



Uniform Civil Code: an unfulfilled vision.

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Abstract

Though our criminal system of law is common to all, laws such as property, inheritance, succession, maintenance, marriage, divorce and adoption depend on the personal laws of the people which is based on religion. The ideal of a Uniform Civil Code for all India is regarded as eminently desirable to foster the sense of national unity and integrity. It is argued that the motto should be one citizen one law. But this remains for the present a distant goal as it is a politically sensitive issue. A great hindrance in achieving this most desirable goal is the Muslim public opinion against it. A proposal has now emerged that to start with, let there be a voluntary uniform civil code. A uniform civil code is essential in order to protect the constitution from the threat of fundamentalism.

Keywords: religion, justice, secularism, unity, integrity, personal laws, uniformity, solidarity.

1. Introduction

Today a major political issue throughout the country is the implementation of the Uniform Civil Code for the people of India versus the different personal laws prevalent in the country. Uniform Civil Code means that common statutory laws in the matters of civil nature, which govern the entire population of the country irrespective of religion, caste or creed. Now the main question is how to reconcile the different personal laws with a demand for uniformity. If we implement the Uniform Civil Code it definitely brings the legal uniformity but it mitigates the very spirit of cultural diversity. But the existing personal laws promote cultural diversity but fail to provide the social justice specially the rights of a woman.

2. Background of uniform civil code

In India the question of Uniform Civil Code was agitating the minds of the member of the constituent Assembly. The Constituent Assembly debated the aspect and considered the needs for Uniform Civil Code for all i.e. Hindu, Muslim, Christian, Sikh, Jain, Buddha etc for national solidarity and comprehensive integrated

Indian Nationals. Uniform Civil Code doesn't in any way interfere with any religious faith. It only aims at laying down uniform law by legislation for all in matters of personal law to do welfare to the people.

During the debate in the constituent Assembly on Article 44 several Muslim members had expressed that implementation of Article 44 would abrogate their personal laws. K. M Munshi had then explained that there was nothing sacrosanct about the personal laws as these laws covered merely secular activities like inheritance and succession. Religion must be divorced from personal law. He pointed out that the India is an advancing society and it is necessary to unify and consolidate the Nation by every means. We must consolidate and unify our personal law so that the way of life of the whole country may in course of time be unified and secular. K. M Munshi also emphasized Religion must be confined to its proper sphere, and the rest of problem is national unity.

Dr. Ambedkar, the then law minister emphasised that India had already achieved uniformity of law over a vast area of human relationship and the only areas of civil law which continued to have diverse laws were

the areas governing matters like marriage and succession. It was this “little corner” that was sought to be made uniform. The other point argued was that such diversity violated the principle of fundamental Rights that there should be no discrimination between citizens.

3. Constitution of India and uniform civil code

There are many provisions under the constitution of India in favour of the establishment of uniform civil code. These are –

3.1. Preamble: The preamble of constitution of India states that “we the people of India having solemnly resolved to secure all its citizens, besides, social, economic and political justice, equality of status and opportunity assuring the dignity of the individual and the unity and integrity of the nation.”

3.2. Article 14: Article 14 of the constitution of India guarantees equality before laws and equal protection of laws.

3.3. Article 15: Article 15 states that the state shall not discriminate against the citizen on grounds of religion, race, caste, sex or place of birth or any of them.

3.4. Article 44: Article 44 states that the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

4. Landmark judgment by supreme court of India on uniform Civil Coded

4.1. The issue of implementation of Uniform Civil Code become an open debate after the decision of the **Mohd Ahmed Khan vs Shah Banu Begum (AIR 1985 sc 945)**. This case arose out of an application given by a Muslim woman for maintenance under section 125 of Cr. P.C 1973, which is a secular in character. The main question raised whether a Muslim husband was exempt from paying maintenance to his divorced wife amount stipulated by the provisions of Cr. P.C. The Supreme Court held that the husband is obliged to maintain a divorcee wife under section 125 Cr. P.C. and the muslim personal law cannot stand as a bar. The court has emphasised; “A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicted ideologies.”

Also the court appreciates the difficulties involved in bringing persons of different faiths and persuasions on a common platform but, nevertheless, the court has said “A beginning has to be made if the constitution is to have any meaning”. “It is state which is charged with the duty of securing a Uniform Civil Code for the

citizens of the country and, unquestionably, it has the legislative competency to do so”.

4.2. Sarla Mudgal vs U.O.I (AIR 1995 SC 1531) On May 10, 1995 a bench of the Supreme Court delivered a historical judgement. In this case a Hindu Husband, married under Hindu Law, embraced Islam and solemnized second marriage. The question was whether the second marriage without the first marriage having been dissolved would be valid qua the first wife who continued to be a Hindu. In the instant case, the court ruled that the second marriage of a Hindu Husband after his conversion to Islam would be a void marriage. The court held that under Hindu Law conversion to another religion does not dissolve the previous marriage and unless the existing marriage is dissolved remarriage is void and punishable under section 494, Indian Penal Code. In this context the Supreme Court stated it is a high time to implement the Uniform Civil Code for protection and promotion of national unity and solidarity.

4.3. John Vallamattom vs. Union of India (AIR 2003 SC 2902) : In this case the petitioner has challenged the validity of section 118 of the Indian Succession Act on the ground that it was discriminatory under Article 14 as well as violative of Article 25 and 26 of the Constitution of India. In that regard court held that section 118 of the Indian succession Act is unconstitutional being violative of Article 14 of the Constitution. Article 25 and 26 have no application in this case as disposition of property for religion and charitable usage is not an integral part of Christian religion. It only protect those rituals and ceremonies that are integral part of religion. The then Chief Justice of India in view of the fact of the instant case forcefully reiterated the view that the common civil code be enacted as it would solve such problems. He said, “Article 44 is based on the premise that there is no necessary connection between Religion and personal law in a civilized society.” A common code will enhance the cause of national integration by removing the contradictions based on ideologies.

4.4. Seema vs. Ashwni Kumar: In this case the Supreme Court held that all marriages irrespective of their religion, be compulsorily registered. It is a step towards the implementation of uniform civil code.

5. Conclusion

Despite the several directions given by the Supreme Court the government is not yet interested to implement the Uniform Civil Code just to keep their

vote bank intact. There is no such evidence of any official activity for framing a common civil code for the country, which has led Article 44 to remain a “dead letter” and a “distant dream.” It is necessary that law be divorced from religion and the enactment of uniform code, will strengthened the secularism; much of the

present day separation divisiveness between the various religions group in the country will disappear, and India will emerge as a much more cohesive and integrated nation. Religious fundamentalism must go and social and economic justice must be made available to all Indian irrespective of any religion race, caste or gender.

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