



UNIFORM CIVIL CODE AS A TOOL FOR THE EMPOWERMENT OF WOMEN IN INDIA: AN ANALYTICAL STUDY

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ABSTRACT: -

India is a secular state that is state does not have any religion of its own. All religion is equal for a state. Article 44 of Indian Constitution as a Directive principle of state policy provides that state shall secure to every citizen of India a uniform civil code. UCC refers to personal laws. UCC is replacing the personal laws of major religion communities in India with common civil law. Concept of UCC is governed by the idea of gender justice and national integration. Women in India are still facing discrimination and inequality specially focused to the practices of Triple Talaq and Halala etc. to protect the rights of women and to provide the gender equality. Voice has been raised many times for implementation of UCC, but UCC has been wrongly posited as an attack on religion. The demand of change in personal laws is essential as it would directly improve the status of women in many spheres like marriage, divorce, adoption, maintenance etc. But even after 69 years of independence, the implementation of UCC is just a distant dream. This paper is based on the implementation of UCC as a tool to provide religious harmony and to protect the rights of women and gender equality as given under our constitution of India."

Key Word: Empowerment of Women, State policy, Gender equality, Religion etc.

Introduction:

There is multiplicity of religions in India. Every religion has their own personal laws; moreover we cannot say that these personal laws are purely statutory rather these are partly unstatutory. In India there is no specific law which may control the personal matters of all the religion.

With this view to achieve uniformity and to establish the secular character of Indian Constitution Article 44 is embodied in the Constitution of India. Article 44 of Constitution of India provides for UCC for all citizens in India and says that the State shall endeavor to secure for all citizens a Uniform Civil Code. But this idea is still a dead letter. Women who make up half of India are still fighting for gender just code to enjoy equality and justice irrespective of their personal laws. That

is why UCC is needed not only to provide uniformity of laws between all communities but also uniformity to provide equality between men and women.

Concept of UCC:

The voice for implementation of UCC has been raised recently because many Muslim women have knocked the door of Supreme Court to protect their rights and dignity from which they are deprived in their respective personal laws. Uniform Civil Code is the replacement of personal laws of all major communities in India with a uniform civil law governing every citizen in the matter of marriage, divorce, inheritance, maintenance etc.

Uniform Civil Code is made up of three words. UNIFORM which means same in similar condition, civil means citizens and CODE means Codified laws. This supersedes the right of Citizens to be governed by their own personal laws. The UCC is conceived as part of secularization of personal laws without interfering in religious beliefs¹.

Need of UCC:

Implementation of UCC is needed to promote national integration and to reform Personal laws. Personal laws are in disagreement with the statutory laws. In our country, in almost all religious communities child marriage is an accepted practice because of lack of the uniform stringent laws on registration of marriage. There is also the concept of caste based councils in villages also known as Khap panchayat which are not elected bodies but having the support of community and played a powerful role while deciding the various issues at the village level without the sanction of law and at many instances commits heinous crimes such as honour killing. As far as Muslim Personal laws are concerned, there are Shariat Courts, and all India Muslim Personal Law Board which are posing a challenge to Indian judicial system.

UCC is needed to provide equal treatment to all person of different religion especially to women. In 21st century where a Hindu wife or a Christian wife can charge her husband for bigamy if he remarry during her lifetime and also during the subsistence of their marriage then why a Muslim wife cannot? Under Muslim law polygamy is permitted where a Muslim man have four wives but if we go through the Quran it says that a Muslim man can marry one, two, three or four but he has to give equal treatment to all of them and it is impossible for him to treat them all equally. So in other sense Quran also suggested for monogamy but polygamy is the practice among Muslims².

The application of a uniform civil code will provide equal protection to all women irrespective of their Personal Laws moreover it will give more rights to the women. Beside this, Uniform Civil Code is needed to promote Secularism which is the basic feature of constitution of India as was held by the Supreme Court in S. R. Bomai V. Union of India³.

¹ Salim Akhtar and Ahmad Naseem, Personal Laws and Uniform Civil Code, P.39 (1998)

² Tahir Mahmood, Personal Laws and Crisis, p.3 (1986)

³ (1994) 3 SCC 1

UCC and the Indian Constitution:

According to our Constitution, India is a secular state that is state does not have any religion of its own. All religions are same for a state. Article 25 to 28 provides the freedom of religion that is every person has freedom of conscience and right to profess, practice and propagate their own religion subjected to public order and morality. Preamble of our constitution starts with the word; we the people of India' includes men and women assured dignity of individuals which includes dignity of women too.⁴

Article 14 provides for equality before law and the equal protection of the law which is also for the men and women both. Article 15 provides a guarantee to every citizen that there shall be no discrimination on any ground and in 15 (3), it is provided the state can make special provision relating to women and children.

Article 16 provides equal opportunity for employment to all which means while giving employment state shall not discriminate between a man and a woman. Article 42 directs the state to make provision for just and humane condition of work and also for maternity relief. And most importantly article 44 which is a directive principle of state policy which provides for uniform civil code for all citizens throughout the territory of India.⁵

There are many Uniform Civil Laws such as Law of Contract, Civil Procedure Code and Transfer of Property Act etc. which are applicable to all citizens irrespective of their culture or religion, but when it comes to the personal matters like marriage, divorce, inheritance, maintenance, adoption etc.; the communities are governed by Personal Laws. And in Personal Laws we can notice the prevalence of discrimination against women in different major communities in India.

Community specific personal Laws in Contravention of Constitutional provisions and other Uniform Codes:

One of the most important reason because of which the Civil Rights are demanding the application of Uniform Civil Code to ascertain the equal right to women, is that all major religious communities in India follow practices which are against the right of women and don't allow their socio-economic progress. For example, according to section 6 Hindu Minority and Guardianship Act, 1956 when the question arises as to the Guardianship of mother she cannot be natural guardian during lifetime of husband which is violation of article 14 and 15 of India Constitution.

In relation to Muslims, usages are very rigid; there was practice of Triple Talaq, the disapproved form of divorce where the Muslim husband had irresistible power to take divorce, even without assigning the reason which is now declared unconstitutional by Honorable Supreme Court of

⁴ J.N. Pandey "Constitutional Laws of India"

⁵ V.N.Shukla "The Constitution of India" (2001)

India in *Shyra Bano V. Union of India*⁶. Another is Halala where if a divorced Muslim husband and wife wants to reunite then wife has to follow the iddat of his former husband then to marry with some other man with a condition that marriage should be consummated then get the consented divorce from second husband then again follow the iddat period only after all this she can remarry with her first husband which is very inhumane and discriminatory for a woman. And foremost is polygamy which is not the rule established by Quran. Polygamy is permissible in Muslims in contravention of section 494 of Indian Penal Code, which is a Uniform Code and is applicable to all communities in India.

In Muslim Personal Laws there is no provision for the maintenance to wife in case of divorce, after the completion of period of iddat. It was decided in *Shah Bano case*⁷ that a Muslim women can claim maintenance under section 125 of CrPC, thus Supreme Court puts the Uniform Law of CrPC above Muslim Personal Laws to provide equality to the women.

Other communities like Christian, Parsis and Jews also having discriminatory provisions like a Christian husband can divorce his wife on the ground of adultery but for wife she has to put additional ground with adultery for obtaining divorce.

This is against the constitutional provision of equality before law. These provisions of inequality in personal laws of different communities needs to be replaced with Uniform Civil Code which will make everybody equal before law in real sense.

Judicial Response in support of Uniform Civil Code:

The issue of Implementation of UCC was first raised in the year of 1985, in the case of *Mohammad Ahmad Khan V. Shah Bano Bagum*⁸ in which the Muslim Wife claimed maintenance from her husband under section 125 of CrPC after which her husband gave triple talaq to her & Supreme Court held that the Muslim women has right to get maintenance under section 125 CrPC. The then Chief Justice of India Y. V. Chandrachud observes that “A common Civil Code will help the cause of national integration by removing disparate loyalties to law.”

After this many meetings and agitations were held and subsequently Muslim women (right to protection on divorce) Act, 1986 was passed which restricted the right of Muslim Women to claim maintenance under section 125 of CrPC.

The Second instance is a case of *Sarla Mudgal V. Union of India*⁹, where Supreme Court directed the government of India to have a note of article 44 in this case, a Hindu husband had solemnized second marriage by embracing Islam. He was charged for bigamy and court held that a

⁶ Writ petition decided by Honorable Supreme Court in 2017

⁷ AIR 1985 SC 945

⁸ Ibid

⁹ AIR 1995 SC 153

Hindu can solemnize second marriage only by taking divorce from first wife. Conversion to Islam and marrying away is not a ground to dissolve the first marriage and thus a second Marriage solemnized after converting to Islam is an offence under section 494 of IPC. Here again the Supreme Court requested the Central Government to have fresh look of article 44 for implementation of UCC.

Again in *Lily Thomas V. Union of India*¹⁰, Supreme Court held that UCC is very desirable but it can be implemented in a socially build up climate. Supreme Court orders are first step towards implementation of UCC.

Again the issue to enact a UCC before Supreme Court was raised in July 2003, when a Christian priest knocked the doors of the Court challenging the Constitutional validity of Section 118 of the Indian Succession Act. The priest from Kerala, John Vallamattom filed a writ petition in the year 1997 stating the Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief justice of India V.N.Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional. Chief Justice Khare commented: “We would like to State that Article 44 provides that the State shall endeavour 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.”¹¹

Again In *Seema V. Ashwin Kumar*¹², Court held that all marriages irrespective of their religion compulsory be registered as it is the need of time.

Obstacle to UCC¹³:

The following objections are raised for implementations of UCC in India by communities:

- First objection against implementation of UCC is that because of tremendous diversities in religion, sects and caste etc. it is practically impossible to come up with a common and uniform set of rules for personal issues.
- Another objection against Article 44 of Indian Constitution is that it is an attack on the personal laws because personal laws are sacred and absolute and no legislature can amend it. A popular erroneous belief which shrouds the issue of ‘personal laws’ is that these laws are based on religious texts and hence pre-ordinate, infallible, self-righteous and inert. But such an

¹⁰ AIR 2000 SC 1650.

¹¹ [John Vallamattom v. Union of India](#) (AIR 2003 SC 2902).

¹² AIR 2006 SC 11.

¹³ South Asian Journal of Multi-disciplinary studies ISSN 2349 – 7858.

objection is groundless, absurd and meaningless because there is nothing divine about personal laws.

- Another is UCC is against fundamental right guaranteed under Art. 25 and 26.

Both Article 25 (the right freely to profess, practice and propagate religion) and Article 26 (freedom to manage religious affairs) are, however, “subject to public order, morality and health” and to the values enshrined in all other fundamental rights such equality and social justice. Article 25, while protecting religious freedom, also empowers the State to regulate or restrict “any economic, financial, political or other secular activity which may be associated with religious practice”. This introduces an important distinction between sacred and secular. Thus practices such as witchcraft, superstition, ordeals, sati, child marriage, prohibitions against widow remarriage, caste discrimination, casual triple talaq and polygamy may be and have been barred or regulated.

- The defense taken against Art. 44 are that it is also against of Art. 29 that guarantees right as to ‘culture’. It is contended that personal law forms a part of ‘culture’. The word ‘culture’ is not defined in Art. 29. Firstly, it has to be noted that Articles 25-28 are grouped under the heading ‘freedom of religion’ and thereafter, comes the heading ‘Cultural & Educational rights’ including there under Articles 29 & 30. It would follow that the ‘culture’ referred to in Art. 29(1) is something which is not founded on religion and which may belong to any section of the citizens’ which may not be necessarily a religious minority. The distinction between culture and religion needs to be taken into consideration. The best illustration of this proposition would be a saying “I am Muslim by religion, but a Hindu by culture”. If this proposition be true, a Muslim’s claim to be governed by a different personal law, alleged to be founded on religion, cannot be defended as a fundamental right under Article 29(1).

Conclusion:

After studying all the pros and cons of a uniform civil code we can say that it is not an easy task to reform the personal laws of different communities and thus implement the uniform Civil Code for whole nation. It is a very controversial and sensitive issue.

In our country citizens belonging to different religions and culture follow different property and matrimonial laws which is not only a set back to the nation's unity and integrity, but it also raises the doubt that whether we really live in a country which is a sovereign, secular, republic or in a country which is a loose confederation of feudal states, where people live at the whim and fancies of maulvis, bishops and pundits.

Justice Leila Seth’s words aptly express the present perception which is starting to spread rapidly among citizens: “These are not Hindu or Muslim or Christian or Parsi demands or laws – these are a cry for gender just laws; for giving women their human rights and their mandated constitutional

rights. If we can't give them all the rights in one go, let us progress little by little but let us not be stagnant. Let us move towards gender just laws and a uniform civil code.”

The object behind Article 44 is to making of India as an integrated nation by bringing all communities based on different personal laws on a common platform on matters which are presently governed by diverse personal laws but which do not form the core of any religion. It will be helpful in avoiding the overlapping of provisions of law and will also decrease the number of litigation due to personal laws. The Constitution was enacted for the whole country, it is binding on the whole country, and every section and community must accept its provisions and its directives. So, Article 44 for the implementation of a Uniform Civil Code should be made mandatory provision, binding the government also.
