



UNIFORM CIVIL CODE: BALANCING THE CONSTITUTIONAL MANDATE WITH SECULARISM

Prof. (Dr.) Richa

Professor,

School of Law,

Maharaja Agrasen University, Baddi (HP)

INTRODUCTION

- India is a country of multi religions and multi languages. A number of people are governed by their personal laws.
- It leads to different treatment meted out to different classes of people in their personal laws.
- There are different codes for different communities like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act; Muslims and Christians are governed by their respective personal laws.
- There are many different sects and they are ruled by their own customs and traditions.

INTRODUCTION

- The Uniform Civil Code as envisaged in the Article 44 of the Indian Constitution includes *inter alia*, entire gambit of the Family laws.
- The term Uniform Civil Code and its meaning came under intense scrutiny during the Constituent Assembly Debates. Muslim member were very vocal against this provisions. The questions were raised that which law of which community were to be taken as standards by the framers. (Constituent Assembly Debates, Vol. VII, (1949), p.543)

INTRODUCTION

- The Chairman of the Drafting Committee Dr. B.R. Ambedkar intended to have a code which provided for uniformity of law in matters of marriage, divorce, succession etc. irrespective of their religion, community.
- Mr. M.C. Chagla, while making a vehement plea for Uniform Civil Code wrote, Article 44 is a mandatory provision binding the government and it is incumbent upon it to give effect to its provision. The Constitution was enacted for the whole country, and every section and community must accept its provisions and its directives. (M.C. Chagla, Plea for Uniform Civil Code, Weekly Round Table, March 25, 1973, p.7)

SECULARISM v. UNIFORM CIVIL CODE

The preamble of the Constitution states that India is a Secular, Democratic Republic. This means there is NO State religion. A Secular State shall NOT discriminate against anyone on the ground of Religion. A religion is concerned with the relation of person with God. It simply means that the religion should not be interfering with the mundane life of an individual.

The word secular is not precise and it has different shades in different contexts. It is opposed to religion in the sense that the Secular State can not be a religious State. In this context, some may feel that a Secular State is an anti-religious State. This is not right that way, a Secular State may be a State respecting all the religions.

So, we may see that the process of secularization is intimately connected with the Uniform Civil Code like cause and effect.

In *S.R. Bommai v. Union of India* ((1994) 3 SCC 1), as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities that can be regulated by the State enacting a law.

The term Secular was added to the Preamble by way of 42nd Constitutional amendment, but the secular spirit permeated every fibre of the Constitution since its inception.

Article 25 and 26 guarantee the Right to Freedom of Religion. Article 25 guarantees to every person the freedom of conscience and the Right to Profess, Practice and Propagate the Religion. But this Right is subject to public order, morality and public health and to the other provisions of the 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 reform.

The protection of Article 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are integral parts of religion. (*Acharya Jagdishwaranand Avadhut v. Comm. Of Police, Calcutta*, (1984)4 SCC 522)

Uniform Civil Code is not opposed to Secularism and will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between Religion and Personal Laws in a Civilized Society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion, permits deliberate distortion. (*Sarla Mudgal v. Union of India*, AIR 1995 SC 1531). The UCC will interfere only in matters of inheritance, right to property, maintenance and succession, there will be a common law.

Justice Khare, in *John Vallamattom v. Union of India*, AIR 2003 SC 2902, said “It is no 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.”

JUDICIAL RESPONSE TO UNIFORM CIVIL CODE

The Judiciary in India has been assigned a significant role to play . It seeks to establish a secular polity founded on social justice irrespective of the tenets of the religion. Here we will try to find out the extent to which the judiciary has been successful in promoting the spirit of Uniform Civil Code as intended by the founding fathers of our Constitution.

it has been found that judiciary has very carefully resolved the sensitive issues of divorce and maintenance wherever there arose a conflict between personal laws and the interests of the communities at large. The judiciary has always tried to narrow the gap between the general provisions of laws and the personal laws.

There are numerous cases in which the Hon'ble Supreme Court has time and again reiterated the need of having a Uniform Civil Code:

Bhagwan Dutt v. Smt. Kamala Devi AIR 1975 SC 83

Bai Tahira v. Ali Fissali AIR 1980 SC 362

Zohara Khatoon v. Mohd. Ibrahim AIR 1981 SC 1243

Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

CONCLUSION AND SUGGESTIONS:

It is pertinent to note that many of the countries of the world do have their own codified civil law applicable uniformly on all its citizens, without fear or favour, affection or malice. The logic and imperative of having a civil code homogeneously applied on all of its' citizens, irrespective of religion, gender or other considerations, can not be overstated.

Thus, to conclude we need to understand the importance and the need of the urgent enactment of the Uniform Civil Code. The time has come to check the constitutional validity of the personal laws and place all the personal laws under one umbrella. The personal laws which discriminate on the basis of gender, must also be checked.

The Uniform Civil Code is a very important step towards the protection of oppressed women, to protect their Human Rights, to remove discrimination against them irrespective of their religion or community to which they belong to and lastly to make our national laws in accordance with the international instruments which are legally binding on India through various conventions and treaties.

The stalwartly Secular character of our nation needs a Uniform Civil Code for promotion of national unity, solidarity and integrity.

Thank You