

ALARMING NEED FOR UNIFORM CIVIL CODE: A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

Human right is an absolute fundamental right of all the human beings irrespective of their nationality, culture, tradition, sex. The preamble of Universal Declaration of Human rights (UDHR) embodies “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Article 12 to Article 35 of the Indian constitution that guarantees certain fundamental rights like right to equality (Art. 14), right to life and personal liberty (Art. 21), right to equal opportunity (Art. 16) and certain rights incorporated under Article 36 to article 51 of the constitution right to equal pay for equal work, equal justice & free legal aid etc covers most of declarations of UDHR. Thus, the importance of human rights is evident from the above-mentioned laws.

The secularistic nature of India is quoted in the Preamble of our Constitution, which also guarantees justice and equality to the citizens of India. But in the name of cultural and religious practices, justice and equality has been denied to the citizens, especially women. The draftsmen while framing the Constitution suggested in unifying the civil code to blot out immoral practises, since mortals of India were stuck to the religious believes, Uniform Civil Code (Article 44) was inserted in the DPSP, which does not impose any compulsory duty on the state for its implication. The importance of Uniform Civil Code is understood in modern times which are evident from the Supreme Court judgements that recommend for the implication of Uniform Civil Code to resolve the prevailing controversies in personal laws and to ensure basic human rights to all the citizens of India. The myth behind Uniform Civil Code is that it might impose the religious practises of majorities over the minority communities, but in real sense Uniform Civil Code aims at eradicating immoral religious and cultural practises prevailing in various communities and bringing all the positive aspects of those communities under a codified statute.

Keywords –Human Rights, Personal laws, Uniform Civil Code, Secularism and Equality.

INTRODUCTION

The settlement of foreigners into the welcoming Indian soil, invasion of other country men attracted by the rich resources along with the natives of India has made India, a country of different religions. It is indeed a pride for an Indian to hear that India stands united in spite of its diversities in culture, language, religion, clothing, belief, tradition and resources.

From the past till today, religion has gained its own importance by its followers with the belief of a Supreme power called God, the creator. Religion has been the vital part of India. The effect of religion has been exhibited in the worship style, daily activities, marriage, rituals and education system.

Religion has resulted in the enactment of personal laws. Personal laws govern the legality of marriage, divorce, succession, adoption etc., as per the belief and customs of the religions. The sad part is that religion has been misused to generate inequality by unreasonably raising the rights of some and suppressing the rights of others. When voice is raised by the suppressed community, they were either threatened or pacified in the name of religion or religious belief.

The point of saturation is when the human rights of any individual get affected just behind the mask of religion. The nature remains unaltered for all irrespective of which God human beings worship. The human body, inner senses, rights are all the same regardless of the gender or religion. Even then there is discrimination among human beings in the personal laws drafted on the basis of religion.

Dr. B. R. Ambedkar in the Constituent Assembly Debates has genuinely said, “I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the encroaching upon that field.” Giving religion such a wide scope in the judicial organ such that it cannot be questioned even in the case of violation of Human rights is not a good sign for any country, especially for a country like India which aims at equality and justice to all. Thus, Uniform Civil Code a common law for all Indians in the areas of marriage, divorce, adoption, maintenance and inheritance could be a permanent and wise solution for violation human rights by way of misusing religious belief.

Objective

The paper aims at bringing out the ability of Uniform Civil Code in order to eradicate the violation of human rights happening in the name of religious belief.

Scope and Limitation

This paper mainly focuses on the importance of Uniform Civil Code and pertaining to rights of individuals. The researchers have not taken the efforts to give a detailed study of personal laws of Parsi community and some minority community other than Hindu, Christian and Islam.

Sources of Study

The sources utilised are secondary sources which includes books, journals, articles and internet sources.

VIOLATION OF HUMAN RIGHTS

Human rights are inalienable fundamental rights of the all human beings irrespective of their culture, nationality, religion, tradition, sex. The need for the protection of human rights emerged after First and Second World Wars. The Preamble of the Universal Declaration of Human Rights (UDHR) states clearly that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.¹ It also states that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the

¹Universal Declaration of Human Rights, Preamble, Dec. 10, 1948.

advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.”² India having ratified the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child should ensure equal rights to all the citizens of India. Thus, “Human rights can be classified into Constitutional Human rights, legal and moral human rights.”³ Fundamental rights enshrined in part 3 of the Constitution of the India which covers most of the declarations of UDHR, ensures Right to equality, Right to life, right to equal opportunity and certain other rights incorporated in the Directive Principles of State Policy ensures right to equal pay for equal work, equal justice and free legal aid. Generally, those rights are available to citizens of India but certain rights such as Right to life and personal Liberty. Hence the importance of basic human rights is guaranteed to all the people of the society. The preamble of the Constitution of India begins with,

“We, the people of India, having solemnly resolved to constitute India into a [Sovereign Socialist Secular Democratic Republic] and to secure to all its citizens:

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

And to promote among them all

Fraternity assuring the dignity of the individual and the [unity and integrity of the Nation];

In our Constituent Assembly, this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution.”⁴, where the people indirectly specifies that all the citizens of India are equal before law irrespective of their gender, caste etc., But there always exists a violation of human rights in the name of religious practises, especially it violates the rights of women, probably the weaker sections of the society.

UNIFORMITY IN CIVIL CODE

India is well known for the phrase ‘Unity in diversity’. The country is diversified by various religions, culture, language and occupation. This diversity gave rise to the different practices and personal laws. But later in the name of personal laws, male domination and other blunders were brought into the society. The preamble of The Constitution of India states, “Secular, Democratic, Republic”⁵ which means that “there is no state religion.”⁶ Therefore, individuals shouldn’t be discriminated on the grounds of religion.

The promising fact is that, human beings irrespective of their religion possess similar emotions, rights and suffer similar pain. But contradictory to the above fact different religions follow different laws which involve in violation of basic rights. Thus, inequality found its

² Ibid.

³ GOKULESH SHARMA, HUMAN RIGHTS AND LEGAL REMEDIES, 147 (3rd ed. 2008).

⁴ INDIA CONST. preamble.

⁵ INDIA CONST. preamble.

⁶ *Uniform civil code-a need for the hour*, SHODGANGA, http://shodhganga.inflibnet.ac.in/bitstream/10603/54472/11/11_chapter%204.pdf.

space in the Indian soil. When we have a close look at all the religious evils, they are gender discriminatory practises.

Even during the British period, Common laws could not be brought in, because of the then existence of orthodox folks. But this mindset of the people continued to exist even during the time of drafting the Constitution. This resulted in the insertion of Uniform Civil Code in the Directive Principle of State Policy as they are unenforceable by the Court of Law. The Constitution reads as “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”⁷. These words reflect the noble wish of the Constitution drafters to bring in a uniform civil law for all Indians irrespective of their belief and religion which in turn promotes national unity. Though it was added in the Directive principles of State policy, no such attempts have been made by the state to implement Uniform Civil Code because they fear that they would lose the vote of minorities.

A Uniform Civil Code was desired by the framers of the Constitution to ensure that basic fundamental rights of citizens, irrespective of their religious and other identities, are protected within a larger human rights framework.⁸ Thus, Uniform Civil Code is a prophecy of the great minds who drafted the Constitution of India. A Common Civil Code, which could bring about unity among the citizens by upholding equality, remains to be a dream till now.

The underlying principle of Uniform Civil Code should be that Constitutional law will override religious law in a secular republic.⁹ Personal laws superseding the Constitutional right of equality of people is a negative sign indicating the degradation of the Nation's wholesome growth. Uniform Civil Code isn't a step to impose the religious practises of majorities upon the minorities, it is a step to eradicate the gender discriminatory evils in all the religions and bringing them under a single code which uplifts equality and a secular nation.

RELIGIOUS EVILS AND JUDICIARY'S ATTEMPT TO IMPLEMENT UNIFORM CIVIL CODE:

The judiciary with the powers pertaining to it, in various circumstances through their judgements have insisted on bringing in Uniform Civil Code for the welfare of the Country and all its citizens. The Judicial organ have been advising the law-making organ to take necessary steps in drafting a Common Code for marriage, divorce, inheritance, adoption and maintenance.

Triple talak, Polygamy, etc are some of the evils in Muslim community because the right of Muslim women is totally deprived by these evils. The importance of Uniform Civil Code was first highlighted in the landmark judgement “Mohammad Ahmed Khan v. Shah Bano Begum,”¹⁰ 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.”¹¹ The decision of the Supreme Court was not entertained by many members of Muslim community and the state government by the compulsion of the Muslim minorities amended the Muslim Women's

⁷INDIA CONST. art. 44.

⁸Tufail Ahmed, *My blueprint for the Uniform Civil Code*, DAILYO, <http://www.dailyo.in/politics/uniform-civil-code-Muslims-triple-talaq-Indian-constitution-supreme-court/story/1/14293.html>.

⁹Mohit Sharma, *Declassifying the Uniform Civil Code*, LIVE LAW, (OCT. 16, 2016), <http://www.livelaw.in/declassifying-uniform-civil-code/>

¹⁰ (1985) 2 SCC 556 (India).

¹¹ *Uniform civil code-a need for the hour*, SHODGANGA, http://shodhganga.inflibnet.ac.in/bitstream/10603/54472/1/11_chapter%204.pdf.

(Protection of rights on Divorce) Act 1986 which clearly denied Muslim women to claim maintenance under sec 125 of CrPC.

Kuldip Singh J in the case of *Sarla Mudgal v. Union of India*¹² stated that, “when more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of uniform civil code for all citizens in the territory of India.” In a concurring judgement, R.M.Sahai, J wrote, ‘But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression’.¹³

In *Ahmadabad Women’s Action Group (AWAG) v. Union of India*,¹⁴ a PIL was filed by challenging the provisions which are gender discriminatory in Muslim, Hindu and Christian law. The Supreme Court 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.”

In Christian community, also there are gender discriminatory provisions. For, instance a Christian man can get divorce from his wife on the grounds of adultery, but a Christian woman has to prove some additional charges like desertion, cruelty to obtain a divorce. Judiciary took progressive steps to eradicate the gender discriminatory provisions in “*Swapana Ghosh v. Sadananda Ghosh*”¹⁵, the Calcutta High Court said that section 10 and section 17 of the Indian Divorce Act, 1869, should be declared unconstitutional. In 1995, the Kerala High Court in “*Ammini E.J. v. Union of India*”¹⁶, and Bombay High Court in “*Pragati Verghese v. Cyrill George Verghese*”¹⁷, struck down section 10 of Indian Divorce Act, 1869 as they are violative of gender equality.

C.J. Khare in the case of *John Vallamattom v Union of India*¹⁸ said that, “we would like to state that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India. It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”

By the landmark case, *Seema v. Ashwani Kumar*¹⁹, which brought about registration of marriage compulsory, the Supreme Court stated that “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.”

Justice R.M. Sahai has stated that, “Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essential civil and material freedoms are not autonomy but oppression. Therefore, a unified

¹² AIR 1995 SC 1531

¹³ RONOJOY SEN, ARTICLES OF FAITH-RELIGION, SECULARISM AND THE INDIAN SUPREME COURT 144 (1st ed. 2010)

¹⁴ AIR 1997 SC 3614 (India).

¹⁵ AIR 1989 Cal. 1 (India).

¹⁶ AIR 1995 Ker 252 (India).

¹⁷ AIR 1997 Bom 349 (India).

¹⁸ 2003 (6) SCC 611 (India).

¹⁹ 2006 (2) SCC 578 (India).

code is imperative, both, for protection of the oppressed and for promotion of national unity and solidarity.”

From the above mentioned landmark judgements, it is evident that there are lot of religious practises that are gender discriminatory. Those practises not only include the minority community but also in majority community, it was reported that 90% of dowry death cases belongs to Hindu community and the remaining 10% includes cases from minority communities. Thus, Uniform Civil Code is not a code to implement the practises of majority community onto the minorities.

The most often debate topic “Uniform Civil Code” was opposed on the ground that India is a secular country that has lot of cultural and religious practises and so the implementation of Uniform Civil Code would erase the cultural identity.

India is a civilised and a developing nation, though culture and religion are important aspects in a secularistic nation like India, those cultures and religious practises should not violate the basic human rights enshrined to the citizens in the Constitution of India. In the present scenario, we have a uniform criminal code to regulate the crimes and the punishments are similar to all the individuals of the country irrespective of their religion and sex. Hence, it gave importance to the rights of the individual and not to the religious practises. Similarly, a uniform civil code will aim at eradicating the evils in the society and by implementation of a civil code to all the religions, this doesn't mean that it would erase the cultural norms, it only aims in eradicating the practises and provisions that violate the basic human rights of the individuals and the statutory and non-statutory laws that are gender discriminatory.

MISCONCEPTION ABOUT UNIFORM CIVIL CODE

The drafters of Indian Constitution had the vision of Common Civil Law governing the people of India with prevalence of equality. But those great minds would have never thought of Uniform civil code struggling in the wrong hands. Nowadays, Uniform civil code is used as a tool by the politicians in their unfair play. Some politicians have created a myth that the Uniform civil code, will suppress the minorities and impose upon them the personal laws of majority communities. The politicians on selfish motive to gain vote from the religious folks, have created evil face for the Uniform Civil Code portraying it as against all religious practices and belief of the people. Such a wrong ideology of uniform civil code is prevailing at present in the society. The reality is not so, the Common law will bring about code of laws uniform to all irrespective of their religion. Our Constitution is drafted in such an impeccable way that the laws are enacted by the Supreme Legislation called the Parliament comprising of people's representatives directly or indirectly. A bill to be passed demands the two-third support of its members and finally the assent of the Executive Authority. Thus, a bill undergoes various scrutinies to become an Act, so will the Uniform Civil Code be subject to many analyses before implementation. These analyses would definitely not neglect minorities and blindly uphold the majority community.

SUGGESTIONS TO IMPLEMENT UNIFORM CIVIL CODE

Educate the citizens:

Before implementing Uniform Civil Code, we must educate the citizens of India regarding the true nature of Uniform Civil Code. Caste and religious believes are inseparable from the minds of the Indian citizens. Therefore educating the individuals regarding the true nature of the Uniform Civil Code and its positive

effect on the society will pave way for the successful implication of Uniform Civil Code. This can be done through media support and social media awareness.

Quandoaliquidprohibetur ex directo, prohibetur et per obliquum"-UCC must not be misused:

Uniform civil code must not become a tool to suppress the interest of the minority communities. The main aim of UCC is to bring a civil code that is applicable to all the communities irrespective their religion and sex; therefore, it must not impose the religious thoughts of majority community upon the minorities. The framers of legislatures must keep in mind that Quandoaliquidprohibetur ex directo, prohibetur et per obliquum, which means, "when anything is prohibited directly, it is also prohibited indirectly"²⁰. Therefore, the minorities must be also given equal importance and their interest must be protected.

UCC must not erase the cultural and religious values:

India has varied cultural and religious practises. And the religion is the one that runs in the blood of each and every individual. So, UCC should try to preserve the cultural and religious values so that once it is implemented it will gain a positive outcome.

For instance, triple talak is often debated as the essential religious practise, but some Muslims feel that arbitrary talak is not a healthy practise and so it can be prohibited on the ground that it violated the basic human rights of the individuals.

Fundamental right to freedom of religion of the constitution of India- needs amendment:

The right to freedom of religion (Art 25), freedom to manage religious affairs (Art 26) must be made available only to the individuals and not to any community. This is because in the present scenario the population of youth is higher and they are ready the individuals are ready for the implementation of UCC yet some religious organisations suppress their view and oppose the UCC to accept the implementation of UCC.

Reduction in the political influence over Uniform Civil Code:

Some politicians focus on vote bank politics, that is the contesting parties or candidates are afraid that, on implementation of Uniform Civil Code they would lose the vote of minorities and non-supporters of the common code. This fear is unnecessary as the common code will come into force by giving individuals their basic rights which will be accepted by the society as a whole.

²⁰SuyashVerma, *Constitutional Law - Doctrine of Colorable Legislation and the Constitution of India*, QUORA, <https://www.quora.com/What-could-be-the-limitations-of-the-application-of-doctrine-of-colourable-legislation-in-relation-to-Article-246>.

CONCLUSION

The pure form of religious practices has turned into certain impure unorthodox religious practices by cruel minds just to widen the discrimination between the upheld and suppressed groups. This conversion has affected the personal laws deeply and has led to the violation of human rights which has resulted in the need for an even statute for all individuals that can uphold the basic rights without discrimination in gender or religion. An urge for common civil code has kept Uniform Civil Code a hot topic to be debated even today after about 68 years of its introduction in the Constitution under Article 44. The implementation of Uniform Civil Code will make the work of settling disputes much easier for the judiciary rather than looking into the personal laws of each religion which is time consuming. This in turn helps in speedy trial of cases involving civil clashes. The time is ripe and in fact alarming for the implementation of Uniform Civil Code because people have started giving due importance to human dignity and human rights compared to the religious beliefs. The society has now become civilised and is in a thirst for wholesome upliftment. Thus, implementation of Uniform Civil Code at this instance can ensure equality and can bind the citizens of India by making them feel the same. The authors of the paper are sure that Uniform Civil Code with genuine legislative work will be well received by the society especially by the suppressed community and by those who wish to see a developing India without any violation of human right behind the veil of personal laws.

