



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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UNIFORM CIVIL CODE

Introduction

Article 44 of the Directive Principles of the State Policy as defined in Indian Constitution states that “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” Uniform Civil Code can aptly be described as “One Nation- One Law.” Uniform civil code (UCC) is indispensable to every democracy because it aims to build an egalitarian society by establishing supremacy of a uniform and consistent legal framework that safeguards everyone’s fundamental rights thus binding the whole society into a cohesive unit by replacing personal laws which are based on scriptures and customs of each religious community. Uniform Civil Code ensures Gender Justice and will prove to be an effective instrument in empowering women.

Historical Perspective

1. 1835: 2nd Law Commission Report and 1840: Lex Loci Report

The Britishers, armed with the policy of Divide and Rule on one hand and grappling with complex affairs of Indian state on the other, advocated through 2nd Law Commission Report of 1835 the need for uniformity in codification of Indian Laws relating to crimes, evidences and contracts, cleverly keeping personal laws out of domain of said uniform codification.

2. 1858: Queen Victoria’s Proclamation

In 1858, Queen Victoria, through her proclamation, promised the people of India, for absolute non-interference of state, in religious matters.

Events Before and After Independence

Due to progressive and social reforms movements in British-ruled India, a spate of laws was passed such as the Hindu Widow Remarriage Act of 1856, Married Women's Property Act of 1874, Hindu Inheritance (Removal of Disabilities) Act of 1928 and Hindu Women's Right to Property Act of 1937, Hindu Succession Act, 1956, Hindu Minority and Guardianship Bill, 1956 and Adoptions and Maintenance Bill passed in 1956, Hindu Marriage Bill, 1995 etc. However, the focus of the Government was primarily on reforming the Hindu Law only and only Hindu Laws were codified.

Efforts Towards the Uniform Civil Code

Hardly any significant efforts have been made towards the implementation of Uniform Civil Code.

1. Special Marriage Act, 1954

The Special Marriage Act of 1954 provides freedom from the boundaries set by personal laws by allowing civil marriage between two consenting adults irrespective of their faith, religion or belief.

2. Shah Bano Case of 1985

In this case, Shah Bano was denied her claim for maintenance. Hon'ble Supreme Court ruled in her favour under Section 125 of Code of Criminal Procedure (CrPC), which applied to all citizens the order for maintenance of wives, children and parents and further regretted non-implementation of Article 44 till date despite various admonitions of the court. Uniform Civil Code will promote the cause of national integration by removing disparities of personal laws having conflicting ideologies. No community will probably come forward to take the initiative and it is the duty of the state for securing a Uniform Civil Code which unquestionably, has the legislative competence to do so. No doubt difficulties will be encountered in bringing persons of different faiths and persuasions on a common platform however a beginning has to be made if the Constitution is to have any meaning. A common civil code is the just and effective substitute to bridge the gap between personal laws and ensuring justice for all rather than piecemeal attempts of the courts to grant justice on case-to-case basis. Ironically, the Secular Government of the day, the Rajiv Gandhi Government, surrendered before the Muslim fundamentalists and in order to appease them passed a law nullifying the judgment through the Muslim Women (Protection of Rights in Divorce) Act, 1986, thereby making Section 125 of CrPC, non-operable for Muslim Women.

Uniform Civil Code – A Critical Analysis

Indian Constitution proudly declares India to be a Sovereign, Socialist, Secular, Democratic, Republic implying thereby that the Institutions of India will not discriminate between the Citizens and will create perfect harmonious relations between the communities. How this harmony and equality will be achieved when Indian Polity continues to nurture the notion of “Unequals among Equals” by discriminating citizens on the basis of dogmatic provisions in the personal laws that violate the fundamental rights and equal remedies before the law especially in case of women and continue to encourage a perpetual cycle of religious oppression and patriarchy?

The Constituent Assembly also has deliberately chosen to ignore this issue and included UCC in Directive Principles of State Policy despite fully realizing that Article 37 of the Constitution makes Directive Principles unenforceable by any court of law.

It is a misconception that UCC will violate Article 25 to 28 of Constitution conferring rights to freedom of religion as all such rights are subject to public order, health, morality and other fundamental rights and the state can intervene to regulate the former in case it infringes upon the latter.

Advantages of Uniform Civil Code

1. It will Integrate India by providing Equal Status to all Citizens
2. It will help in curbing vote bank politics
3. It promotes real Secularism
4. It is a sign of modern progressive nation
5. Promote Gender Parity
6. Many provisions of Specific Personal Laws are in violation of Human Rights.
7. Codification and Unification of the variegated personal laws will produce a more coherent and a robust Legal System and will reduce existing confusion and enable easier and more efficient administration of laws by the judiciary.
8. Support National Integration

9. Bypass the contentious issue of reform of existing Personal Laws

Conclusion

With repeated exhortations by the judiciary, a strong Feminist movement and a strong nationalist government, this is the best time to realise the long overdue dream of Constitutional framers of India. All India Muslim Personal Law Board (AIMPLB) is clear that it shall oppose any attempt to adopt a Uniform Civil Code, yet, the recent Triple Talaq Act has found approval in most places, including Muslim Women. Thus, in an age when citizen's rights are of paramount significance, and the admitted position is to move towards an egalitarian society which respects human rights irrespective of caste, creed, religion, faith, belief and gender, it all has become all the more essential to enact Uniform Civil Code. It is true that the implementation of Uniform Civil Code is an arduous task as it will bring many challenges like issuing judicial pronouncements that ensure gender equality, adopting expansive interpretations on marriage, maintenance, adoption and succession with a view that all communities should benefit equally. Political and intellectual leaders should try to evolve a consensus instead of using it as an emotive issue to gain political advantage. There is an imminent need to treat each human being with dignity (something which personal laws have so far failed to achieve) and fostering the notion of national unity by rising above and beyond the narrative of minority protection and convincing minorities to become equal partners in growth and development of the nation.