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Uniform Civil Code a Constitutional Mandate: Issues and Challenges

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ABSTRACT

*The constitution of India treats all people equally in terms of equality, it prohibits Inequality. The preamble of Indian constitution secures to all citizens of India “equality of status and opportunity as well as promote among them all justice.” Article 14 of our constitution provides that, “the state shall not deny to any person equality before the law or equal protection of laws within the territory of India,” equality before law and equal protection of laws is also the basic postulate of **Rule of law**. It means, the law should be common among people of equal circumstances, and everyone should be treated by the common law. In India there are multiplicity of family laws and there is no legal uniformity in relation to marriage, adoption, divorce, maintenance and succession etc. consequently the country is still facing the social issues and challenges, due to the absence of a clear and uniform family law. Although the article 44 of our constitution provides that the state shall endeavour to secure for the citizen an uniform Civil Code throughout the territory of India, but due to political interest of several political parties, this effort could not get success so far. It is the need of hour that uniform Civil Code is required to maintain Social unity and integrity of the country.*

I. INTRODUCTION

India is a democratic and social welfare country, it prohibits inequality. The preamble of our constitution secures to all citizens of India. ‘Equality of Status and of opportunity and to promote among them all justice. Besi des this Article 14 of our constitution provides that : “*The state shall not deny to any person equality before the law or equal protection of laws within the territory of India.*” It means ‘All are equal before the law and are entitled to get equal protection of law without any discrimination.’² The phrase ‘equality before law’ is somewhat a negative concept for it implies absence of any special privilege in favour of any particular individuals, while the expression ‘equal protection of laws’ is positive in operation, ensuring equality of treatment to all in equal circumstances.

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² See also Art. 7 of the Universal Declaration of Human Rights, which came into the existence on 10 Dec. 1948.

The phrase 'equal protection of laws' is based on section 1 of the fourteenth amendment of constitution of the United States of America adopted on July 28, 1868, which runs as nor shall any state-deny to any person within its jurisdiction the equal protection of laws. It means that all persons have the right to equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed by laws.

The concept of equality has been held basic to the **Rule of Law** and is regarded as the most fundamental postulate of republicanism. In **Indira Nehru Gandhi V. Raj Narayan**³ the majority of the supreme court has held that the right to equality conferred by Article 14 is a basic structure of the constitution and an essential feature of democracy or rule of law.

India is a multi-religious country, and every religion has its own philosophies, own concepts and rules about marriage, divorce, adoption, etc. and our constitution protects all religions. India has no religion of its own but it treats all religion equally. Indian constitution embodies the positive concept of secularism. Secularism is a basic feature of Indian constitution. It means a state which has no religion of its own as recognized religion of the state.

India has a multiplicity of family laws. Every religion has its own personal law and because of secular concept of India every religion follows its own personal laws. Christians have their own Christians Marriage Act 1872, and Indian Divorce Act 1869. Parsis have their own marriage and Divorce Act 1936. Hindus have their own Hindu Marriage Act 1955, Muslim law to still uncodified and traditional, there is also a special marriage act 1954 which is a secular code of marriage law of a general nature under which any two Indians irrespective of their religion may get marry but it is an optional law of which any two Indians can take advantage and thus we can say that family law in India is communal is so far as each community or religious group has its own distinct law for given domestic affairs and religions. But it creates confusion, nowadays family law is thus a maze, because what law will apply to a person depends on the religion he follows and so many complications arise in the family laws.

II. NEED TO UNIFORM CIVIL CODE

In India there is no legal uniformity in relation to marriage, adoption, divorce, maintenance, succession etc. while the constitution of India secures to all its citizens 'Equality before law and equal protection of laws'. There is no homogeneity in India in matters of family relation, not only there is diversity of laws, but the diverse laws, have diverse provisions on similar point and all this creates very confusing situation at present.

³ AIR 1975 SC 2299 for facts see infra 1168-69.

For example : (i) monogamy has been introduced for everybody and bigamy is a crime, except muslims, who still enjoy the privilege of having four wives at a time besides this he can enjoy others as a *mutta marriage* in a same time. (ii) only Hindus can adopt a child in the sense of affiliating him or her legally and confer on the child rights of property. Others cannot adopt even if they want to do so. They have to take recourse to the guardian and wards Act, but guardianship over a child falls for short of conferring the legal status of a son on the ward. (iii) The various divorce laws prevalent in India at present are also inexplicable and indifferent on some matter of dissent of marriage such as parsi law requires a three year period of separation and it could serve as a ground both for judicial separation or divorce, while Indian Divorce Act provides for a period of two year separation and makes it a ground for judicial separation only, that is to say that each law suffers from some deficiencies and identical matters show differences. (iv) The provisions related to maintenance have been inserted in every personal laws, besides this anybody can take recourse the provision of Sec. 125 of Cr. PC 1973 for maintenance. Muslims have always opposed it and persist on their personal law regarding family matters. (v) A muslim woman can only get maintenance from her husband till *Iddat* period not after that.⁴

It is true that present day family law is a mixture of old and new, it is of complicated, incoherent and non-symmetrical nature and so there is need for such a code which will do away with diversity in matrimonial law. Family laws of religion need to be changed in view of contemporary social circumstances. It is important to simplify the Indian Legal System to make Indian Society More homogeneous, only then the idea of a secular society can be achieved and for these there is need for uniform civil code for all religions.

III. CONSTITUTIONAL INITIATIVES FOR UNIFORM CIVIL CODE

The constitution maker were aware with the immediate circumstances of the time. They knew that people of different religions and community live together in India. But everyone has different laws and traditions in respect of family matters. Therefore an uniform civil code is indispensable to maintain the unity and integrity among them. Thus, Article 44 of the constitution provided for uniform civil code Articles 44 of Indian Constitution directs: “*The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*” Article 44 directs, in order to cut across religion, caste and tribes and to build up a homogeneous nation, that the state shall endeavour to secure for the citizens a uniform civil

⁴ Sec. 3, Muslim women (protection of rights on divorce) Act 1986.

code throughout the territory of India.⁵

Though, it would be difficult to bring the persons of different faiths and persuasions on a common platform but, the court held that ‘a beginning has to be made if the constitution is have any meaning’.⁶

The objective of Article 44 of the Directive Principal in Indian Constitution was to address the discrimination against vulnerable groups and harmonise diverse cultural groups across the country. Dr. B. R. Ambedkar, while formulating the constitution had said that a uniform civil code is desirable but for the moment it should remain voluntary and thus the Article 35 of the draft constitution was added as a part of the Directive Principles of the State Policy in Part IV of the constitution of India as Article 44. It was incorporated in the constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the uniform civil code could be made.

Ambedkar in his speech in the constituent assembly had said ‘No one need be apprehensive that if the state has the power, the state will immediately proceed to execute that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so.

The issue of Uniform Civil Code came up in **Shah Bano Case**⁷, in April 1978, a 62 years old Muslim Woman, Shah Bano, filed a petition in court demanding maintenance from her divorced husband Mohammed Ahmad Khan, Modh. Khan had granted her irrevocable (Teen Talaq) talaq.

They were married in 1932 and had five children. Shah Bano’s husband has asked her to move to a separate residence three years before, after a prolonged period of her living with Khan and his second wife. Shah Bano went to court for maintenance for herself and her five children under Sec. 125 of Cr. PC 1973. However Khan contested the claim on the grounds that the Muslim personal law in India required the husband to only provide maintenance for the *Iddat* Period after divorce. The argument of Khan was supported by the All India Muslim Personal Law Board which contended that courts cannot take the liberty of interfering in those matters that are laid out under Muslim Personal Law, adding it would violate the Muslim Personal Law (Shariat) Application Act 1937. Justice Y. V. Chandrachud (Supreme Court as he then was) said in his decision “Section 125 was enacted in order to provide a quick and summary remedy

⁵ Hedge, Supra Note 19, 65

⁶ Ms Jorden Deinghed V. S.S. Chopra AIR 1985 SC 935

⁷ Mohammed Ahmad Khan V. Shah Bano 1985 (2) SCC 656.

to a class of person who are unable to maintain themselves. The liability imposed by section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion. The orthodox Muslims felt that their communal identity was at stake if their personal laws were governed by judiciary.

The Congress government has passed the Muslim Women (Protection of Rights on Divorce) Act 1986. This law overturned the verdict in the Shah Bano case and said the maintenance period can only be made liable for the *Iddat* period. The Shah Bano case was a landmark case for many reasons:-

- (i) It brought into focus the plight of the Muslim women, the discrimination they have to face in matters related to marriage.
- (ii) It showed that the laws of the land which are secular in character will take precedence over the religiously ordained customs and personal laws.
- (iii) It was a step in the direction of implementation of the Uniform Civil Code and
- (iv) Most important of all it raised a debate about the rights of women, application of the principle of equality. The debate engulfed civil society, religious groups, legislature and common man and nothing can be more fruitful in democracy than a debate.

The consequence of the problem today is that many Hindus have changed their religion and have converted to Islam only for the purpose of escaping the consequences of bigamy, this is so because Muslim law permits more than one wife, to the extent of four. In **Sarla Mudgal V. Union of India**.⁸ Many petitions were filed on this topic. One petition was filed by a registered society 'Kalyani' working for the welfare of women as public interest litigation. Second was filed by one Meena Mathur alleging that her husband Jitender Mathur has converted into Islam and got a second marriage without giving divorce to her. Third was filed by Sunita (Aka Fatima) alleging that her husband Jitender Mathur has again accepted the Hindu religion and he is living with his first wife Meena Mathur. Fourth was filed by Geeta Rani alleging that in 1988 she was married with Pradeep Kumar who always misbehaves with her and absconded with Deepa a girl, and both of them have converted to Islam and married. Next petition was filed by Sushmita Ghosh that her husband has accepted the religion of Islam and got married with Vinita Gupta. The Division Bench of the Supreme Court (Kuldeep Singh and R. M. Sahai) in their separate but concurrent judgment said that since 1950 a number of Governments have come and gone but

⁸ Sarla Mudgal Vs. Union of India AIR 1995 SC 1531

they have failed to make any efforts towards implementing the constitutional mandate under Art. 44. In this case, the question arose that, whether a Hindu husband married under Hindu Law, after conversion to Islam, without dissolving the first marriage can solemnize a second marriage. The court has held that such a marriage will be illegal and the husband can be prosecuted for bigamy under section 494 of the Indian Penal Code, and to eliminate such type of evil practices from society the Supreme Court held that, there is need for uniform civil code to take up such situations.

The Supreme Court directed to Central Govt. through the Prime Minister to take a fresh look at Article 44. The case related to a Hindu remarrying, after conversion to Muslim religion, without dissolving his first marriage. The desirability of the Uniform Civil Code can hardly be doubted, but, it can concretize only if social climate is properly built and the masses awakened to accept the change.⁹

In *Panna Lal Bansi Lal*¹⁰ The Apex Court had observed that the founding fathers, while making the constitution were confronted with problems to unity and integrate people of India professing different religious faiths, born in different castes, sex or sub-sections in the society speaking different languages and dialects in different regions. They to integrate all sections of the society as a United Bharat, provided a secular constitution, A uniform law, though highly desirable, enactments thereof in one go perhaps, might be counter-productive to unity and integrity of the Nation. It could be done by process of law by stages, the court said.

Later in **John Vallamattom V. Union of India**¹¹. The chief justice of India regretted that Article 44 had not been given effect to holding that a common civil code would help the cause of national integration, the learned chief justice observed; there is no necessary connection between religious and personal law in a civilized society. The aforesaid two provision, viz. Articles 25 and 44 show that the former guarantees religious freedom, whereas the later divests religion from social relations and personal law The learned chief justice explained that marriage, succession and the like matters of a secular character could not be brought within the guarantee enshrined under Article 25 and 26 of the constitution. Nowadays, with different personal laws existing in the country, we are secular in selective ways. The Uniform Civil Code, if, implemented would ensure that all the diverse communities of India will follow a single law which will unite us as a nation

⁹ *Sarla Mudgal Vs. Union of India* AIR 1995 SC 1531, Per Justice R. M. Sahai.

¹⁰ *Panna Lal Bansi Lal V. State of A .P.* AIR 1996 SC 1023

¹¹ AIR 2003, SC 2902.

IV. CONCLUSION AND SUGGESTIONS

The major problems for implementing Uniform Civil Code, are the country's diversity and religious laws which not only differ sect-wise, but also by community, caste and region, women's right groups have said that this issue is only based on their right and securing irrespective of its politicization, as given in Article 44 of the constitution, need for strengthening the unity and integrity of the country, rejection of different laws for different communities, importance for gender equality and reforming the ancient personal laws. The Shah Bano case soon became nationwide political issue and a widely debated controversy.¹²

Many conditions, like the supreme court's recommendation, made her case have such public and political interest. After the 1984 anti-sikh riots, minorities in India, with muslims being the largest, felt threatened with the need to safeguard their culture.¹³ The All India Muslim personal board defended the application of their laws and supported the muslim conservatives who accused the government of promoting Hindu dominance over every Indian citizen at the expense of minorities. The criminal code as seen as a threat to the muslim personal law, which they considered their cultural identity. According to them, the judiciary recommending a Uniform

Civil Code was evidence that Hindu Values would be imposed over every Indian. On 30 November 2016, British Indian intellectual **Tufail Ahmad** unveiled a 12 points document draft of it, citing no effort by the govt. since 1950. The Law Commission of India stated on August 31, 2018 that Uniform Civil Code is neither necessary nor desirable at this stage, in a 185 page consultation paper, adding that secularism cannot contradict plurality prevalent in the country.¹⁴ The debate for Uniform Civil code, with its diverse implications and concerning secularism in the country, is one of the most controversial issue in twenty first century in Indian Politics. The Bhartiya Janta Party (BJP) has promised a uniform civil code in every election manifesto since 1998, but has not taken any action yet, including when it had a strong mandate. It can say that vote bank politics cannot reap the courage to do so. **ShayaraBano**, a 35 years old women from Uttarakhand, emerged as the defining persona in the legal battle against the patriarchal custom that, though not as commonly followed, was judged unconstitutional by the Supreme Court recently. In **ShayaraBano and others V. Union of India and others**.¹⁵ The Supreme Court of India set aside the practice of **Talaq-e-bidat**, which allowed certain muslim

¹²Lawrence & Karim 2007 P. 265-267.

¹³Ibid

¹⁴Muslim intellectual proposes a revolutionary Uniform Civil Code. The statesman archived from the original on 1 Dec. 2016. Retrived 30 Nov. 2016.

¹⁵See also Ahmad Tufail "My Blueprint for the Uniform Civil Code 30 Nov. 2016.

men to divorce their wives instantaneously and irrevocably, on the basis that it violated the constitution of India. The case itself does not primarily focus on gender justice but has strong positive implications on advancing women's rights and gender equality in India. The Central Govt. has enacted muslim women (protection of rights on marriage) Act 2019, which makes the practice of instant divorce through 'triple talaq' among Muslims a punishable offence with 3 years imprisonment. But the attitude of the govt. in favour of Uniform Civil Code is still wavering. The demand for a Uniform Civil Code has been framed in the context of communal politic. A large section of society sees it as majoritarianism under the garb of social reform.

The citizens' fundamental rights to equality before law and equal protection of the laws guaranteed by the constitution call for a similar action in respect of these territories as well. So does the provision of Art. 44 enjoining the state to make endeavours to secure for the citizens a uniform civil code through the territory of India. Uniform Civil Code is essential for equality and justice to all irrespective of their religion, caste, creed or race. The code would enable rights to those who rights have been overlooked by religion based rules. Equality reigns supreme and it should for the rest of the person's life. Uniform Civil Code will enforce appropriate justice mechanisms, uniform rules applicable to all. Uniform Civil Code amounts to equal laws for all sections of our society. All the people of India must be governed by one set of laws. For nations unity and for secularism uniform civil code is necessary. The plurality of laws in personal law matters is a blow and direct threat to national integrity and solidarity. So the govt. of India should take initiative for enacting a Uniform Civil Code, which should contain the best elements of different civil laws of the various religious communities of the country and thus fulfill its positive obligations imposed upon Art. 44 of the constitution of India.

V. REFERENCES

1. Constitutional Law of India Ed. 2019 : Narender Kumar
2. Bharat Ka Sambhidhan – 2017 – J.N. Pande
3. Cr. P.C. 1973 – Ed. 2017, Dr. Pranjpe
4. The Criminal Procedure Code 1973 – Shailender Malik
5. Personal Law Reforms and Gender Empowerment : A Debet on Uniform Civil Code, Hope India publication.
6. Sarkar, Sumit, Tanika (2008) Women and Social Reform in Modern India Inian University Press.
7. Larson, Gerald James, ed. (2001). Religion and Personal Law in Secular India, Indian University Press.
8. Triple Talaq, GeetaPande
9. Why Triple Talaq Needs to Abolised : Zaika Soman& N. Niaz.
10. The Politics of autonomy Indian Experience – Samaddar Ranbir (2005)
11. wap.business-standard.com
12. en.m.wikipedia.org
13. iasscore.in
14. www.thequint.com
15. www.thehindu.com
16. www.scobserver.in
17. www.lawctopus.com
18. www.thehinducentre.com
19. www.ili.ac.in
20. www.jagranjosh.com
21. www.drishtiiias.com
22. www.indiatoday.in.
