

UNIFORM CIVIL CODE- THE NEED OF THE HOUR

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Article 44 of Indian Constitution Says that "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India." Tough the Art. is DPSP but fundamental rights and directive principles aim at the same goal of bringing about a social revolution and establishment of a welfare state and they can be interpreted and applied together. They are supplementary and complimentary to each other. It can well be said that directive principles prescribed the goal to be attained and the fundamental rights laid down the means by which that goal is to be achieved. The word "religion" has not been defined in the Constitution and indeed it is a term which is hardly susceptible of any rigid definition. The State has no religion. The State is bound to honour and to world the scales even between all religions. It may be more useful to develop a general, uniform civil code for all religions in order to reduce the possibility of loopholes. A uniform civil code would allow for clarity within the Indian legal system. The legal maze is bewildering enough without retaining a wide permutation and combination of laws which create rights in some and take them away in another depending upon their religion. The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system. Constitutional provisions prohibit the establishment of a theocratic State and prevent the State from identifying itself with or otherwise favoring any particular religion.

INTRODUCTION

The idea of the personal law is based on the conception of man as a social being, so that those transactions of his daily life which affect him most closely in a personal sense, such as marriage, divorce, legitimacy, many kinds of capacity, and succession, may be governed universally by that system of law deemed most suitable and adequate for the purpose. Dr. Ambedkar Explained in the Constituent Assembly¹ *"In fact the bulk of these different items of civil law have already been codified during the British Rule and only major items still remaining for a uniform code are marriage and divorce & Adoption and guardianship"* The civil law in Goa—derived from the Portuguese Civil Procedure Code of 1939—could be a useful starting point for a national debate. The coastal state continued with its practice of treating all communities alike even after its entry into the Indian Union. The government would also do well to complement the overdue move towards a uniform civil code with a comprehensive review of several other laws in the context of gender justice. Bringing the UCC would help and reduce many technicalities and loopholes present in

¹Constitutional Assembly Debate Vol 7 ,Pg. 550.

present existing personal laws, it was an aspiration of our Constitution makers. The Government must draft a common civil code with the view of all minorities and their best interests in mind. Bringing the UCC would help and reduce many technicalities and loopholes present in present existing personal laws, it was an aspiration of our Constitution makers. The Government must draft a common civil code with the view of all minorities and their best interests in mind. Muslim women, victims of polygamy and triple talaq, the Protection of Women from Domestic Violence Act, 2005 — that is available to all Indian citizens regardless of religious identity — as well as the Muslim Women (Protection of Rights on Divorce) Act, 1986, to deal with polygamy and triple talaq, and to obtain maintenance, child custody and rights to matrimonial home for countless Muslim women. *S.P. Mittal v. Union of India*² where the Apex Court had an occasion to discuss the concept of religion at great length. The relevant paras of the same are reproduced as under:- "In order to appreciate the contentions of the parties, it is necessary to know the implication of the words "religion" and "religious denomination". The word "religion" has not been defined in the Constitution and indeed it is a term which is hardly susceptible of any rigid definition.

An objection was taken to this provision in the Constituent Assembly by several Muslim members who apprehended that their personal law might be abrogated and as personal laws are not parts of Article 13 of the Indian Constitution³, (i) that India had already achieved a uniformity of law over a vast year. (ii) That through personal laws, there was nothing sacrosanct about them (iii) the secular activities such as inheritance, covered by personal laws should be separated from religion (iv) that a uniform law applicable to all would promote national unity (v) that no legislature would forcibly amend any personal law in future if people were opposed to it.⁴ 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."⁵

LEGAL FRAMEWORK

Not much progress has so far been made towards achieving the ideal of uniform civil code which still remains a distant dream; the only tangible step taken in this direction has been the codification and secularization of Hindu Law. The codification of Muslim Law still remains a sensitive matter though enlightened Muslim opinion appears to favour such step⁶

²AIR 1983 SC 1.

³The State Of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84

⁴VII CAD, 540-2

⁵211th Report of the Law Commission of India which was forwarded on 17 October, 2008.

⁶S.S. Nigam, A Plea for Uniform Civil Law of Divorce, 5 JILI (1963)

*S.R.Bomma v. Union of India*⁷ The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and basic structure of the Indian political system. Constitutional provisions prohibit the establishment of a theocratic State and prevent the State from identifying itself with or otherwise favouring any particular religion. In the Case of *Mohammad Ahmed Khan v. Shah Bano Begum*⁸, 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" The object behind the Article 44 is to effect an integration of India by bringing all communities on the common platform. In *Ms. Jordan Diengdeh v. S.S. Chopra*⁹ It was just the other day that a Constitution Bench of this Court had to emphasise the urgency of infusing life into Art.44 of the Constitution which provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." The present case is yet another which focuses on the immediate and compulsive need for a uniform civil code. In *Shamim Ara v. State of U.P.*¹⁰ the triple talaq under Muslim law was held invalid.

*Kesavananda Bharati v. State of Kerala*¹¹ and *Indira N. Gandhi v. Raj Narain*¹². It was held that: Any step inconsistent with this constitutional policy is in plain words, unconstitutional. The State has no religion. The State is bound to honour and to hold the scales even between all religions. It may not advance the cause of one religion to the detriment of another. It may be more useful to develop a general, uniform civil code for all religions in order to reduce the possibility of loopholes. A uniform civil code would allow for clarity within the Indian legal system. The legal maze is bewildering enough without retaining a wide permutation and combination of laws which create rights in some and take them away in another depending upon their religion¹³ *Kesavanda Bharti v. State of Kerala*¹⁴, the Supreme Court said that fundamental rights and directive principles aim at the same goal of bringing about a social revolution and establishment of a welfare state and they can be interpreted and applied together. They are supplementary and complimentary to each other. It can well be said that directive principles prescribed the goal to be attained and the fundamental rights laid down the means by which that goal is to be achieved. *Minerva Mills v. Union of India*¹⁵, where it was stated that there is no conflict between the directive principles and the fundamental rights. They were said to be complementary to each other. *State of Tamil Nadu v. L. Abu Kavur Bai*¹⁶. The Court held that although the

⁷1994 AIR 1918 1994 SCC (3) 1 JT 1994 (2) 215 1994.

⁸(1985 SCR (3) 844)

⁹AIR 1985 SC 935.

¹⁰MANU/SC/0850/2002

¹¹(1973) 4 SCC 225)

¹²AIR 1975 SC 2299, 1976 (2) SCR 347

¹³Vasudha Dhagamwar, Towards the Uniform Civil Code (Mumbai: N.M Tripathi Ltd, 1989) at 71.

¹⁴(1973) 4 SCC 225)

¹⁵AIR 1980 SC 1789

¹⁶AIR 1984 SC 626.

directive principles are not enforceable yet the Court should make a real attempt at harmonizing and reconciling the directive principles and the fundamental right and any collision between the two should be avoided as far as possible. *Air India Statutory Corporation v. United Labour Union*¹⁷, the Supreme Court explained the concept of Social justice. “The concept of social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen.” “The constitution, therefore mandates, the State to accord justice to all members of the society in all facets of human activity.”

IT DOES NOT VIOLATE ARTICLE 25 OF INDICAN CONSTITUTION

Article 25 runs as follows: “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.” the meaning and scope of this article thus: “Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and section also violates the fundamental rights of the petitioners ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution¹⁸. sacrifice of any animal by Muslims for the religious purpose on Bakr'l'd does not include slaughtering of cows as the only way of carrying out that sacrifice. Slaughtering of cows on Bakr'l'd is neither essential to nor necessarily required as part of the religious ceremony. An optional religious practice is not covered by Article 25(1)¹⁹.UCC 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 aw in a civilized society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion. The UCC shall not result in interference of one's religious beliefs relating, mainly to maintenance, succession and inheritance. It was held in *Sarla Mudgal v. Union of India*²⁰ Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27.

Articles 25 and 26 guarantee right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess practice and propagate religion.

¹⁷AIR 1997 SC 645.

¹⁸Ratilal Panachand Gandhi v. The State of Bombay [(1954) SCR 1055, 1062-1063]

¹⁹State of W.B. v. Ashutosh Lahiri [(1995) 1 SCC 189]

²⁰1995 AIR 1531, 1995 SCC (3) 635.; Lilly Thomas v. Union of India, 2000 (4) SCALE 176, (2000) 6 SCC 224.

But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms.²¹The right to religion guaranteed under Articles 25 & 26 is not an absolute or unfettered right; they are subject to reform on social welfare by appropriate legislation by the state. The Court therefore while Interpreting Article 25 and 26 strikes a careful balance between matters which are essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community²²

They serve to emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution²³ Justice Khare, in the case of *John Vallamattom v. Union of India*²⁴, said, " *It is not matter of doubt that marriage, succession and the like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution.*" The Chief Justice also cautioned that any legislation which brought succession and like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation. Article 25 confers right to practice and profess religion, while Article 44 divests religion from social relations and personal law. On matters which individuals were governed by diverse personal laws but which do not form the essence of any religion, e.g. Divorce, Maintenance for divorced wife. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. Since Article 25(1) is subject to Part III of the Constitution, as such, it was liable to be in consonance with, and not violative of the rights conferred through Articles 14, 15 and 21 of the Constitution. Since the practice of 'talaq-e-biddat' clearly violates the fundamental rights expressed in the above Articles, it was submitted, that it be declared as unconstitutional²⁵.

WHY UNIFORM CIVIL CODE CANNOT BE ENFORCED IN INDIA

The religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience, i.e., the spirit of man. It must be capable of expression in word and deed, such as worship or ritual²⁶. To profess a religion means the right to declare freely and openly one's faith.²⁷ Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines.²⁸

²¹Acharya Jagdishwaranand Avadhut v. Commissioner of Police, Calcutta, (1984)4 SCC 522.

²²AS Narayana Deeshitalyu v. State of Andhrn Pradesh (1996) 9 SCC 548.

²³Sardar Suedna Taiir Saifiddin v. State of Bombay AIR 1962SC 853.

²⁴AIR 2003 SC 2902.

²⁵Shayara Bano v. Union of India, MANU/SC/1031/2017.

²⁶SP Mittal v. Union of India, AIR 1983 SC 1.

²⁷Punjab Rao v. DP Meshram, AIR 1965 SC 1179.

²⁸Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.

It is Legislative Action

The Apex Court has held in *Commissioner, H.R.E. v. L.T. Swammiar*²⁹ that:

“A religion may not only lay down a code of ethnical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship, which are regarded as integral parts of religion and these forms and observance might extend even to matters of food and dress.” In the case of *State of Rajasthan v. Union of India*³⁰, the court rejected the petition on the ground that it involved a political question and therefore the court would not go into the matter. In *S.R. Bommai v. Union of India*³¹, the hon'ble judges observed that 'there are certain situations where the political element dominates and no judicial review is possible and power of Parliament to reform and rationalize the personal laws is unquestioned'.

In *Maharshi Avadhesh v. Union of India*³², this Court had specifically declined to issue a writ directing the respondents to consider the question of enacting a common Civil Code for all citizens of India holding that *the issue raised being a matter of policy, it was for the Legislature to take effective steps as the Court cannot legislate in this matter.* Further, the Supreme Court refused to declare Muslim Personal Law as void by saying that the issues raised were fit to be dealt with by the legislature and not the Courts³³.

The attempt of judiciary to interpret certain verses of Qur'an and admonition to state with regard the Uniform Civil Code definitely frustrates the well-established principle of 'Judicial self-restraint' and the concept of 'Judicial Activism' surely does not permit Indian independent judiciary to do like this.³⁴ The constitution leaves it, entirely and exclusively to the wisdom of the state when, how, in what way, and to what extent it can and should apply the principle of uniformity in making civil laws³⁵In case of *Ahmedabad Women's Action Group (AWAG) v. Union of India*³⁶, Muslim personal law regarding polygamy and oral divorce by uttering the word 'talaq' thrice, popularly known as *“triple talaq”*, were challenged on the ground that they violated the fundamental right to equality. The Court held that the since the petition raised questions of social policy it fell outside the scope of its power. It further held that whether to have a legislation or not is solely a policy decision and the court cannot give any direction in this regard.³⁷ In *Lily Thomas and Ors. v. Union*

²⁹1954 AIR 282, 1954 SCR 1005.

³⁰AIR 1977 SC 1361

³¹[1994] 2 SCR 644 : AIR 1994 SC 1918

³²1994 Supp. (1) SCC 713.

³³Ahmedabad Women Action Group v. Union of India, AIR 1997 SC 3614; (1997) 3 SCC 573, Pannalal Bansilal Patil v. State of Andhra Pradesh, AIR 1996 SC 1023;(1996) 2 SCC 498.

³⁴Mohd. Shabbir, Muslim Personal Law and Judiciary, p. 271 (1988).

³⁵Tahir Mehmood, Uniform Civil Code : Fictions and Facts, p. 129(1995).

³⁶AIR 1997, 3 SCC 573; Krishna Singh v. Mathura Ahir, AIR 1980 SC 707; C.Masilamani Mudaliar v. Idol of Sri Swaminathathaswami Therukoil, (1996) 8 SCC 525; Saumya Ann Thomas v. Union of India, 2010 (1) KLT 869: ILR 2010 (1) Ker 805

³⁷Pannalal Bansilal Patil v. State of A.P., AIR 1996 S.C. 1023; P. Koteswara Rao “Shah Bano's Case and Uniform Civil Code”, The Journal of Indian Law Institute, Vol. 27, p. 572, (1985);

*of India and Others*³⁸, the Supreme Court has reiterated that it has no power to give direction for enforcement of the Directive Principles of State Policy as they do not create any judiciable right. Further, in *Maharishi Avadhesh v. Union of India*³⁹ this Court while dismissing a Petition under Article 32 of the Constitution held that: “*The prayer is to issue a writ of mandamus to the respondents to consider the question of enacting a common Civil Code for all citizens of India. These are all matters for legislature... The writ petition is accordingly dismissed.*”

NECESSARY FOR THE RIGHT OF WOMEN

The State parties to pursue elimination of discrimination against women, by adopting “appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women”. Muslim personal laws violate the right of women and it is against Article 14 of the Indian Constitution. the Universal Declaration of Human Rights, 1948, the International Covenant of Economic, Social and Cultural Rights, 1966 and the International Covenant of Social and Political Rights, 1966, emphasized on equality between men and women. India being a founding member of the United Nations, is bound by its Charter, which embodies the first ever international agreement to proclaiming gender equality, as a human right in its preamble, and reaffirming faith in fundamental human rights, through the dignity of the human person, by guaranteeing equal rights to men and women., the United Nations Commission on the Status of Women.

CONCLUSION

UCC will promote justice, equality and national integration. The enactment of UCC will promote Gender equality and welfare of women. It can be argued that Personal Law system violates the principle of equality of the Constitution because by having different personal laws for different religions, we are going against the secularism and equality⁴⁰ . Another advantage of UCC is that it will simplify the cumbersome legal matters governed by personal laws and will promote gender justice by removing the inbuilt gender injustice of personal laws⁴¹. It has been rightly pointed that UCC will not violate Article 25 and 26

Virendra Kumar, “Towards a Uniform Civil Code Judicial Vicissitudes (From Sarla Mudgal(1995) to Lily Thomas (2000)” Vol. 42 pg. 314,(2000).

³⁸ (2000) 6 SCC 224, P.M. Ashwathanarayana Setty and Ors. v. State of Karnataka Ors., 1989 AIR 100, 1988 SCR Supl. (3) 155; His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr,

³⁹1994 (supp) I SCC /18. Bhaurao Shankar Lokhande & Anr v. State Of Maharashtra & Anr 1965 AIR 1564, 1965 SCR (2) 837

⁴⁰Nithya N.R, *Uniform Civil Code for India: Prospects and Constraints*, Global Research Analysis Journal Vol. 2 Issue 9,157(Sept.2013).

⁴¹Neepa Jani, *Uniform Civil Code, A Vociferous Judicial Claim and reluctant Political Will*, Voice of Research Vol1 Issue 4, 58 (March 2013).

and it will help in attaining secularism and Article 44.⁴²The Uniform Civil Code is required not only to ensure uniformity of laws between communities, but also uniformity of laws within communities ensuring equalities between the rights of men and women.⁴³ In a UCC which is the cherished constitutional goal, if we have a single ground of divorce viz. that the marriage has broken down irretrievably, the scope of any controversy is ruled out.⁴⁴ We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: this country has practically a Civil Code, uniform in its content and applicable to the whole of the country.

⁴² Werner Menski, *The Uniform Civil Code Debate in Indian Law*, German Law Journal Vol9 Issue 3, 214 (2008).

⁴³F. Agnes, "Hindu Men Monogamy and Uniform Civil Code" XXX (50) Economic and Political Weekly 32 (1995); B. Karat, "Uniformity v. Equality" Frontline 17 Nov, 1995.

⁴⁴Paras Diwan and Peeyushi Diwan, *Law of Marriage and Divorce*, 47 (1997).