

UNIFORM CIVIL CODE- A FEASIBLE LEGISLATION

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INTRODUCTION

“Uniform Civil Code” is not a new term to Indians. Every citizen is asking for the uniform laws. India is consisted of diverse religions. Every religion has its own laws and regulations. In the preamble of our constitution we, the people of India, are stating that India is a secular country. We cannot differentiate between the religions on the grounds of their personal laws. The Constituent Assembly of India was already aware of the situation during the drafting of our constitution. That’s why they put a duty on the state to make “Uniform Civil Code”.

In the Constituent Assembly, Pandit Jawaharlal Nehru had stated during his speech that India was not ready to accept uniform laws for all the religions. But now the situation is different. From the time of Independence only we have majorly two religions which are always in conflict with each other-Hindus and Muslims. The personal laws of both the religions are used by the people as per their own whims and prejudices. This can be seen by the following cases.

Legal Scenario

Art.44 of the Constitution of India states that:

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. This Article was actually Art.35 of the draft Constitution. There were huge debates among the Constituent Assembly members over the inclusion of the Article 35 in the Constitution.

Mr. Mohammad Ismail Sahib from the Madras Province opined for the amendment to the section that any group, community or section of people shall not be obligated to give up their personal laws. If we are including the provision of uniform civil code, that can be regimentation of the personal laws of the people. Such regimentation may create disharmony among the people. The same opinion was expressed by Mr. Nazirrudin Ahmad. He stated for the procedure by the

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legislature to be implemented for the recognition of uniform civil code by the citizens. The community should give their approval for the same. The uniform civil code is likely to violate the very essence of Art.19 of the Draft Constitution, “subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.” It seemed to be murdering the consciences of the members of different religions. ¹

But Mr. Hussain Imran from the Bihar Province opined that the legislature has to wait till whole India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own fights. Shri K.M.Munshi argued that the personal laws have to be unified in such a way that the way of life of the whole country may in course of time be unified and secular. The aim is to divorce the religion from personal laws and to create disharmony. Religion must be restricted to spheres which legitimately appertain to religion and the rest should be regulated by a uniform code. National unity is of the prime concern for us. ²

Shri Alladi Krishnaswami Ayyar from Madras constituency opined that we should derive knowledge from the British that when they conquered India, they implemented uniform criminal law i.e. Indian Penal Code for all the citizens. People did not protest against the same so why would they protest now? Every system law is derived is not self-contained. They are derived from different parts of the world. So if we want to unite India then we have to forget the differences existed among the personal laws. ³

In Shah Bano case⁴, the Honourable Supreme Court of India held that a Muslim woman is entitled to monthly maintenance by her husband. There was a lot of hue and cry shown by the Muslim community. In order to save its majority in parliament, the Congress government passed an amendment after the judgment known as Muslim Women (Protection of Rights on Divorce) Act, 1986. The amendment stated that a divorce muslim woman is entitled to maintenance till the iddat period gets over. This shows how religious values can be used to influence the entire vote

¹ C.A.D,vol.VII,pp.538, 540-552

² id

³ id

⁴ 1985 SCR (3) 844

ban of the country. This judgment tried to change the perspective of personal law. It took into consideration the dynamic nature of law. Whatever our ancestors have followed it may not be applicable now. What would happen to the divorced lady who is unable to maintain herself after the marriage? Section 125 of the Code of Criminal Procedure is a secular provision. It enables every incapable woman, who is living separately from her husband on account of divorce, to claim maintenance from her husband. The personal laws cannot override this provision. It will be violation of the Art.14 as the Muslim law is giving undue advantage to the male spouse. Although marriage is considered as a contract under the Shariat law, but divorce should not be one of the ways for the male spouse to escape responsibility towards his other half. The Court felt the need of deciding the case in the secular manner and gave the judgment in favor of the wife.

The Sarla Mudgal's⁵ case laid down the principles against the practice of solemnizing second marriage by conversion to Islam, with first marriage not being dissolved, followed by Hindu husbands. In the Indian Republic there was to be only one Nation-Indian Nation-and no community could claim to remain a separate entity on the basis of religion". Justice Kuldip Singh stated that there is no reason for delay in the "Uniform Civil Code" for the Indian citizens. There are many codified laws for the Hindus like Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoptions and Maintenance Act, 1956. Then why the legislature is not codifying "Uniform Civil Code" for all the citizens? The Sarla Mudgal ruling was looked with disfavour in certain circles on the ground that it infringed a person's fundamental right to freedom of conscience and profession of religion guaranteed by Article 25 of the Constitution. The usage of personal laws should not be used to play with the feelings of the other party. In the Hindu religion, marriage is considered as a sacrament. This bondage of marriage cannot be broken away by converting into other religion. Every religion has its own laws and those have to be followed by the members of that community. Religion is a way of life. Our ancestors have made different religions because of different ways of living existed at that point of time. The judges in this case are not stating that the uniform civil code has to be implemented now only. The implementation will take time but we should not lose our hope.

⁵ AIR 1995 SC 1531

Ms. Jordan Diengdeh vs S.S. Chopra⁶, the court was of the view that now the legislature has to interfere in making of the laws regarding “Uniform Civil Code”. In Mohd. Ahmed Khan vs Shah Bano Begum And Ors⁷, the Supreme Court of India stated that There is no evidence of any official activity for framing a common civil code for the country. A common Civil Code will help the case of national integration by removing disparate loyalties to laws which have conflicting ideologies. Art.44 states that the State shall endeavour to secure for the citizens a “Uniform Civil Code” throughout the territory of India. A beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal laws cannot take the place of a common civil code. Justice to all is a far more satisfactory way of dispensing justice from case to case." There are numerous cases that came before the court of law in regards to nullity of marriage on the ground of conversion into other religion. The culprit persons do not understand that they will not get any benefit from the conversion. They are only looking at the immediate satisfaction that they will get from their marriage to a woman other than his wife. Dr.B.R.Ambedkar stated the importance of the uniform civil code in the Constituent assembly. The members of every religion feared of the implementation of uniform law as they thought that their personal laws would get abolished. The main contentions were from the Muslim community. But Shariat law was not there in India till 1935. The Muslims were governed by the Hindu personal laws. At that time, there were no protests. Even Hindu law has derived many things from other religions. The Hindu Succession Act has adopted many principles of Roman succession Act. Therefore how can the members of one religion are showing their superiority over others? Every religion has its own ideologies. The citizens may accept the religious principles in their own way as all these depend on their perspective.

Current Scenario

Everyone has the same query when is the appropriate time to implement the “Uniform Civil Code” in India? If we are for that moment, then it will never come in this century. The political parties will not take such a big step to make laws as they will not take a chance of losing their

⁶ 1985 SCR Supl. (1) 704

⁷ 1985 SCR (3) 844

seats in the legislature. Recently, a campaign was launched called “Ghar Wapsi” where the people ,who were forcibly converted from Hindu to other religions, they were asked to reconvert them into Hindu. If we take balance both these rights, then every individual in the territory of India can adopt any religion. Few years back there were cases of forceful conversion of people from Hindu to Christian in the Malkangiri district of Odisha. This is a blatant violation of the Right to freedom of religion.

Uniform Civil Code and The Constitution of India

In the article 25 of the Constitution of India, the people of India are given the right to practice, profess and propagate any religion. But the exercise of this fundamental right should not be arbitrary at all. Article 19 of our Constitution provides for the freedom of speech and expression. All the Fundamental rights cannot be exercised by damaging others rights. After the Shah Bano case, many people were protesting against the gender injustice happening on the women. The personal laws were in violation of the right to equality of our Constitution. But we cannot ignore the personal laws. They have their own significance. That is why “Uniform Civil Code” is important.

In S.R. Bommai v. Union of India⁸, as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting a law. Article 25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms. There is lot of difference between religion and personal laws. Personal laws are related to inheritance, succession , marriages etc. But religion is a belief that we adopt in our day to day life. In India, there exist a concept of positive secularism as distinguished from doctrine of secularism accepted by America and some European States i.e., there is a wall of separation between religion and State. In India, positive secularism separates spiritualism with individual faith. If the right to “Uniform Civil Code” had been given as fundamental right in our Constitution then it would have been a pressure on the state to protect those rights. That’s why it’s still a duty on the state to make uniform laws.

⁸ (1994)3 SCC 1

Hinduism is a way of life. It is not a religion. People have made it so that they can use it as they wish. If we ask a child of 3 years old about his religion he or she will definitely answer. Our mindsets are formed in that way only from our childhood. We can preach that we need uniform laws but we never practice it. Every religion has its own advantages and disadvantages. But the founders of religions had never thought of this kind of problem like people will be divided on the basis of their religion.

We have laws for the penal provisions i.e. Indian Penal Code and Code of Criminal Procedure. Why are not we have uniform code for all the personal laws? In *Mary Roy v. State of Kerala*⁹, the supreme Court ruled that the Travancore Act had been superseded by the Indian Succession Act. *Mary Roy* has been characterized as a "momentous" decision in the direction of ensuring gender equality in the matter of succession.

The Special Marriage Act, 1956 has been landmark legislation in the field of implementation of uniform laws in India. Two different religious communities' people can come forward and marry each other in order to lead a happy life. Our legislature can take guidance from this Act so as to start off the making of the uniform laws.

The women activists are asking for the "Uniform Civil Code" because all our personal laws are patriarchal in nature and it exploits women. Our politicians have to be committed to uniting our society, and disregard threats by secessionist forces, override hard-liners and implement it with the full backing of our judicial system, then only our vision will be possible.

Conclusion

Religion has its own significance. Their origins differ. The people should imbibe the positive aspects of that religion. It has many loopholes also. But those should be used as a means to bully the religions. What people have done around a century ago, that might not be applicable today? Many people argued that the uniform civil code will violate the Art.19. But we have to read the objective of the Constitution makers behind incorporation of that Article 19 with that of the Art.44 of the constitution of India. Our objective is to unite India and the state can make laws restraining the freedom of Speech and Expression to implement uniform laws.

⁹ 1986 SCR (1) 371

Everyone knows that if we are making “Uniform Civil Code” for all the religions, it will not get accepted by the people. But the government has to face that in one or the other way. If not this government, then may be the next government has to face the turmoil. Whenever we are going to make laws we first set up law commission for the recommendation on the same. Here in this matter the eminent jurists and the retired ones can show us the path about how to go about in making the uniform laws. The religious intellectuals can help us to a large extent in this regard. We do not know many intricacies in the personal laws of many religions like Christianity, Parsis etc. This can be subjective but we need to codify the important aspects of all the laws. What has happened has happened. We should not regret for the time that has passed by. Our generations are unable to make such changes but we can do something for our future ones.

The seed of the “Uniform Civil Code” has to be planted in the curriculum of the school level only. The children have to know the importance of “Unity in Diversity”. The making of “Uniform Civil Code” will not happen in one day. It has to be done in step by step process. We can take example of the state of Goa which is the only Indian state having “Uniform Civil Code”. Appropriate time will never come if we sit idle. We have to take the risk and face the consequences as it is high time for us to realize the importance of “Uniform Civil Code”.