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- - Note - -

This compilation has continuous footnoting. Kindly read the references to previous footnotes in all the Articles in isolation upon the particular Article only.

Publisher Details -

Bishikh Mohanty

E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,

Khorda, Odisha, Pin - 751021

Telephone: +91 8106743973

Email: editor@ijcons.com

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UNIFORM CIVIL CODE: IN THE LIGHT OF JUDICIAL STAND ON PERSONAL LAW

THE AUTHOR

Elizabeth Moirangthem, student, Bishop Cotton Women's Christian Law College.

Citizen of India are governed by different personal laws based on their religion, caste, community, etc, . A uniform civil code is a set of common personal law for all the citizens of India.

Article 44 of the Constitution of India provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Uniform civil code was one of the most debated provisions end contentious since the Constitution was promulgated.

During British rule personal laws were framed in India. Uniform civil code's demand was firstly put forward in the beginning of 20th century by women activities with objective of women's right, equality and secularism.

In the Constituent Assembly several speakers from the Muslim community opposed the inclusion of article 44 .They put forth that it was not the business of the state to interfere in the personal law and family laws of the individuals. Whereas by the supporters of the said article pointed out that many European countries including France, Germany, and Italy had enacted Civil Codes that governed not only the citizens of the said countries but even for other countries like India if they had property in these countries. Dr. Ambedkar stated that "I can cite innumerable enactments which would prove that this country has practically a Civil Code uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring that change."

It is interesting that even in day today the supporters and detractors continued raised many arguments of the Uniform Civil Codes.

The scope and limits of the Uniform Civil code is to be examine at the first place because in the mind of the people they thought that this article would cause sustainable violence to inherent religious practices which is endangering the religious identity of a person .So, if scopes and limits are properly examined people will get a clear idea on which elements of personal laws would be amenable to codification by way of this article and which would not. The scope of the Uniform Civil Code as envisaged by the member of the Constituent Assembly is evident from the extract of Dr. Ambedkar's speech quoted before wherein he expresses the desire for enactment of a uniform civil code covering the issues of marriage and succession.

Uniform Civil Code is necessarily involved in interference with various aspect of personal laws and it is ought to be left the discretion of the society and ought not to be made the subject of legal processes. Moreover society has a significant role to play in preparing the public at large for formulating and adopting a measure of uniform civil code. Nevertheless, such a measure is not only of sociology interest but it is also significant interest for the legal system, particularly in the view of the principles of equality enshrined in article 14 and 15 of Indian Constitution.

There are some essential benefits of Uniform Civil Code which are envisaged by the proponents of it. They are: i) unification of the country by uniformity of laws, and ii) gender equality and grant of equal status to women in regard to secular aspect of personal laws. While Uniform Civil Code has a wider and more idealistic as well as latter goals that command immediate attention of the legal system since our society women suffers a subordinate status in the personal laws of all religion.

Uniform Civil Code would not only be a legal document but rather would constitute an instrument of social change. Uniform Civil Code brought about sustaintial changes in the traditional aspects of Hindu personal laws, with the intent of securing gender equality, by introduction of measures such as i) abolition of bigamy or polygamy ii) provisions of share of daughter in interstate inheritance as Class 1 heir, iii) sanction of adoption of girl child, etc. Since Uniform Civil Code concerned women's right it has effect in ensuring gender justice and equality in the wider society.

Uniform Civil Code also brings benefit to the legal system as regards to the secular aspects of personal laws, which is an issue of particular interest to jurist and persons in the legal profession .Clarity and certainty of legal provision is fundamental necessity for any legal system, so that people are aware of and foresee the consequences of their action. In the book "The Rule of Law" of Jurist Tom Bingham it says that "The Law must be accessible and so far as possible intelligible, clear and predictable."

Codification of laws in India over the last one and a half centuries has brought clarity and certainty to vast majority of legal subjects, whether in the fields of civil, criminal, etc. . Codification of personal laws by a way of Uniform Civil Code would also bring similar clarity and certainty to the issues raising on religious matter as well as inter personal and family issues.

In the Shah Bano case, the SC made the following observations: "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common civil code will help the cause of national integration by removing disparate loyalties to the laws which have conflicting ideologies, No communities is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty securing a uniform civil code for the citizens of the country and

unquestionably, it has the legislative competence to do so. A counsel in the whispered somewhat audibly that legislative competence is one thing the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assured 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 than justice from case to case.”

Similarly, observation has been made by the Supreme Court in the following cases:

1. *Jordan Diengdeh vs S.S Chopra* (1985) 3 SCC 62pp.62-63,71,para1,7.

2. *Sarla Mudgal vs Union of India and others* (1995) 3 SCC 635 .The Supreme Court directed the P.M. Narsimha Rao to take a fresh look at Art. 44 of the Constitution, which enjoins the state to secure a uniform civil code which, according to the court is imperative for both protection of the oppressed and promotion of national unity and integrity. The provision of Art. 44 of the Constitution today, as regards the question of uniform civil code has become the most debatable question.

The Division Bench (Kuldip Singh and R.M. Sahai) in then- separate but concurrent judgment said that since 1950 a number of Governments have come and gone but they have failed to make any efforts towards implementing the constitutional Mandate under Art.44.

3. *John Vallamattom and Anr. Vs Union Of India* (2003) 6 SCC 611 as to need for enactment of a Uniform Civil Code.

The establishment of a Uniform Civil code would pave way for greater unity among Indians. The animosity due to different treatment of different sections under different laws will be removed. Human right violations and exploitations due to social institutions and norms such as Khap dictates and honour killings can be checked effectively. Uniformity of laws will reduce the burden on judiciary in context of pronouncing judgements on personal laws.

The concept of uniform civil code is fraught with numerous differences in opinions and has multiple challenges on-road to its implementation by the Indian state. Challenges in the way of implementation of Uniform Civil Code Building a consensus over Uniform laws in personal matters among various communities in India is a humongous task itself. India has a long history of personal laws which people are familiar with. Hence, abrupt changes in these laws will be difficult to adapt for the people and may even cause confusion. Further, no draft of uniform code has been prepared yet. Also questions regarding the nature of a uniform civil code if implemented in future should it be a blend of personal laws of various religious communities in India or have completely different provisions based on the Constitution of India.

There needs to a massive consensus building campaign. The state authorities and informed members of civil society must work together to convince communities about need for genuine reform in their personal laws and the benefits of enforcing a uniform civil code. Further, allaying minority fears over the code is the need of the hour. Further, a piecemeal approach can also be adopted to start reform in areas/sections where communities are most comfortable with reform thereby gradually starting the process of transformation.

Supreme Court has been considering a suo moto PIL on gender discrimination faced by Muslim women owing to arbitrary divorce and second marriage of their husbands during the currency of their first marriage. Recently, the Government has asked the law commission to examine the issue implementing the Uniform Civil Code. This is the first time a government has asked the commission, which has a crucial advisory role on legal reform, to look into the politically controversial issue of a uniform civil code.

In variety of judgments the court has aroused the hope that one of the greatest evil of Indian society will be removed. In *Pragati Varghese v. Cyril George Varghese* (AIR 1997 Bom. 349) the full Bench of the Bombay High Court has struck down section 10 of the Indian Divorce Act under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on the ground that, it violates the fundamental rights of a Christian woman to live with human dignity under Article 21 of the Constitution.

The court also declared sections 17 and 20 of the Act invalid which provided that an annulment or divorce passed by a District Court was required to be confirmed by 3 Judges of the High Court. The Court said that section 19 of the Act compels the wife to continue to live with a man who has deserted her or treated her with cruelty; such a life is sub-human.

The ideal of a uniform civil code for all India is regarded as eminently desirable to foster the sense of national unity and integrity. But the great hindrance in achieving this most desirable goal is the orthodox public opinion against it.

The traditional, conservative, religious opinion still holds sway over the Muslims, and we can also say that Government regards it as a politically sensitive issue and so hesitates to proceed. Till there is a better appreciation among the Muslims until then the law in its present day confused and variable state will continue dividing the people on a religious basis something which does not go well with the secular concept.

The idea of a Uniform Civil Code has received support from two seemingly opposed constituencies: women's rights groups and right-wing parties and organizations. Yet, the first stage of reform of the personal laws of Hindus giving women the right to choose or divorce their partners, some rights in the property of their fathers and husbands, abolishing bigamy faced considerable opposition from the then Jana Singh the precursor of the Bharatiya Janata Party (BJP) as well as the Rashtriya Swayamsevak Sangh (RSS). For many, it's ironic that the push for a Uniform Civil Code now comes from the BJP.

But the Congress's track record is no better and it will, in all probability, never live down the shame of pushing back the rights of Muslim women by passing the perversely named Muslim Women (Protection of Rights under Divorce) in 1986. The passage of the Act by the Rajiv Gandhi government effectively reversed a Supreme Court judgement that granted maintenance to divorced Muslim women.

Where do we go from here, and how do we move forward? Can we put aside past acrimonies and suspicious?

The first of these is the argument that the time is still not right. Muslims all over the world are under siege. Moreover, there is suspicion among the minorities in this country about this government's true intentions common law or majoritarianism? Controversies over beef, safronization of school and college curriculums, love jihad, and the silence emanating from the top leadership on these controversies have done little to instil a feeling of confidence. Can the government build bridges and instil confidence?

Second, while a UCC has remained a wonderful principle, nobody has actually spelt out what this common code will look like. What are the nuts and bolts of this law? Is it to take the 'best' practices from all religions and, if so, which ones? How would it deal with polygamy not just among Muslims but also Hindus and tribal? What will happen to the tax exemptions and breaks granted to the Hindu Undivided Family (HUF)?

One way forward is to look at the UCC in terms of gender reform, a line favoured by many, including myself. But there is a caveat here, too. Can you look at parity of law for all women without first looking at parity between men and women? For instance, says former additional solicitor-general Indira Jaising, will our law-makers consider a concept of shared labour in marriages that would necessarily mean an equal division of assets acquired in the life of a marriage in case of a divorce?

One argument in favour of a status quo and against a UCC is that the courts have in innumerable cases given secular laws precedence over personal, religious codes. In the past 12 months alone, a two-judge bench ruled that Muslim women are entitled to maintenance beyond the *iddat* (roughly three months) period. It upheld a previous Allahabad high court judgement that "polygamy was not an integral part of religion". It has questioned why Christian couples must wait for a two-year separation before filing for divorce when it is just one year for others. Earlier still, it gave Muslim women the right to legally adopt children even though this goes against their personal law.

The problem with this line of argument is that it looks at justice on a case-by-case basis. It presupposes also that all minority women have access to lawyers and the courts.

There is another alternative—change from within. Already social organizations within the realm of religion have begun demanding an end to practices such as triple talaq. The All India Muslim Personal Law Board has not, so far, responded favourably even though an online petition by the

Bharatiya Mahila Muslim Andolan demanding a ban has already attracted over 50,000 signatures.

And yet, there can be no turning back, no drowning out of voices demanding justice. This Eid, the three-century old Aishbagh Eidgah in Lucknow opened its doors to women to offer prayers for the first time in its history. It was a tiny step towards what could be a new beginning.

One of the most important reasons, because of which civil rights groups are backing the Uniform Civil Code, is to ascertain equal rights to women. All major religions in India follow practices which are discriminatory towards women and do not allow their socio-economic progress. Even though to the All India Muslim Personal Law board it seems as though the government is specifically targeting their religion with the changes that would be introduced under the Uniform Civil Code, this could be because of the comparatively higher number of discriminatory practices followed in Islam that the UCC aims to address, when compared to the other religions in the country. The UCC, will, however, ensure that women from any religion do not have to face medieval laws that were made to prevent their empowerment. Echoing this stand, the government has stated that any practice that leaves women socially, financially or emotionally vulnerable or subject to the whims and caprice of menfolk is incompatible with the letter and spirit of Articles 14 and 15 of the Constitution. Articles 14 and 15 are meant to guarantee the Right to Equality to women in India. It is thus that the government made it clear to the AIMPLB that Muslim women, merely by virtue of their religious identity and the religion they profess, cannot be relegated to a status more vulnerable than women of other religious faiths. Further the government asked the Supreme Court whether, in a secular democracy, religion can be a reason to deny the equal status and dignity available to women under the Constitution of India. The Uniform Civil Code would bring about the following changes to the major religions in India:

One of the greatest problems to implementing the uniform Civil Code is the illusion that the UCC would offend the largest minority in India. However, the fact remains that the biggest beneficiaries of the UCC would be Muslim women. This is a fact that is acknowledged by the All India Muslim Women Personal Law Board. The government too has come out in support of abolishing medieval practices followed even today such as triple talaq, polygamy and nikah halala. Triple talaq allows the Muslim husband to divorce his wife by uttering (or even writing) the word talaq three times to his wife. This leaves the Muslim Wife divorced and without means of livelihood. The Islamic practice of polygamy permits a Muslim male to be married to four wives at a time. Whereas, according to nikah halala a woman who has been divorced through triple talaq has to marry another man and consummate her marriage with him before being eligible to remarry her ex-husband. The Centre reasons that these practices are against constitutional principles such as gender equality, secularism, international laws etc. Further the government argues that when these practices are banned in Islamic theocratic countries, the practices could have absolutely no base in religion and are only prevalent to permit the dominance of men over women. Further, there is no legal bar against abolishing polygamy and triple talaq.

Not surprisingly, the legal battle is not just between the AIMPLB and the government but even more between the AIMWPLB and the AIMPLB. The All India Muslim Women Personal Law Board demands from the government that they ban triple talaq and punish men who give divorce arbitrarily. They further demand that the law allows women to seek a divorce. According to the AIMWPLB, the triple talaq is like a hanging dagger for Muslim women. The group has also sought a ban on 'nikah halala' from the centre.

The position of the All India Muslim Personal Law board is a stark contrast. According to the AIMPLB the Muslim practices of polygamy, triple talaq and nikah halala are matters of religious policy and cannot be interfered with by the government especially since they are based on the interpretation of the holy Quran.

According to a centuries-old law, Christian couples have to live separately for two years before they could apply for the dissolution of their marriage. Many members of the community find this law to be unfair since members of other religious communities need only wait for a one-year duration. The Supreme Court demanded that the centre take a stand on this issue when a petition was filed by Albert Anthony in March 2015. These requirements are as per a 147-year-old divorce law applicable only to Christians. A Uniform Civil Code would ensure that Christians need not face this hostile discrimination.

Meanwhile, the Law Commission of India has sought for a public vote on the implementation of the Uniform Civil Code (UCC) in the country. It has even released a questionnaire on the 7th of October. The questionnaire can be filled out by any person or organisation within 45 days. In a bid to assess the mood in the society, the law panel chairman retired Justice BS Chauhan has said, "The Commission hopes to begin a healthy conversation about the viability of a uniform civil code and will focus on family laws of all religions and the diversity of customary practices, to address social injustice rather than plurality of laws."
