

Uniform civil code – Need in present context

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ABSTRACT

The diversity of cultures, customs, faiths, religions, languages, etc. is the identity of India. The world knows India for its pluralism. The constitution of India is the guardian of this diversity. It guarantees to every citizen equality and justice without any fear or favour and that the secularism is ensured. Secularism means that every person shall be free to profess and practise any religion of his or her own choice and the state shall not have a religion of its own nor shall it favour any particular religion. The Constitution, penal laws, procedural laws and the statutory laws are equally binding on every person irrespective of their caste, community or religion but in the matters of marriage, divorce, inheritance and maintenance every person is governed by different set of rules and customs given under personal laws of their respective religion. The inequality of treatment in respect of personal laws challenges the equality clause of The Constitution. Some of the provisions under these personal laws are rational while some are absolutely unfair, biased and against the principles of natural justice. But still such practices are prevalent in the name of freedom of profession of religion. The state is silent on the issue of inequalities in personal laws. Uniform Civil Code advocates for replacing personal laws based on customary practices and religious texts with a common state made law that equally binds every person irrespective of religion or community in the matters of marriage, divorce, maintenance and disposal of property. It ensures justice, equality of treatment and uniformity in the application of law.

1. Introduction

In the present Indian society, in the matters of marriage, divorce, inheritance and maintenance, people are regulated by the age old personal laws of their respective religion. The state cannot govern family matters. In every religion or community there are different customs or rituals relating to marriage ceremonies. Right to profession of religion being a personal choice and an unconditional freedom and marriage being regulated by religion becomes a personal matter. Since The Constitution of India is secular in nature, therefore there is no state made law in respect of personal matters. But in the name of freedom of profession of religion, the unequal and different treatment in respect of personal matters continues to happen which in itself is against the Equality Clause of the Constitution. This brings for the need to have a common law in respect of civil matters. As the term *Uniform Civil Code* says, it is a code or law which is equally or uniformly applicable on all citizens in respect of civil matters. Under this system, the same set of civil laws based on secular principles govern the people irrespective of their caste, community or religion for the purposes of marriage, divorce, inheritance and maintenance related matters. The idea behind the need to realise a common civil code is the mandate of the Constitution for the State to ensure equality and justice to all citizens. Uniform civil code means the absence of laws based on religious texts or customs in the administration of civil matters. Under this system every person is governed by the state made common law. At present a uniform civil code is not in effect anywhere in India except in the territory of Goa. Personal laws of all religions are different in terms of their sources, philosophy and their application. Therefore, it has become very difficult for the State to bring a unanimous acceptance in adopting a common civil law.

2. Concept of uniform civil code

The present day legal literature traces its origin to the colonial era. Laws relating to crime, evidence and contract, etc. were codified during the British rule but personal laws were kept outside the purview of codification. Lord Warren Hastings in 1780 declared a Policy in the Administration of Justice Regulation that disputes relating to marriage, divorce and inheritance shall be governed by the personal laws. Post-colonial period, the makers of the Constitution envisaged the need to have a uniform civil code in the society therefore Article 44 was added to the Part IV of the Constitution. Article 44 imposes a duty on the State that it shall attempt to secure a uniform civil code for the citizens throughout the territory of India.¹ The duty to secure a common civil law is a Directive Principle of State Policy and thus not enforceable under Art.37. Although the duty under Article 44 was imposed to ensure justice and equality to all citizens but the governments after independence continued to politicise the issue and thus resulting in delay to have a uniform civil code till date. Only the Hindu personal laws were codified after independence and strict statutory provisions were laid down in respect of marriage, divorce, succession and maintenance for the people belonging to Hindu faith. Hindu Family laws have been strictly enforced but people belonging to Islam are still governed by their religious laws and State does not interfere in their family matters. The Preamble of the Constitution resolves that India will be a secular nation which means that the State shall have no religion and neither shall it discriminate on the basis of religion nor shall it favour any particular religion. Since the personal laws of every religion are based on different ideologies, therefore a uniform civil code seeks to strike a balance between protection of fundamental rights and religious principles of different communities. Matters relating to marriage, divorce, succession and maintenance are matters of

¹ Article 44, The Constitution of India

secular nature and can be regulated by the law, therefore a common codified law which can subsume all religions in relation to family laws governing different communities should be necessitated. The Supreme Court of India for the first time in 1985 discussed the need for a common civil law and directed the parliament to frame it in the case of Mohd. Ahmed Khan vs Shah Bano Begum and Ors. The Court stated that "A Common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies."² In the case of Smt. Sarla Mudgal, vs Union of India & Ors, the Court observed that "The State shall endeavour to secure for the citizens a uniform civil code through-out the territory of India" is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law - a decisive step towards national consolidation."³ Therefore, the Supreme Court has urged the State on repeated occasions to realise the duty imposed on it under Article 44 to ensure a uniform civil code throughout the territory of India.

3. Importance of uniform civil code

• Equality of status

A common civil code ensures equality of status of all citizens as there would be no special privilege or different treatment on the basis of any caste, community, religion or gender and there would be uniformity in the application of law.

• Removal of gender disparities

Personal laws of the majority of religions are commonly discriminatory towards women because of the inbuilt gender injustice of personal laws. Under personal laws of some religions, the provisions relating to marriage, divorce and maintenance are absolutely male dominated and female oppressive as the husband enjoys unparalleled rights in the marriage. Women are the most aggrieved section from these personal laws as they are the most affected persons by the regressive rigidity of these patriarchal family laws.

• Promotion of unity and national integration

In respect of criminal laws and other civil laws (except personal laws) all citizens are already equal in the eyes of law as they all are governed by the same set of rules. But in the matters relating to marriage, divorce, inheritance and succession personal laws of different religions govern the citizens. A common civil code will help in uniting the people as there would be no sense of feeling of different treatment or special privilege to any community on the basis of religion.

• Simplification of legal matters governed by personal laws

The implementation of uniform civil code will simplify the procedure of family courts in dealing with the proceedings relating to family disputes as there would be same set of rules for the matters of marriage, divorce, inheritance and succession for all communities.

• Extension of special marriage act, 1954

A secular law named Special Marriage Act, 1954 already exists in the country from a long time. It governs people from all religions whether Hindu, Muslim, Christian, and Parsi, etc. and validates inter-caste and inter-religious marriages also. The Act is acceptable throughout amongst all citizens. This shows that the Act has universal acceptance and that there can be a similar state made common civil law which can substitute the existing personal laws.

• Protection of secularism

The uniform civil code promotes secularism and Article 44. It does not violate the right to freedom of profession and practise of religion as matters relating to marriage, divorce, succession and maintenance are secular matters and law can regulate them and Article 25 allows the State to legislate for welfare of religious entities.

• Promotes monogamy

Uniform civil code promotes monogamy among all citizens. At present only the Muslim men have the right to bigamy to marry a maximum number of 4 wives under their personal law. Before the enactment of the Hindu Marriage Act, 1955, a Hindu husband could marry an unrestricted number of wives. The introduction of the common civil law will lead to the betterment of position of women in the society.

4. Barriers to uniform civil code

• Practical difficulties

Since India is a nation with huge diversity in terms of cultures, customs, languages, religions, castes, class, etc. it is extremely difficult to bring together people from different sects and communities under one umbrella. It is very tough to realise a law which can uniformly oblige all citizens following different faiths and beliefs.

• General perception regarding uniform civil code as an encroachment to right to freedom of religion

The minority communities believe that uniform civil code is an encroachment to their right to freedom of religion. They are afraid that a common law will neglect their customs and impose rules which will be influenced by the religions in majority.

• Intervention in personal matters

The constitution gives the freedom to choose religion of own choice. The codification of personal laws will result in reduced scope of right to religion.

• Sensitive issue

Uniform civil code will not be an ordinary legislation. The State has to keep in view the sentiments of all religious communities. It is a very time taking task and involves high intellect. The government has to be very sensitive, cautious and unbiased while formulating the law keeping in regard both, the majority and the minority communities.

• Perception as threat to religious identity

There is a general perception, particularly of the minorities that after the introduction of uniform civil code the people in majority will outweigh the religious identity of the minorities and

²1985 AIR 945

³1995 AIR 1531

that they will be compelled to be bound by the majority influenced law.

- **Legislative delay**

The attitude of all governments since independence has always been reluctant in this direction. All governments politicised the issue and for securing their vote bank politics kept on ignoring and delaying the legislation.

5. Conclusion

The time has come when there should be a common civil law in respect of personal matters. The present generation wants to be treated on the principles of natural justice and equality. The introduction of a common code will ensure equality amongst all citizens in true sense as there would be no different treatment or special privilege to any person on the basis of any particular community or religion. A law common

for all communities will simplify the court procedures and lessen the burden of judiciary as the family matters of all communities will be governed by the same law. In the system of uniform civil court secularism is not affected as the right to freedom of religion remains protected and only the matters relating to marriage, divorce, inheritance and maintenance are regulated by law as they are secular matters. It helps in national unity and integration also since members of all communities feel sense of equal treatment from the State. A common code promotes monogamy resulting in betterment of the position of women in the society because in any religion the women are the ones who suffer from the regressive rigidity of the personal laws. The rule of law means equality before law and it would be attained in true sense only if all citizens are treated equally before the law and there is no differentiation in treatment of any person on the basis of any caste, community or religion.