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UNIFORM CIVIL CODE

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I. INTRODUCTION

Dr. B R Ambedkar, in my opinion religion should not be given the vast jurisdiction in the constitutional law because it may prevent the legislature to encroach upon that field. Uniform Civil Code is also known as 'Common Civil Code'. It has been one of the most important debated concepts of the Constitution of India. Constitution of India treats all citizens of India equally regardless of their caste, religion, sex, creed and race. But however when it comes to execute the Uniform Civil Code, in accordance of provisions of Constitution of India, in that case we can notice that opinions differ from each other. In India there exist various personal laws relating to marriage, adoption, divorce, maintenance, guardianship etc. As discussed earlier it becomes clear that India has numerous personal laws relating to various matrimonial causes. In others words, India failed to enforce a Uniform Civil Code in respect of family matters. In India there exists a Uniform Code for all citizens in respect of criminal matters. Since independence legislators have been debating that India needs a Uniform Civil Code in matters relating matrimonial causes. But even after six decades of independence governments failed to implement it.

II. HISTORY OF UNIFORM CIVIL CODE

The history of systematization of laws lies in the Colonial Period. It must be noted that Colonial Masters played a very significant part in determining and framing the legislative structure of our country. It must be noted that, The Lex Loci Report of October, 1840 concentrated on the necessity for codification of Indian law relating to crimes, evidences, contract etc. But it however suggested that personal law of Hindus and Muslims and of other societies should be kept separate from such systematization. In the Indian legal history, Warren Hasting in the Administration of Justice Regulation, 1780, made it clear that all the matters related to maintenance, marriages, inheritance and divorce, will be dealt by their personal laws. However

the British Parliament organized the law of crimes and made a common law to deal with the crimes and equally applicable on all citizens irrespective of their caste, sex, creed and religion. In the region of personal laws very few attempts were made. The attempt for a Codified Hindu law has also failed.

It may be noted that in the post-colonial period, the framers of the Indian constitution and Sh. Pandit Jawaharlal Nehru were considered that modernization is required before implementing a Uniform Civil Code and imposed on citizens belonging to different religions including Muslims. They also believed that it is a serious matter, and it might be possible that the citizens see it as an invasion on their cultural and religious rights as provided by the Constitution of India. The framers also believed that certain time should elapse before such a proposal can be undertaken. In backdrop of partition, where chaos and bloodshed became the order of the day, again bringing an issue regarding religious laws would not have been a wise decision. However, even after so many years of independence as well, the dream of a Uniform Civil Code remains a dream only.

III. CONSTITUTIONAL ASPECT

Article 44 of the Constitution of India deals with the concept of 'Uniform Civil Code' and it requires the State to secure for the citizens a Uniform Civil Code throughout the territory of India.¹ However Art 44 is the outcome of 'Directive Principles of State Policy' as provided under Art 34 of the constitution of India. But it must be noted that directive principles are not enforceable in the Court of law. It is mere a moral obligation on the States to implement a Uniform Civil Code as make the government more democratic. A Uniform Civil Code is equally applicable to all citizens irrespective of their caste, sex, religion, creed etc. But however at that time it was noted that if Uniform Civil Code is implemented then it would infringe the fundamental right of freedom of religion as mentioned under Art. 25 and it would also amount to victimization to the minority. The most important problem in respect of implementation of Uniform Civil Code is to establish the national unity in this country. In order to prevent the discrimination within the nation, whether related to different caste, sex, religion as the case may be it is necessary to implement the Uniform Civil Code. Uniform Civil Code will provide justice and equality in all matters relating to maintenance, adoption, marriages, divorce, succession, irrespective of their religion.

IV. BENEFITS OF IMPLEMENTING UNIFORM CIVIL CODE

There are numerous benefits of implementing Uniform Civil Code namely,

- It will reduce the civil litigation,
- It will also help in order to avoid the overlapping of provisions of personal law,
- It will also enhance the national integration,
- It will make the government more democratic.
- It will protect the rights of the citizens in matters pertaining to adoptions, marriages, divorce, and succession.

¹ DR. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA 451 (52 ed. 2015).

India has been established as a secular nation and thus it becomes more important to implement Uniform Civil Code in India to make the nation more secular.

V. APPROACH OF JUDICIARY IN ORDER TO IMPLEMENT UNIFORM CIVIL CODE

There are various landmark cases in the history of Indian judiciary where the Courts have directed the Central Government to implement the Uniform Civil Code as provided under Art 44.

The very first time the Supreme Court directed the Parliament to frame a Uniform Civil Code in the year 1985, **In Mohammad Ahmed Khan v. Sheh Bano Begum**², In this case, Muslim women named Sheh Bano Begum, demanded maintenance from her husband u/s 125 of the Crpc after she was given triple talaq from her husband. In this case Court held that a Muslim woman also has a right to get maintenance from her husband u/s 125 of Crpc. The then Chief Justice of India Y. V. Chandrachud observed that, "A Uniform Civil Code will aid the cause of national incorporation by eliminating dissimilar loyalties to law which have incompatible ideologies."

After many decisions and various meetings and debates, the Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of criminal Procedure. The explanation given for implementing this Act was that the Supreme Court had merely made an observation for enacting the Uniform Civil Code; not binding on the government or the Parliament and that there should be no interference with the personal laws unless the demand comes from within.

This was the very first alarm given by the Hon'ble Supreme Court to the Parliament of India to implement the Uniform Civil Code.

In Sarla Mudgal v. Union of India³, Finally, the Supreme Court has issued a directive to the Union of India to " endeavor" framing a Uniform Civil Code and report to it by August, 1996 the steps taken. The Supreme Court opined that: "Those who preferred to remain in India after the partition fully knew that the Indian leaders did not believe in two- nation or three "nation theory and that in the Indian Republic there was to be only one nation and no community could claim to remain a separate entity on the basis of religion."

It is, however, to be noted what the Supreme Court expressed in Lily Thomas case. The Court said that the directives as detailed in Part IV of the Constitution are not enforceable in Courts as they do not create any justiciable rights in favour of any person. The Supreme Court has no power to give directions for enforcement of the Directive Principles. Therefore to allay all apprehensions, it is reiterated that the Supreme Court had not issued any directions for the codification of a Common Civil Code.

The most recent alarm given by the Supreme Court to implement the Uniform Civil Code was in the year of 2003.

² A.I.R. 1985 S.C. 945.

³ A.I.R. 1995 S.C. 153.

In John Vallamattan v. Union of India⁴, the Bench, headed by the then Chief Justice Khare observed as under: “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 Uniform Civil Code in the country.”

VI. WHETHER WE NEED UNIFORM CIVIL CODE OR NOT?

There has been series of debates on this topic that whether we really need the Uniform Civil Code or not? Is it the right time to implement the provision of Article 44 of the Constitution of India? But unfortunately it still doesn't become clear. Some of them are in the favor of Uniform Civil Code and others opposed it. But the Supreme Court is in the opinion of implementing the Article 44 and has many a times issued direction, in various cases, to the Center to implement a Uniform Civil Code in the nation. But however the Central Government failed to do so.

The object of the Article 44 is to effect national integration by brining all communities on the common platform on matters which are at present governed by various personal laws, e.g., marriage, divorce, maintenance. It is based on the concept that there is no necessary connection between religion and personal law in a civilized society⁵. The Supreme Court believes that Article 44 remained a dead letter and also recommended the legislation to implement it.

The above mentioned cases, clearly shows the influence of religion over a community be it Muslim or any other for the time being in force. We can say that it is an oppressiveness of the minority over majority. It seems that unity of India would be at stake if religion is allowed to override the importance of Indian society. We have been a Sovereign Socialist and Secular Democratic Republic. State has no religion; it favours none and is an enemy to none. Humanism is our path and a Common Law for all Indian is our ideal. We believe and follow to rule of law. The framers of the Indian Constitution also believed that it is only a Uniform Civil Code that would help to establish the rule of law within Indian Society.

Dr. Ambedkar, the principal framer of the Indian Constitution was of the view that the provision relating to a Uniform Civil Code should be included in the fundamental rights chapter and thus should be made it more democratic and justifiable. However, on this point the committee was divided and wrote in a dissenting note "We are not satisfied with the acceptance of a Uniform Civil Code as an ultimate social objective. One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keeps the nation divided into water-right compartments in many aspects of life and a Uniform Civil Code should be guaranteed to the Indian people of five to ten years."

A secular republic needs a common law for all citizens rather than differentiated rules based on religious practices. Another reason to implement the Uniform Civil Code is the gender equality and justice. Mostly the rights of women are get effected and are limited under religious or personal law, be it Hindu or Muslim or any other community for the time being in force. The existence of triple talaq is a classic example. Many practices are governed by religious tradition and personal laws, are at odds with the fundamental rights guaranteed in the Indian Constitution.

⁴ A.I.R. 2003 S.C. 2903.

⁵ *supra* note 4.

Courts have many a times alarmed the Center in its various judgments that the government should try to implement a Uniform Civil Code in the nation including the judgment in the Shah Bano case.

VII. CONFLICTS BETWEEN SECULARISM AND UNIFORM CIVIL CODE:

The main controversy revolving around the concept of Uniform Civil Code has been secularism and the freedom of religion as provided by the Constitution of India. The Preamble of the Constitution states that India is a "secular democratic republic." This means that there is no State religion. It means that a secular State shall not discriminate its citizens on the ground of religion. It also believed that a State is only concerned with the relation between man and man and however it is not concerned with the relation of man with God. It does not mean allowing all religions to be practiced. It means that religion should not interfere with the life of an individual in any manner.

In S.R. Bommai v. Union of India⁶, "the Supreme Court held that religion is the material of individual confidence and it should not be diversified with secular events; Secular events can be controlled by the State by passing a law."

In Indian Society, there exists a concept of "positive secularism" as renowned from doctrine of secularism accepted by America and some European states i.e. there must be a barrier of separation between religion and State. In India, positive secularism splits spiritualism with individual faith.

However Articles 25 and 26 of the Constitution of India assurance right to freedom of religion, Article 25 assurances to every person the freedom of morality and the right to acknowledge practice and propagate religion. But however this right as provided by Constitution of India, is subject to public order, morality and health and to the other provisions of Part-III of the Constitution of India, Article 25 also authorizes the State to control or limit any economic, financial, political or other secular activity, which may be associated with religious practice and also to deliver for social welfare and reforms. The shield of Articles 25 and 26 is not partial to matters of doctrine of belief. It spreads to acts done in undertaking of religion and, therefore, covers a guarantee for ritual and observations, rites and manners of worship, which are the essential parts of religion.

It must be noted that, Uniform Civil Code is not opposite to secularism or will not infringe the provisions of Articles 25 and 26 of the Constitution of India. Article 44 of the Constitution of India is founded on the concept that there is no compulsory association between religion and personal law in an educated society. It is the self-confessed fact that no religion in the world permits deliberately misrepresentation. It is debated that the Uniform Civil Code will not and shall not outcome in interference of one's religious principles relating, mainly to matrimonial causes. In other words, it means that under the Uniform Civil Code a Hindu shouldn't be obliged

⁶ A.I.R. 1994 S.C.C. (3) 1.

to perform a nikah or a Muslim shouldn't be forced to carry out saptapadi. But however in matters of inheritance and other matters, there will be a common law.

VIII. EXISTENCE OF UNIFORM CIVIL CODE IN GOA

In India GOA is the only State that has a Uniform Civil Code. It must be kept in mind that at the same time as a nation-wide civil code is still being debated, a optimistic step in this way has already been taken by this state, which has passed a set of 'Family Laws', which extends to all people in Goa. It is a very unique feature of this set of Family Laws that there is no discrimination in this Code between Hindus or Muslims or Christians or any other community. It is mentioned in this Code, which passes a very liberal law that, every birth, death and marriage is compulsorily registrable, and it offers for an equal separation of property between husband and wife and also between children. It passes the rule of commitment, and Muslims whose marriages are registered in Goa can neither take a second wife nor divorce the current one by a pronouncement of a triple talak. Under this Code strict provisions have also been incorporated relating to the distribution of property at the time of divorce. It is mentioned that each spouse is allowed, in cases of divorce, to a half share in the property. However the matter of succession is concerned, if the spouse dies, it is given under this Code that the ownership of half the property is reserved by the surviving spouse, the other half to be equally divided between all the children, regardless of whether they are male or female, or whether they are unmarried or have got married and left the house.

IX. WHY IT IS DIFFICULT TO EXECUTE THE UNIFORM CIVIL CODE

In India there are lots of difficulties to execute Uniform Civil Code because India is a secular country and assures its sections the right to follow their individual religion, culture and customs as provided under Articles 29 and 30 of the Constitution of India. But however it is debated that executing a Uniform Civil Code will obstruct India's concept of secularism. It is cleared that the request for Uniform Civil Code has always been mounted in the framework of communal politics. Some people see it as majoritarianism under the apparel of social improvement. It is often regarded as a political issue.

X. RECOMMENDATIONS FOR THE EXECUTION THE UNIFORM CIVIL CODE

In order to execute the Uniform Civil Code as provided by Article 44 of the Constitution of India, the following suggestions need immediate consideration.

- It is recommended that a progressive viewpoint is obligatory amongst the people to recognize the position of such code.
- It is also recommended that the Uniform Civil Code should act in the best attention of all the beliefs.
- It is recommended that a commission of well-known jurists must be measured to preserve consistency and care must be taken not to upset the opinions of any specific community.

- People must understand that it will reduce the litigations and will also treat the citizens equally in matters relating to, marriages, divorce, maintenance, divorce and succession, irrespective of their caste, sex, religion and creed.
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XI. CONCLUSION

In nutshell we can conclude that, Article 44 of the Constitution of India requires the state to secure for the citizens of India a Uniform Civil Code throughout the territory of India. As has been noticed above, that in India there exist various codified personal laws of Hindus, Muslims, Christians, and Parsis. However, there is no Uniform Civil Code in respect of family matters in India, which would be equally applicable on all communities who co-exist in India. The question is not of minority protection, or even of national unity, it is simply one of treating each human person with the dignity that he deserves; something which personal laws have so far failed to do. The principle object of Uniform Civil Code is to treat each person equally and everyone be protected by just, fair and predictable laws.

Times have changed, societies have changed and it is high time that laws change. On the other side, rural settlements are still struggling with adherence to customary and superstitious beliefs in family matters. A Uniform Civil Code will not only change the entire perception of how families are governed but also change the lives of millions by filling the lacunas in various religious laws. However it is unfortunate that even after so many years of independence governments failed to implement the Uniform Civil Code.
