must be made during the Iddat period under Section 3(1) (a) of the Act. It was therefore held that the liability of a Muslim husband to his divorced wife arising under section 3(1) (a) of the Act to pay maintenance is not confined to the Iddat period. In *Shah Bano case*¹⁵, the Supreme Court held that Section 125 of the Code of Criminal Procedure (CrPC), 1973, being a secular provision was applicable to all and therefore in accordance with it the husband was bound to maintain his wife so long as she doesn't remarry. The Court regret that the legislature had disregard towards Article 44.

The Supreme court applied the doctrine of harmonious construction and construed the

¹² AIR 2000 SC 1650

¹³ 'Halala' means 'The divorced Muslim wife has to marry another person and get the marriage consummated. Thereafter she has to take divorce from second husband and then she can be able to marry the first divorced husband.'

¹⁴ (2001) 7 SCC 740

¹⁵ *Mohd. Ahmed Khan v. Shah Bano*, AIR 1985 SC 945

enactment very much in line with its Shah Bano judgment¹⁶. The position, therefore, is that a Muslim woman is entitled to reasonable and fair maintenance under Section 125 of the CrPC so long as she remains unmarried after the divorce.

Many other sects like Christian, Parsi and Jews also have provisions of discriminates like conversion is ground for divorce among Christians for Convertor under Convert's Marriage Dissolution Act 1866; under Parsi Marriage and Dissolution Act 1936 conversion is ground for divorce for non-convert couple. A Christian husband can divorce wife on ground of adultery but wife has to prove more grounds *in lieu of* adultery on her husband's side to obtain divorce.

While gender biasness affects under all subsisting personal laws a communal bias is evident even in allegedly secular Special Marriage Act 1954. However an amendment to SMA in 1978, with the primary aim of preserving property accruing to Hindu amendment in the avowedly secular law, on contracting a civil marriage, a Muslim, Christian, Parsi or Jew no more has approach to her or his personal law of succession. They are governed by the Indian Succession Act, 1925. But a Hindu, Buddhist, Jain or Sikh shall, on contracting the same civil marriage, hold on his or her personal law of succession.

VI. OBSTACLES TO UNIFORM CIVIL CODE

There are major three objections raised for implementations of Uniform Civil Code in India are as follows:-

Firstly, Article 44 of the Indian Constitution must be repealed because personal laws are sacrosanct and immutable and no legislature can amend it: Such an objection is baseless, irrational and illogical because there is nothing divine about personal laws. The provision in Article 44 is nothing but an important implementation of the objective of 'fraternity, unity and integrity of the Nation', which is not only given in the preamble to the Constitution, but also in the Fundamental Duties in Article 51 A(c) and (e).

Secondly, Uniform Civil Code is in opposition to Fundamental Right guaranteed under Article 25 & 26. Both the articles are however subject to public order, morality and health and to the values enshrined in all other fundamental rights such equality and social justice. Chief Justice in John Vallamattom case¹⁷ reminded that 'there is no necessary connection between religious and personal law in a civilized society.

Thirdly, UCC is in opposition of fundamental right contained in Article 29. An additional

¹⁶ Soumik Chakraborty, Uniform Civil Code & Gender Justice, (December 17th, 2014), <https://www.lawctopus.com/academike/uniform-civil-code-gender-justice/> (Last visited on Apr 27th, 2020)

¹⁷ John Vallamattom and another v. Union of India, (2003) 5 SCALE 384

defense taken against Art.44 is of Art.29 that guarantees right as to culture. It is claimed that personal law builds a part of culture.

A danger is revealed that if Article 44 is implemented, it would tear away the isolate identity of minority communities. This danger is totally groundless as there are Articles 25-27 to protect one's own religion, religious beliefs & sentiments.

VII. CONCLUSION

Uniform Civil Code is an prominent tool to achieve the goal sanctified in the Constitution of India, has become only debatable issue and our Indian Legislature, due to absence of commitment, did nothing to enact the UCC rather this organ of State, to get advantages in general elections, has attempted to obstruct the path of UCC which has been facilitated by Judiciary from time to time. De facto, it is negligence on the part of legislature which can be never said in interest of national integrity and unity.... a uniform civil code is a crucial for the protection of the persecuted, promotion of national unity and solidarity, for safe guarding the human rights of women in India irrespective of the religious community they attach and, moreover, to upbringing the national laws in conformity with the legally binding provisions of international law in the form of various international human rights instruments already ratified by India.
