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Abstract:

India is a democratic country. It has world's largest democracy. Millions of people are residing here peacefully. People have their own rites, custom, culture and religions, People have various civil, political, social and political rights under Indian constitution. Constitution provides for various civil and political rights under the heading of FRs under Part III and also provides for social rights under directive principle of state policy under Part IV of the constitution. Part IV of directive principle of state policy contains 18 articles. Among these policy articles, article- 44 for bringing and implementing the Uniform Civil Code has arose a conflict between government and various religious communities. Art.44 of the Constitution mandates that there must be a Uniform Civil Code in India. All Indians ideally will have to come under the umbrella of a Uniform Civil Code which will contribute to the creation of national identity and character. Idea is that, there should be a uniform civil code applicable to all irrespective of their religion. Same matters of different communities should have been dealt with by one substantive law. Everyone has its own perspective regarding Uniform Civil Code. In this paper the researcher shall deal with perspective of the Indian judiciary regarding the possibility of Uniform Civil Code and make an attempt to highlight the need of the Uniform Civil Code in India Important court judgments shall be discussed in this research paper..in these judgments constitutionality of personal laws has been challenged or the courts have expressed its own opinion in favor of enactment of Uniform Civil Code.

Key words: Uniform Civil Code, Personal Laws, Indian Judiciary

Introduction

India is a highly diverse country. It has largest democratic system in the world. It is second in number in the list of most populous countries. Many languages are spoken to by the people. Different cultures and religions are preserved and followed by the people. Due to these diversities constitution of India declare it as secular country. Religion and culture are playing very important role in people life. These diversities are the identity of the people or we can say that it identifies the people. It affects the social and political issues also.

The constitution of India is a unique document. The constitution is living and vibrating document. Its provisions are living not merely a dead letter. Some sort of activeness is required by these provisions. It is possible if parliament makes it happen. Some of these vibrating words in Article 44 of the constitution provides for Uniform Civil Code.

Uniform Civil Code for this country is something which kindles hope and enthusiasm especially when it holds forth the promise of ending discrimination against women in India. At the same time one is worried about the manner in which we may go about seeking to achieve this noble constitutional goal, as also about all the implications of enormous exercise that harmonize the various personal laws already in existence.

Though Dr. B.R. Ambedkar was an extensive supporter of the Uniform Civil Code, he couldn't get it through more than a status of Directive Principle due to opposition from the members. This directive principle is aimed at to achieve, gradually, rather than at once, more far-reaching equality for all citizens. The state has been entrusted with this voluminous task. However, no significant steps have been taken by any government till now.¹

Meaning of Uniform Civil Code

A Uniform Civil Code is the same set of secular civil rules which is to govern all people irrespective of their religion, race, caste, and community. In India, personal matters are dealt with by the personal laws of the person. Uniform Civil Code overrides the claim of citizens to be governed by their personal laws. Many modern countries have adopted this concept of uniformity of law irrespective of religion, race and cast of persons. Uniform Civil

¹ VII, *Constituent Assembly Debate*, 551,552 (23rd November, 1948)

Code includes the matters related to property, contract, other civil matters and family matters such as marriage, divorce, maintenance, adoption, guardianship, inheritance.²

Uniform Civil Code is about applicability of one single law to all. It deals with same specific matters marriage etc. But one single law in uniformity for all the religious communities etc. Hindu codified laws, Parsi laws, Christian laws and Muslim personal laws deal with same specific matters such as marriage etc. but to his own particular religion. Hindu codified laws cannot be applicable to Muslim, Christian and Parsis and vice-versa.

Uniform Civil Code is the ongoing point of debate within Indian mandate to eradicate personal laws which are based on religious literature and scriptures of each major religious community in India with a same set of rules governing every citizen. The purpose of Uniform civil code is one nation, one law for its citizens.³

Idea is that, there should be a uniform civil code applicable to all irrespective of their religion. Same matters of different communities should have been dealt with by one substantive law. Like, Muslim laws, Hindu laws deal with the same matters but both the personal laws are different in its applicability. What is given by Hindu laws is never given by Muslim laws and vice-versa in the same circumstances and on the same grounds. One can adopt a child but other will not. One can take divorce but other will not on the same ground and under the same circumstances. It results in violation of human rights on the basis of religion. Person to whom these laws apply stands at equal footing, having said that they face discrimination on the basis of religion, cast, community etc.

Meaning of Personal Law

Marriage, divorce, adoption, maintenance, succession etc are the personal matters of the people. The law which deals with these personal matters is called personal law. So, Personal laws are the laws which deal with personal matters of the people. Base of these personal laws can be religion, custom of particular community.

² Veena L. Kolekar, "Uniform Civil Code" Volume XLII *Indian Bar Review* 215 (Jan March 2015)

³ Krati, "Uniform Civil Code" <http://www.legalserviceindia.com/legal/article-773-uniform-civil-code.html>

(Visited on 14-8-2017).

Therefore, Personal laws deal with these personal matters according to the cast, community and religion of the people. By analyzing these laws we found that a Muslim can marry under Muslim law; a Hindu can marry under Hindu law. Hindu marriage act, 1955 deals with marriage, divorce etc. between two Hindus. This act shall not apply to people of other religions i.e. two Muslim cannot solemnize marriage under Hindu marriage act. Personal law subjects like marriage, divorce, inheritance come under Concurrent list.

Problems in Implementing Uniform Civil Code

Uniform Civil Code, couldn't get status of fundamental right due to opposition from the members of other communities. It is inserted in the constitution as directive principle of state policy. The goal of this directive principle is to achieve, gradually, rather than at once, more far-reaching equality for all citizens. The state has been entrusted with this voluminous task. However, no significant steps have been taken by any government due to objections raised by the people.

1. It is argued by some orthodox people that it would lead to the loss of the culture and the identity of the minorities in the Indian society.

2. Most of the people, such as Hindu, Christian, Muslim or any other community, are not ready to adopt truly secular laws separated from religious customs. So, why should a law be imposed on an unwilling population?⁴

3. The All India Muslim Personal Law Board claims that Uniform Civil Code will diminish the rights of minority which is democracy's basic duty. So, Uniform Civil Code would go against the fundamental principle of constitutional democracy.⁵

4. The All India Muslim Personal Law Board argues that Muslim personal law is based on the Quran, which is inextricably interwoven with the religion of Islam and not on a law enacted by Parliament. Thus, it is the matter of freedom of religion provided under Articles 25 and 26 read with other Articles such as Articles 29⁶ and 30⁷ of the constitution.⁸

⁴ Akandsira, What are the arguments against Uniform Civil Code in India?, <http://www.quora.com/what-are-the-arguments-against-a-uniform-civil-code-in-india> (visited on 31/10/2016)

⁵ *ibid.*

⁶ The Constitution of India, Article 29

⁷ The Constitution of India, Article 30

⁸ Puneeth Babu, Which Countries have a Uniform Civil Code, available at <http://www.quora.com/which-country-have-a-uniform-civil-code> (Visited on 4/11/2016)

5. it's better to bring about reforms in various personal laws, in order to make them relevant for the changing times, instead of Uniform Civil Code an external enforcement, let these changes be internal reforms.⁹

6. Some sections in minorities claim that in the guise of Uniform Civil Code personal law of majority community shall be imposed on them.

7. Change in laws in favor of women like the Hindu Succession Act,¹⁰ did nothing in favor of the women. Women hold the same percentage of property as they hold originally before this act.¹¹

8. There is lack of political will because uniform civil code is a very complex and sensitive issue.

9. Misinformation about the Uniform Civil Code has not been spelt out leading minorities to believe that it is a way of Hinduism them.

Judicial Approach

Supreme Court has given number of decision and interpreted the various provisions of personal laws based on religion according to the present circumstances prevailing in India. The Supreme court has brought into light in many cases (*Shah Bano Begam*¹² to *Shayara Bano's case*)¹³ the need and importance of the Uniform Civil Code and asked the Indian government directly or indirectly to remove the derogatory practice of the personal laws by implementing the Uniform Civil Code.

In Case of *Bai Tahira vs. Ali Fissali*¹⁴ an issue was raised before the Supreme Court that whether the compromise deed executed by the husband and the wife can exclude the operation of Section 125 of criminal Procedure code of 1973. The facts of the case were that Bai Tahira had been divorced in 1962 and thereafter the defendant married to second wife. In the compromise deed Rs. 5000 had been adjusted as a Mehar mentioned in the deed that she had no further claim against her husband. But in 1973, the Criminal Procedure Code was

⁹ Ibid

¹⁰ The Hindu Succession (amendment) Act, 2005

¹¹ Puneeth Babu, Which Countries have a Uniform Civil Code, available at <http://www.quora.com/which-country-have-a-uniform-civil-code> (Visited on 4/11/2016)

¹² Mohammad Ahmed Khan vs. Shah Bano Begum AIR 1985 SC 945

¹³ Shayara Bano vs. Union of India AIR 2017 SC 4609

¹⁴ AIR 1979 SC 362

amended. Thereafter, Bai Tahira filed an application for maintenance under Section 125 in the Trial Court. Ultimately this case went to the Supreme Court in appeal against the decision of the Bombay High Court. Justice Krishna Iyer delivered the judgment on behalf of Tulzapurkar J and R. S. Pathak J and upheld Bai Tahira's right to ask for maintenance despite the compromise. Court said that no settlement of claims which does not have the special statutory right of the divorce under Section 125 can operate to negate the claim." Justice Krishna Iyer then continued: "Nor can Sec. 127 secure the response from his obligation. Payment of Mehar money as a customary discharge is within the cognizance of that provision.

*Mst. Zohra Khatoon vs. Mohd. Ibrahim*¹⁵, in this case a substantial question of law was raised before the Supreme Court that whether she can claim maintenance under Sec. 125 and 127 of Criminal Procedure Code or not? Before the Court text books of Muslim Law were referred to support the argument that the appellant is not entitled to maintenance according to Muslim Law. Justice Fazal Ali on behalf of the majority delivered the judgment and held "The views taken by the High Court is erroneous and is based on a wrong interpretation of clause (1) (b) of the explanation to Sec. 125 (1) of the Criminal Procedure Code under clause (b) the wife continues to be a wife within the meaning of the provisions of the code even though she has been divorced by her husband or has otherwise obliged a divorce and has not remarried. He further observed that the High Court, therefore, erred in question the order of the Magistrate. The applicant in the eyes of law continues to be the wife of respondent, despite the decree of dissolution of marriage and is entitled to get maintenance awarded by the Magistrate. The Supreme Court by ignoring the orthodox Muslim Law covered the case of appellant under Sec. 125 of the Criminal Procedure Code. Hence Supreme Court has made efforts towards one civil code.

In case of *Mohammad Ahmed Khan vs. Shah Bano Begum*¹⁶ the Supreme Court said that the state should take initiative in making the Uniform Civil Code. In this case Shah Bano was the wife of Muslim who divorced her when she was sixty years of age. She applied for maintenance from his husband under section 125 of Criminal Procedure Code, 1973. Then, question before the SC was whether section 125 of the Code of Criminal Procedure also applies to Muslims. This section deals with wife's right to maintenance under certain

¹⁵ AIR 1981 SC 1243

¹⁶ AIR 1985 SC 945

circumstances. The court found that section 125 is secular provision and applies to divorced women regardless of their religion.

Further, Justice Kuldeep Singh in *Sarla mudgal's case*¹⁷ remarked that “when more than 80% of citizens have already been brought under the codified personal law, than there is no justification whatsoever to keep in abeyance, any more, the introduction of the Uniform Civil Code, for all citizens in territory of India.”

*Kesavananda Bharati vs. State Of Kerala And Anr*¹⁸ Article 44 enjoins that the "State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India." Desirable as it is, the Government has not been able to take any effective steps towards the realization of this goal. Obviously no Court can compel the Government to lay down a Uniform Civil Code even though it is essentially desirable in the interest of the integrity, and unity of the country.

In case of *Friday vs. By Adv. Sri.S.Sreekumar*¹⁹ court stated that “It is perhaps unfortunate that the mandate of Art.44 of the Constitution for a Uniform Civil Code for the polity has not been translated into the tangible reality even in this 7th decade after the adoption of the Constitution. In a secular democratic republic, in respect of most citizens religion is nothing but an accident of birth. There is no choice for the individual. Discrimination on the grounds of divorce merely because of such accident of birth for which the citizen is not responsible is certainly unjust and constitutionally unacceptable. In this Matrimonial Appeal context, we note that the mandate under Part IV of the Constitution is to all instrumentalities of the State and the adjudicator/interpreter exercising sovereign functions is no exception to that mandate. Wherever there is elbow room for an adjudicator/interpreter, he must seize the opportunity readily to put into reality the mandate of Art.44 of the Constitution. Interpretational it is certainly permissible to bring in uniform provisions in personal laws at least in certain areas.”

But, In *Ahmadabad Women's Action Group vs. Union of India*²⁰ a PIL filed by Ahmadabad Women's Action Group (AWAG) challenging the constitutional validity of statutory and non-statutory provisions in Hindu, Muslim, and Christian law this time

¹⁷Sarla Mudgal vs. Union of India AIR 1995 SC 1531

¹⁸ AIR 1973 SC 1461

¹⁹ Matrimonial appeal no. 75 of 2008

²⁰ 1997(3) SCC 573

Supreme Court took the narrow view and stated that the removal of gender injustice is an issues of state policies in which court cannot interfere.

The Supreme Court has gone a step forward in *Seema vs. Ashwani Kumar*²¹ to implement the Uniform Civil Code and stated that all marriages should be registered. The religion of the parties does not matter for registration of marriage. This judgment was very progressive and need of the time because certain person denies marriage, and leaving their wife in lurch. Registration of marriage can help in seeking maintenance, custody of children, or inheritance of property.

In case of *The Tibetan Children Village School vs. Karma Lama and Anr*²², the Supreme Court said that the Juvenile Justice Act, 2000 is a secular law and step forward in reaching the goal of Uniform Civil Code enshrined by Article 44 of the constitution. Personal beliefs and faiths though must be honored, but it cannot dictate the operation of an enabling statute.

*Saumya Ann Thomas vs. The Union Of India*²³, "It would be necessary to emphasize that the respective personal laws were permitted by the British to govern the matters relating to inheritance, marriages etc., only under the Regulations of 1781 framed by Warren Hastings. The Legislation - not religion - being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/ supplemented by introducing a uniform civil code."

We do first of all look at Art, 44 of the Constitution which enjoins that the State must endeavour to secure for all its citizens a Uniform Civil Code throughout the territory of India. The preamble of the Constitution declares and stipulates that the Union of India shall be a sovereign, secular, socialist, democratic republic. The core values of the constitution are declared. Secularism without any dispute is one of the basic features of the Indian Constitution. The State cannot be secular until the polity also becomes secular. Constitutional secularism is not denying religion as such. The core of Constitutional secularism is the realistic understanding and acceptance that the religions shall not transgress into domains and areas where religion is and ought to be irrelevant.

²¹ AIR 2006 SC 1158

²² 2015(222) DLT 685

²³ 2010(1) KLT 869

Besides the Supreme Court, High Courts are also interpreting personal laws according to the needs of the present time for example; Gujarat High Court in case of *Jafar Abbas Rusool Mohammad Marchant vs. State of Gujarat*²⁴ stated thus, Islamic sanction of a man having up to four wives was justified in the historical times mentioned above. Today, there are no tribes, which are killing each other and making women widows and children orphans. On the basis of modern, progressive thinking, India must shun the practice and establish a Uniform Civil Code by removing the contradictions based on ideology.

Further, in *Shayara Bano vs. Union of India*²⁵ the Supreme Court asked the central government to clear its stand and for filing an affidavit regarding triple talaq practice prevailing in the Indian Muslims. Therefore, on 7th October, 2016, the central government filed an affidavit in reference to the Supreme Courts directions and opposed the triple talaq practice as gender injustice. Finally, Supreme Court declared the practice of triple talaq as unconstitutional. Recently, public interest litigation has been filed by the Sameena Begum under article 32 of the Constitution of India. In this petition she challenged the practice of Polygamy and Nikah Halala as discriminatory practices prevailing in India.²⁶

The basic idea of proposing a Uniform Civil Code is to separate religion from personal laws and also from social relations or, from rights of parties as regards inheritance or succession. Thus, the proposed code believes in unifying and consolidating the nation by every means without interfering with religious practices. Moreover, a common code will help the cause of national integration by eradicating the dissimilarities and discriminations on the bases of religion and ideologies.

Uniform Civil Code and secularism are not antagonistic; rather they are complementary to each other. The Supreme Court in *S. R. Bommai v. Union of India*²⁷ has held “that religion is a matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the state by law.” The provision in Article 25 (2) is worth mentioning here which empowers the state to make law to regulate the secular activities touching the religious practices. Thus, marriage, adoption, divorce, succession, inheritance etc. are secular activities and hence are not opposed to Uniform Civil Code.

²⁴2016(1) Crimes 44

²⁵Writ Petition(civil) No.118 of 2016

²⁶Sameena Begum vs. Union of India, WP(C) No. 222/2018

²⁷ AIR 1994 SC 1918

Conclusion

From the various judgments of the Supreme Court, it is crystal clear that Supreme Court is in favor to give real meaning to the Indian constitutional provisions either fundamental right or directive principles under Article 44. Supreme Court after due considerations of all the aspect related to the Uniform Civil Code advocated for its drafting and implementation in India.

The judiciary has made great efforts to curtail by laying down principle that the constitution protects only the essential aspects of religious freedom.

Idea is that, there should be a uniform civil code applicable to all irrespective of their religion. Same matters of different communities should have been dealt with by one substantive law. Like, Muslim laws, Hindu laws deal with the same matters but both the personal laws are different in its applicability.

Art.44 of the Constitution mandates that there must be a Uniform Civil Code in India. All Indians ideally will have to come under the umbrella of a Uniform Civil Code which will contribute to the creation of national identity and character.

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