

UNIFORM CIVIL CODE: A MAJOR ISSUE TO BE TACKLED IMMEDIATELY

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Abstract

It can be seen through daily practices that there are so many cases where the personal laws stand in derogation of basic human rights or in many cases they opposed the public policy . In such cases need for uniformity of law can be felt by different folks of the society . These uniform laws can guarantee equal rules as advocated by various international conventions through local legislation , for the society as a whole in various matters .

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Introduction

The term UNIFORM CIVIL CODE , referred to the concept of a unique civil law code in independent India . Under this code , all people are governed by a set of secular laws irrespective of their religion , caste, etc. .This code replaced the rights of the citizens to be governed under different personal laws . This code is meant to cover the whole body of laws governing rights relating to property and in personal issues like marriage , divorce , adoption , maintenance, and inheritance, etc.

According to article 44 of the Constitution of India,” the State shall endeavor to enact a uniform civil code for citizens throughout the country”. This civil code should be of such nature that will deal with the personal laws of all communities and all other matters like marriage , succession , inheritance to property , adoption , divorce, etc. which are secular in character in India . This code should enhance the humanity and fraternity among the citizens of India . Although the exact contours of such a uniform code have not been spelled out , it should presumably incorporate modern and progressive aspects of all existing personal laws while discarding retrograde rules .

The uniform civil code will not only promote the gender parity but it will also facilitate the national integration by ensuring equality and prevention of discrimination on various grounds , as all citizens , irrespective of the religion practiced by them , shall be governed by a single civil code .¹However , in spite of the goodness of UC , it has been perceived by the minority communities, that the code of this nature will fundamentally encroach upon their rights to religious freedom and with the codification of personal laws into uniform rules , the scope of the freedom of religion will be reduced .²

Historic Nees of Uniform Civil Code

The Constitutional Assembly debated the implementation of UCC at length , and some of its members did not agree to the inclusion of UCC in the Constitution of India . B. Pocker Sahib Bahadur questioned the meaning of the term UCC and what it stood for . The absence of any particular law which could be taken as the standard was a subject of concern for Muslim members as they wanted to avoid any imposition of majoritarian law.³Unfortunately , this unwarranted concern prevailed over the need for a strong national character of the nation . The Muslim members opined that the word civil code should not cover the strict personal law of citizens. Allowing the fears of the members who questioned the connotation of the word UCC and the object of such provision in the Constitution, K.M. Munshisaid: “The whole object of this article is that as and when the Parliament thinks it proper , or

rather when the majority in Parliament thinks proper , an attempt may be made to unify the personal law of the country”.⁴

The chairman of the Drafting Committee Dr. B. R. Ambedkar while replied to the question raised by the minority community regarding UCC in the Assembly said “it was intended to have a Code which provided for uniformity of law in matters of marriages , divorce , succession, etc. irrespective of religion , community”⁵, etc.. M.C. CHARLA , J. has also supported UCC vehemently by saying “ Article 44 is a mandatory provision binding the government and it is incumbent upon it to give effect to its provision. The Constitution of India was enacted for the whole country , and every section and community must accept its provision and its directives”⁶.

It is a historical fact that the framers of our Constitution know very well the importance of UCC but they did not make it a mandatory provision i.e. they had included this provision in Directive Principles Of State Policy , which are not enforceable through court . The reason behind this appeared that the Confederation of States in India at that was a very fragile combination having different religions , cultures , languages, etc. . At that time , as it seems , for maintaining the fabric of Indian unity it was not advisable to apply the provisions like UCC.

SECULARISM , UCC &THE CONSTITUTION –

The Preamble of the Constitution of India states that India is a secular , democratic, and republic country . It means that the State , of its own , has no religion . The State of this type cannot make any discrimination against anyone on this ground . Jeevan Reddy j. has observed in the S.R.Bomma case regarding secularism . He said that “religion is the matter of individual faith and cannot be mixed with secular activities and can be regulated by the State by enacting a law”⁷

It can be seen through daily practices that there are so many cases where the personal laws stand in derogation of basic human rights or in many cases they opposed the public policy . In such cases need for uniformity of law can be felt by different folks of the society . These uniform laws can guarantee equal rules as advocated by various international conventions through local legislation , for the society as a whole in various matters .

The precise definition of the word secular is not available anywhere . This word is used in many senses . It appears just opposite to religion when we are talking about a secular state , as the state cannot be a religious state . But it is a wrong notion . It does not mean that the secular state is an anti-religious state . It simply means that the state respects all the religions. Also, the context of secularism is

somewhat different as it is understood in America and European countries . These countries have their own specific reasons behind the adoption of secularism . Before adopting secularism these countries have faced various stages . So far as India is concerned things were somewhat different . The goal of religion is to enlighten the person to have its attachment with the God , by whatever name he knows him . Whereas the goal of secularization is to remove impediments from the life of a person by providing equal laws . In this sense , we can say that the goal of a uniform civil code is to make the idea of secularism successful. And due to this the reason, this idea of uniform civil code has been adopted by many modern nations

The major controversy which surrounds the issue of UCC is secularism and the constitutional provisions under articles 25 and 26 guaranteeing freedom of religion . Regarding this controversy, REDDY J. observed that the religion is a matter of individual faith and cannot be mixed with secular activities as secular activities can be regulated by the state ⁸.UCC is not against the idea of secularism nor will it violate articles 25 and 26 . In a society like ours, there is no need for a necessary connection between religion and personal laws and this is the basic concept that is followed under article 44 in the constitution . In Shah Bano Begam's case, Y.V.CHANDRACHUD J. observed that “ a common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies”.⁹Implementation of UCC will not result in the interference of anyone's religious beliefs rather it will regulate the matters of secular nature like maintenance , succession , inheritance, etc. .

Judicial Approach on Uniform Civil Code

The SUPREME COURT in its various pronouncements reflects its intention towards a uniform civil code in India. In Shah Bano Case¹⁰ , the Apex court observed that it is also a matter of regret that Article 44 of our constitution has remained a dead letter . This was a liberal interpretation of the law as required by gender justice . many people rightly denounced that it was , no doubt a retrograde step . In Sarla Mudgal case¹¹ Kuldeep Singh J. while delivering the judgment , directed the govt. to implement the directive of article 44 and to file an affidavit indicating the steps taken in the matter and held that –”Successive governments have been totally remiss in their duty of implementing the constitutional mandate under Article 44 . Therefore , Supreme Court requested the govt. of India , through the Prime Minister of the country to have a fresh look at article 44 of the constitution of India and endeavor to secure for its citizens a UCC throughout the territory of India. R.M. Sahai J. too agreed on the issue and said “ours is the Secular Democratic Republic . Freedom of religion is

the core of our culture . But religious practices , violative of human rights and dignity and sacerdotal suffocation of essentiality civil and material freedoms , are not autonomy but oppression .

In John Vallamattom case¹² the court express its concern over the contradictions in marriage laws of various religions and emphasized on the need for legislative reforms as a UCC . Stressing that there was no necessary connection between religious activities and personal laws in a civilized society . V.N. Khare , C.J. further emphasized that a UCC will help the cause of the national integration by removing the contradictions based on ideologies . The triple talaq issue in Shayara Bano case ¹³ is also , not exactly , but a major step towards UCC . The Supreme Court has declared this practice as unconstitutional .

In this sense, we can say that the Apex court has on various times directed the govts. to raise the issues enshrined in the Directive Principles to make these a reality by making the laws accordingly.

Conclusion

India is a Secular , Democratic , Republic country in which its citizens enjoy the freedom of religion .A secular state The state cannot interfere in the matters of individual faith /religion . The religion is only a matter of individual faith or worship . It only provides the methods for attaining close proximity with the GOD . This cannot be mixed with the secular activities like maintenance, adoption , inheritance , succession , marriage, etc. . These are some issues that can be regulated by the State by making law . The Supreme Court has also declared this in the famous case of S.R.Bommai . The underline principle behind the article 44 is that the ‘constitutional principles must override the religious sentiments of an individual’ in the interest of the secular republic . In this light, we can now conclude that UCC amounts to equal laws for all the citizens of the society . For achieving the status of a real secular state UCC is necessary . ‘One nation one law for all’ is now a must for the country.

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