
UNIFORM CIVIL CODE AS A HUMAN RIGHT: A DISTANT DREAM

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Abstract: India is a country of multi-religions and multi languages. The Indian democratic society, which is governed by the rule of law, in which it is predicted that all citizens are equal before law and entitled to receive equal protection of law, irrespective of their caste, creed, religion, race and sex etc. But, the pillar of humanity i.e. women are jeopardized in many ways and bound to face problems of varied nature only due to being women. Constitutional and statutory protections and safeguards could not provide fruitful results for their protection in form of a human being. In this connection, the Uniform Civil Code (UCC), a constitutional mandate, is awaiting the mercy of Indian Legislature to take the form of law to provide equal status to women, who are victims of diversities in personal laws. In India, it is a harsh fact that women are not women; rather they are Hindu, Muslim, Christian, Jew or Parsi. This mentality is the root cause of various social evils. It is the need of the hour to understand the utility of UCC which is an efficient tool to harmonise the diversities of laws in personal matters which will ultimately achieve the objective enshrined in gender justice.

Keywords: Human Rights, Personal Laws, Secularism, Uniform Civil Code

Introduction: Under International law, a state that ratifies an international instrument becomes legally bound to implement its provisions. Accordingly, India having ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, is bound to enforce the relevant provisions and ensure gender equality under its national laws. However, women in India under Hindu, Muslim and Christian laws continue to suffer discrimination and inequalities in the matter of marriage, succession, divorce and inheritance.

Prevalence of discrimination against women under various personal laws of different communities in India was openly accepted by India in its periodic report before the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) when it admitted, "The personal laws of the major religious communities had traditionally governed marital and family relations, with the Government maintaining a policy of non-interference in such laws in the absence of a demand for change from individual religious communities." India has been submitting periodic compliance reports vis-a-vis the implementation of the CEDAW, to this committee. This committee expects India's compliance to the provisions of the said international instrument and 'noted' that "steps have not been taken to reform the personal laws of the different religious and ethnic groups, in consultation with them, so as to conform to the Convention," and warned that "the Government's policy of non-intervention perpetuates sexual stereotypes, son preference and discrimination against women." The committee also "urged the Government to withdraw its declaration to Article 16, paragraph 1 of the convention and to work with and support women's

groups and members of the community in reviewing and reforming these personal laws" and expected the Government "to follow the Directive Principles in the Constitution and the Supreme Court decisions and enact a Uniform Civil Code that different ethnic and religious may adopt."

Meaning and Need of Uniform Civil Code: The term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance. The demand for a uniform civil code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde.

The spine of controversy revolving around Uniform Civil Code has been secularism and the freedom of religion enumerated in the Constitution of India. The preamble of the Constitution states that India is a "Secular Democratic Republic" This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A State is only concerned with the relation between man and man. It is not concerned with the relation of man with God. It does not mean allowing all religions to be practiced. It means that religion should not interfere with the mundane life of an individual. Rebecca J. Cook rightly points out that although the Indian Constitution contains articles mandating equality and non discrimination on the grounds of sex, strangely however, several laws exist that apparently violate these principles and continue to be there especially in personal laws of certain

communities with provisions that are highly discriminatory against women. The situation is further criticized when it pointed out that, "The Indian State has, however, made no effort to change these laws or introduce new legislation in conformity with Constitutional principles. In fact Indian Government seems to have chosen to ignore these principles completely and acts as if they did not exist."

The Indian Constitution expressly stands for gender equality. For example, Article 44 of the Constitution envisages a Uniform Civil Code for all citizens and lays down that, "The State shall endeavor to secure for the citizen a Uniform Civil Code throughout the territory of India." However, even after half a century from the framing of the Constitution, the ideal of Uniform Civil Code is yet to be achieved. Women, who make up nearly a half of India, continue to clamour for a gender just code to enjoy equality and justice irrespective of the community to which they belong. The Uniform Civil Code is required not only to ensure (a) uniformity of laws between communities, but also (b) uniformity of laws within communities ensuring equalities between the rights of men and women.

Attempts have been made from time to time for enacting a Uniform Civil Code after independence and the Supreme Court in various cases has been giving directions to the government for implementing Article 44 of the Constitution and to reform the personal laws specially those relating to the minorities and to remove gender bias therein. While a uniform civil code is not particularly high on the national agenda, value-based progressive changes, preserving the separate identity of each religious group, is a feasible project avoiding insult and injury to any minority. This may be a preliminary step to pave the way for a common code. Mobilization of Muslim, Christian and Parsi opinion in this direction is sure to yield salutary results and reduce fundamentalist resistance. Maybe, to facilitate a national debate, a facultative common code may be drawn up at a non-governmental level. It will be purely optional for minorities to accept or reject those provisions.

Our founding fathers have been cautious in their phraseology while drafting Article 44 and therefore in a situation where the nation is in the grip of communal tension hurry must make way to moderation. Initially, the idea of Uniform Civil Code was raised in the Constituent Assembly in 1947 and it was incorporated as one of the

directive principles of the State policy by the sub-committee on Fundamental Rights and clause 39 of the draft directive principles of the state policy provided that the State shall endeavor to

secure for the citizen a Uniform Civil Code. The arguments put forward was that different personal laws of communities based on religion, "kept India back from advancing to nationhood" and it was suggested that a Uniform Civil Code "should be guaranteed to Indian people within a period of five to ten years".

Uniform Civil Code – A Possible Aid to Gender Justice: In *Mohammad Ahmed Khan v. Shah Bano Begum*, popularly known as Shah Bano's case, the Supreme Court held that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter." Though this decision was highly criticized by Muslim Fundamentalists, yet it was considered as a liberal interpretation of law as required by gender justice. Later on, under pressure from Muslim Fundamentalists, the central Government passed the Muslim Women's (Protection of rights on Divorce) Act 1986, which denied right of maintenance to Muslim women under section 125 Cr.P.C. The activist rightly denounced that it "was doubtless a retrograde step. That also showed how women's rights have a low priority even for the secular state of India. Autonomy of a religious establishment was thus made to prevail over women's rights."

In *Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and others*, Kuldip Singh J., while delivering the judgment directed the Government to implement the directive of Article 44 and to file affidavit indicating the steps taken in the matter and held that, "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44, Therefore the Supreme Court requested the Government 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 uniform civil code throughout the territory of India." However, in *Ahmadabad Women's Action Group (AWAG) v. Union of India*, a PIL was filed challenging gender discriminatory provisions in Hindu, Muslim and Christian statutory and non-statutory law. This time Supreme Court became a bit reserved and held that the matter of removal of gender discrimination in personal laws "involves issues of State policies with which the court will not ordinarily have any concern." The decision was criticized that the Apex Court had virtually abdicated its role as a sentinel in protecting the principles of equality regarding gender related issues of personal laws of various communities in India.

The situation regarding the personal laws for Christians in India was different. In their case, the courts seemed to be bolder and took a progressive stand in terms of gender equality. For example, in 1989, in *Swapana Ghosh v. Sadananda Ghosh*, the

Calcutta High Court expressed the view that sections 10 and 17 of the Indian Divorce Act, 1869, should be declared unconstitutional but nothing happened till 1995. In 1995, the Kerala High Court in *Ammini E.J. v. Union of India*, and Bombay High Court in *Pragati Verghese v. Cyrill George Verghese*, struck down section 10 of Indian Divorce Act, 1869 as being violative of gender equality.

In September 2001, a poor Muslim woman, Julekhabhai, sought changes in the divorce provisions in Muslim law as well as that polygamy be declared illegal. The Supreme Court asked her to approach Parliament, refusing to entertain the petition. Julekhabhai had sought equality with Muslim men, requesting court to declare that "dissolution of marriage under Muslim Marriage Act, 1939, can be invoked equally by either spouse". It also requested the court to strike down provisions relating to "talaq, ıla, zihar, lian, khula etc", which allowed extra-judicial divorce in Muslim personal law.

Bigamy is punishable by law in all communities save the Muslims, who are governed by the Sharia law. The Muslim Personal Law (Shariat) Application Act 1937 was passed by the British government to ensure that the Muslims were insulated from common law and that only their personal law would be applicable to them. Bigamous marriages are illegal among Christians (Act XV of 1872), Parsis (Act II of 1936) and Hindus, Buddhists, Sikhs and Jains (Act XXV of 1955). Enactment of a Uniform Civil Code would impinge upon Muslim rights to polygamy. In almost all recent cases where the need for a Uniform Civil Code has been emphasised women were at the receiving end of torture in the garb of religious immunity. Apart from the famous *Shah Bano* (1986) and *Sarla Mudgal* (1995) cases, there have been several other pleas by Hindu wives whose husbands converted to Islam only in order to get married again without divorcing the first wife. "To conserve the cohesion of Hindu society, the Hindu laws made allowances for customs and usages. The imposition of uniformity would have undermined Hindu social cohesion. If matters relating to family laws and customs fall under the jurisdiction of Parliament and state legislatures, the country will have a variety of regulations. The State amendments have made many in-roads in the Hindu laws damaging the uniformity of these laws, affecting many substantive rules."

The State should come out with specified steps to endeavor to secure the citizens a Uniform civil Code throughout the country. The Supreme Court ruled in *Seema v. Ashwani Kumar*, that all marriages irrespective of their religion be compulsorily registered. The Court felt that, "this ruling was necessary by the need of the time as certain unscrupulous husbands deny marriage, leaving their spouses in the lurch, be it for seeking maintenance,

custody of children or inheritance of property." The Supreme Court order is a first step towards the Uniform Civil Code. The Supreme Court ruled that all the marriages irrespective of their religion, be compulsory registered. Justice Pasayat, writing the judgment for the bench in a matter that was an offshoot of a matrimonial case, directed the Government to provide for "consequences of non-registration of marriages" in the rules, which should be formalized after inviting public response and considering them. The Law Commission of India recommended in 2008: "It is high time we took a second look at the entire gamut of Central and State laws on registration of marriages and divorces to assess if a uniform regime of marriage and divorce registration laws is feasible in the country at this stage of social development and, if not, what necessary legal reforms may be introduced for streamlining and improving upon the present system."

For long, Christian women too had the law loaded against them. A Christian man could obtain a divorce on the basis of adultery; a woman had to establish an additional charge like desertion or cruelty under the Indian Divorce Act 1869. But in 1997, cruelty, physical and mental torture were made ground enough for a Christian woman to obtain a divorce, with the Bombay High Court recognizing cruelty and desertion as independent grounds for the dissolution of a Christian marriage. Divorce under the Hindu Marriage Act 1955 can be obtained on the grounds of adultery, cruelty, desertion for two years, conversion in religion, an unsound mind, suffering from venereal disease or leprosy or if the spouse has renounced the world and has not been heard from for seven years. Also no resumption of co-habitation for one year after the decree of judicial separation, no restitution of conjugal rights for one year after decree for restitution of conjugal rights, or if the husband is guilty of rape, sodomy or bestiality.

All major religions thus have their own laws that govern divorces within their own community, and there are separate regulations under the Special Marriage Act, 1956 regarding divorce in interfaith marriages. Under a common civil code, one law would govern all divorces.

Uniform Civil Code and Human Rights: There is a compelling need to study the personal religious laws from a human rights perspective. India has time and again pledged its commitment to upholding the normative regime of human rights, be it in the provisions of the Constitution or the terms of the various international covenants and treaties.

Principles of equality, non-discrimination and fairness which form an essential part of the human rights discourse are the subject matter of the debate regarding personal laws of India. These principles are

enshrined in the Preamble to the Constitution, Fundamental Right and the Directive Principles. Gender equality is a facet of equality and it is one of the basic principles of the Constitution. Moreover, the doctrine of equality as enshrined in Article 14 of the Constitution of India is not merely formal equality before the law but embodies the concept of real and substantive equality which strikes at all the inequalities arising on account of vast historical, socio-economic and customary differentiation. Thus, 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. Article 44 which directs the state to secure for its citizens a Uniform Civil Code throughout the territory of India is the cornerstone for women's equality in the country and must be urgently implemented so as to eliminate antiquated discriminatory norms of religious laws.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a unique international convention in that it was based on the need for special formulation that would assert, protect and promote women's human rights. The Convention expressly states that discrimination against women is socially and culturally constructed and encompasses public and private spheres, thereby bringing within its fold the domain of the family. An important feature of the CEDAW has been to fix responsibility upon the state for actions of private actors, particularly when such actions constitute a systematic pattern of violations within the community. This is because gender-discrimination has socio-cultural underpinnings and is practiced by private actors. The State's reluctance to intervene in such patterns of discrimination would amount to a condonation of the violations. The CEDAW has contributed significantly in setting new normative standards for human rights law and practice but it is regrettable that CEDAW has the distinction of being the most reserved human rights convention today, i.e. state parties have modified or waived obligations in relation to certain parts of the treaty by means of reservation clauses.

India too has ratified CEDAW 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) and 16(1) of the Convention, 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". India's reservation is an unqualified exemption from state interference into customary practices and it also fails to specify a time frame. This reservation can only be construed as being inconsistent with the objectives and purpose of the Convention and an indication of the utter lack of political will on part of the Indian state, even in face of international duties and obligations, to bring about an egalitarian, uniform civil law in the country.

Conclusion: Since different treatment for any religious group is violative of the UN Covenant on Civil and Political Rights and the Declaration on the Rights to Development adopted by the world conference on Human Rights, it is hoped that Parliament will frame a common civil code without further delay, divesting religion from social relations and personal law. One should not forget that nationhood is symbolized by one Constitution, a single citizenship, one flag and a common law applicable to all citizens and India's obligations under international law and requirements of various international instruments relating to the human rights of women such as Universal declaration of Human Rights, 1948 and the Declaration on the Elimination of Discrimination Against Women, 1967, also demand that even if one rules out Article 44 the Union of India cannot evade its international obligation to make laws to remove all discrimination against women.

The Article 44 of the Constitution of India requires the state to secure for the citizens of India a Uniform Civil Code throughout the territory of India. As has been noticed above, India is a unique blend and merger of codified personal laws of Hindus, Christians, Parsis and to some extent of laws of Muslims. However, there exists no uniform family related law in a single statutory book for all Indians which is universally acceptable to all religious communities who co-exist in India. The time has come to place personal laws of all religions under a scanner and reject those laws that violate the Constitution. Personal laws of all religions discriminate against women on matters of marriage, divorce, inheritance and so on. There is an urgent need to cull out the just and equitable laws of all religions and form a blueprint for a uniform civil code based on gender justice.

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