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‘UNIFORM CIVIL CODE IN INDIA : SITUATION OF 2013’

The government must prepare a good environment for Uniform Civil Code by explaining the contents and significance of Article 44. It should take steps and find our means to find out the obscurantist's who oppose to move of Uniform Civil Code.

- The press, radio, television and various other means of communication may be of great help in this regard. The conservative sections of the citizens must be made to understand the utility of uniformity of laws so that they do not stand in the way of implementation of Article 44 of the constitution.
- The state should bring social reform by stages and the stages may be territorial or they may be community wise.
- It is the duty of academicians to generate good environment for the adoption of the UCC in India. It is their moral duty to promote the feelings of secularism and explain the contents of UCC to the community at large so that they are made to understand the beneficial effect of the UCC.
- One reason why personalized laws based on religion is not favoured is because religious laws tend to be highly gender biased. Most major religions developed, over time, a bias towards women - treating them as somewhat inferior. In Christianity, Eve was meant to be the root cause of all evil. In Hinduism, Sati was practiced in some communities for ages till the British formally put a stop to it. The practice of dowry and the ill treatment of widows continue till today in many regions. In Islam, the staunchest Muslims don't let women

travel alone, wear something revealing or go to work. These are just a few examples of the deep underlying biases that lie within faiths. Such practices are justified via religious texts or customs that simply "must not be broken". It has taken generations of rebellion to inculcate any change within these religions.

- Many Islamic countries have codified and reformed Muslim personal law to check its misuse. Muslim countries like Egypt, Turkey and even Pakistan have reformed their laws.
- By 1961 Pakistan, a Muslim country had actually reformed its Muslim Law more than India had and this remains true today. There is no reason why India should continue with vastly discriminatory personal laws.
- In fact, the reforms meted out in Tunisia and Turkey helped abolish Polygamy. Polygamy has also been either banned or severely restricted in Syria, Egypt, Turkey, Morocco, Iran and even in Pakistan.
- Besides Muslims who live in U.S.A, Australia, U.K, and other parts of Europe readily accepted the civil laws applicable uniformly to all citizens in the respective countries but do not feel insecure on that account. So, then, why, in India should there be such a feeling? ! Iran, South Yemen and Singapore all reformed their Muslim laws in 1970s, although Iran appears to have backslid in this respect. In the end argument is quite clear. If Muslim countries can reform Muslim Personal Law, and if Western democracies have fully secular system, then why are Indian Muslims living under laws passed in the 1930s?

Religious fundamentalism must go, social and economic justice must be made available to the Muslim women and other women and their dignity and equality be ensured, basic human rights guaranteed and there should be an end to exploitation of Muslim Women. By providing this equality to all Indian women whether she is Hindu, Muslim, Shikh, Parsi, or Christian, we are uplifting our country's dignity.

INTRODUCTION

Each community has its own laws governing marriage and divorce, infants and minors, adoption, wills and succession. These personal laws go with an individual across the states of India where they are part of the law of the land, and the individual is entitled to have that individual's own personal laws are statutory and customary laws applicable to particular religious or cultural groups within a national jurisdiction. They govern family relations in such matters as marriage and divorce, maintenance and succession. India is a secular country where every community is allowed its own personal laws.

HISTORY:

When India attained independence and the issue of Uniform Civil Code (UCC) arose, much was debated at the Indian Parliament in 1948. While the founding father of our constitution and Chairman of the Draft Committee, Dr. B.R. Ambedkar, supported by eminent nationalists like Gopal Swamy Iyenger, Anantasayam Iyenger, K.M. Munshiji, Alladi Krishnaswamy Iyer and others favoured the implementation of the Uniform Civil Code; it was strongly opposed by Muslim fundamentalists like Pocker Saheb and members from other religions. On 23rd November 1948 a Muslim member, in Parliament, gave an open challenge that India would never be the same again if it tried to bring in Uniform Civil Code and interfere with Muslim personal law. Earlier, the Congress had given an assurance that it would allow Muslims to practice Islamic personal law and the architects of the Constitution, therefore, found a compromise by including the enactment of a Uniform Civil Code under the Directive Principles of State Policy in Article- 44. Distinguished members like Shri Minoo Masani, Smt. Hansa Mehta and Rajkumari Amrit Kaur put in a note of dissent saying that one of the factors that has kept India back from advancing to nationhood has been existence of personal laws, based on religion, which keep the Nation divided into watertight compartments in many aspects of life. They were strongly in favour of the view that Uniform Civil Code should be guaranteed to the Indian people within a period of five to ten years. But even after sixty five years, because of perverse secularism and perverted communalism, Uniform Civil Code has not come into being.

CONSTITUTIONAL ASPECTS OVER THE ISSUE:

Article 44, which is one of the "directive principles" laid down in the Constitution says: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." As Article 37 of the Constitution itself makes clear, the directive principles "shall not be enforceable by any court". Nevertheless, they are "fundamental in the governance of the country." Indian women can never be given equality with a man which is enshrined in Article 14 of the Constitution. Uniform Civil Code is not opposed to secularism or will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are of secular nature and, Therefore, law can regulate them. No religion permits deliberate distortion.

Ex-attorney general Soli Sorabjee has said: "personal laws do not enjoy any immunity from compliance with constitutional obligations guaranteeing fundamental rights. Besides, one of the fundamental duties prescribed by the Constitution is to 'renounce practices derogatory to the dignity of women' under Article 51 A (e)."

UNIFORM CIVIL CODE THE CONCEPT INSERTED IN INDIAN CONSTITUTION.

Like the concept of secularism, justice, liberty, equality and fraternity all are essential and inseparable part of Indian Constitution and along with clarity and security are also considered as essential part of the constitution and as stated earlier prevalence of different personal laws ruins the clarity of laws and creates apprehensions in the mind of different religious so the very purpose of the Constitution is not fulfilled and there is a necessity for the formation of Uniform Civil Code.

Providing justice without equality to the individual will not fulfill the very basic purpose of the Constitution. It will create such a situation in which a person have the power to go to courts for infringement of his rights but the basis of this infringement is equality itself which is not provided to individual.

Along with the above reasons the Fundamental Rights which are considered to be the basic structure of the Constitution will also not be provided to the individual under the garb of different personal laws. Their will infringement of Articles like 14, 15, 16, 17 and 18. As all of them talks about equality like Article 15 prohibits discrimination on the grounds only of religion, race, caste, sex or any of them.

Article 16 talks about equality in matters of public employment. Thus the very purpose of these Articles will not be fulfilled if the different personal will keep on prevailing as they provide different treatment to individuals with in accordance with the religion they follow. Preventing communalism and promoting the spirit of our constitution i.e secularism which is featured in our preamble. Uniform Civil Code is a safe guard against the political domination by means of minority fundamentalism. Thus it is a means of preventing encouragement to the communalism spread by political parties in order to achieve their political ends.

INDIAN CONSTITUTION AND INTERNATIONAL HUMAN RIGHTS IN REFERENCE TO UNIFORM CIVIL CODE.

We see that Article 15(3) of the Constitution empowers the State to make special provisions for protection of women and children. Article 25(2) mandate that social reform and welfare can be provided irrespective of the right to freedom of religion.

India has ratified CEDAW – The Convention on the Elimination of All Forms of Discrimination Against Women, with a declaration to limit its obligations relating to changing the discriminatory cultural practices within the community and the family. Hence, with regard to Articles 5(a) [2] and 16(a) [3] of the Convention, the India declares that “it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.”

Personal laws have often been kept beyond the reach of fundamental rights by shifting the burden of sanitizing the discrimination in personal laws to the parliament. Surprisingly, Supreme Court has not hesitated in giving full effect of certain other Directive Principles of State Place, such as the right to education, and elevating them to the status of a Fundamental Right. A similar approach has not been forthcoming on the Constitutional directive to bring about a uniform civil code, though the courts have time and again exhorted the government of the day to take necessary steps in this direction.

As recently as February 2011, the Supreme Court, while discussing lack of uniformity in marriageable age and age of consent, pulled up the government for its failure to overhaul personal laws of the minority communities, saying that it was a reflection on their secular credentials.

CASES REGARDING UNIFORM CIVIL CODE:

The Supreme Court first directed the Parliament to frame a UCC in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum. Popularly known as the Shah Bano case. In this case, a penurious Muslim woman claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq from him. The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125. The Court also held that Article 44[3]of the Constitution has remained a dead letter. The then Chief Justice of India Y.V. Chandrachud observed that, “A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies”

After this decision, nationwide discussion, meetings and agitation were held. The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Woman (Right to Protection on Divorce) Act1986, 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 UCC, 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.

In S.R.Bomani V Union of India, as per Justice Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting a law.

The other instance in which the Supreme Court again directed the government of Article 44 was in the case of Sarla Mudgal v. Union of India. In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnize second marriage? The court held that a Hindu marriage solemnized under the Hindu Marriage Act 1955. Conversion to Islam and Marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus a second marriage solemnized after converting to Islam would be an offence under Section 494[5] of the Indian

Penal Code.

Let us take a look into the case of Imrana – 28 years old woman and the mother of five children. On June 6 2005, Imrana was raped by her 69 year old father-in-law Ali Mohammad. Soon after she was raped, a local Muslim panchayat (council of elders) asked her to treat her husband Nur Ilahi as her son and declared their marriage null and void! Can any law of the land justify this?

The Supreme Court in October 2008 refused to entertain a PIL seeking a direction to Parliament to enact a legislation on Uniform Civil Code.

“There is no power with us to give such a direction.” Said a bench comprising Chief Justice KG Balakrishnan and Justice P.Sathasivam. “It is the prerogative of Parliament to enact a legislation. Direction can not be given to it,” said Justice Balakrishnan speaking for the bench. The CJI

further observe, “This court has earlier also said that such a direction can not be given to Parliament. “The PIL had said that there was a need for a Uniform Civil Code in the country. Petitioner Satya Pal appearing before the bench submitted that he was approaching the apex court as Parliament has not taken any steps in this direction for the past 60 years.

However, the bench said it will not give any direction to Parliament to make a legislation as such powers were non-existent. When the petitioner said that the prime minister can be asked to take steps, the bench said this was also not possible. The petitioner later withdraw the plea just when the bench said it would dismiss it.

The Supreme Court has again pulled up the government for its failure to overhaul personal laws of the minority communities, saying that it was a reflection on their secular credentials.

The court also said that government’s attempt to reform personal laws don’t go beyond Hindu who have been more tolerant of such initiatives. “The Hindu community has been tolerant to these statutory intervention. But there appears a lack of secular commitment as it has not happened for other religions”

Justice Dalveer Bhandari and A.K. Ganguly made the observation while hearing petitions filed by the National Commission for Women. The petitioners have sought formulation of a uniform marriageable age and complained that different stipulations in as many statutes had created confusion. Additional solicitor general Indira Jaising explained the differences in age limits provided in statutes, saying that these were meant to achieve diverse social objectives. “Hence, there could not be a uniform age. Though the government feels that girls above 16 years should be said to have attained the age of consent to sexual relation and hence could marry, the formal age of marriage would stay at 18 years” argued the ASG.

HOW APPLICABLE UNIFORM CIVIL CODE IS IN INDIA?

The convention of the Bar Council of India on the UCC came out strongly in favour of a compulsory code. The problem in optional code is that it can not be a uniform. It can only be one more addition to the existing family laws, thus compounding rather than reducing the confusion that exists.

Surprisingly, the small state like Goa has accepted and enforced the UCC in entire territory in 1961.

THE TECHNICAL OBSTRACLES

- Lack of information among the public with regard to the UCC in India.
- Prejudice which arises out of ignorance.
- No build up of public opinion.
- No draft bill.
- No basic thinking about the structure of the UCC.

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