UNIFORM CIVIL CODE: ISSUES AND CHALLENGES

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Introduction

Article 44 of the Indian Constitution provides that “the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. Its particular goal is towards achievement of gender justice.¹ The concept of Uniform Civil Code envisages the idea of having a common code which applies to all groups and communities, irrespective of their religion, race, caste, creed etc. It is proposed to have a standard and uniform code to govern matters like marriage, inheritance, divorce, maintenance, etc. Considering the religious and cultural diversity in India, it has long been considered that it is neither feasible nor possible to have a common code for these diverse groups throughout the country. This is one possible reason because of which the constitution framers must have decided to include a uniform civil code in the Directive Principles of State Policy, and not in the list of Fundamental Rights. The term civil code includes the complete set of laws relating to personal matters like marriage, divorce, maintenance, adoption and inheritance of property as well.² In India, the only state having a common civil code is Goa.³ The coming into of a uniform civil code essentially implies unifying all the personal laws and to have one set of secular law applicable to all citizens of India irrespective of the religion or community they belong to. The basic issue of controversy concerning Uniform Civil Code is secularism and the freedom of religion enshrined under the Indian Constitution. Even though the Indian Constitution provides for articles promoting equality and non discrimination on the grounds of sex, but a number of laws still exist which are contrary to these principles and have become a part of the personal laws of certain groups and communities and are largely contained with provisions that are majorly discriminatory against women.

Attempts have been made every now and then for enacting a Uniform Civil Code post independence and the Supreme Court has been giving directions by stating the same in its various Judgments to the government for giving effect to Article 44 of the Constitution and to reform the various personal laws specially those relating to the minorities and to remove gender bias therein.

³ Dr. Parminder Kaur, “Personal Laws Of India Vis-À-Vis Uniform Civil Code A Retrospective And Prospective Discussion”, Available at: http://journal.lawmantra.co.in/wp-content/uploads/2015/05/17.pdf
While a uniform civil code is not on priority in the national age-nda, it is a value-based progressive change which can be fruitfully effected while preserving the separate identity of each religious group.

**Issues in implementing UCC**

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 not like any other country having a common religion for all. It has 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 law in a single enactment of Legislature which is accepted by all those religious groups and communities who co-exist in India. These personal laws have grave and deep consequences on the lives and rights of a large number of women of such groups and communities. It is also notable that although various efforts are being made by the means of international instruments, reforms of national laws, changing judicial trends, recommendations of Commissions, etc., a state that ratifies an international instrument falls under a corresponding obligation 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, it is bound to enforce the relevant provisions therein and also to ensure gender equality under its national laws.\(^4\) However, women in India under the Hindu, Muslim and Christian laws continue to suffer discrimination and inequalities in the matter of marriage, succession, maintenance, divorce and inheritance.

One major issue that needs to be acknowledged is that not all groups and communities would assent to having such a unified system of personal laws. The very basis and origin of different religious groups are based on differences in ideologies. Certain things may be suitable for one community, but for others they may be totally unacceptable. This difference in ideologies and opinions make it a major issue to have a common code for all. Also, certain communities have their laws based on divine laws, for example, the Muslim religious group asserts that their personal laws are based on Sharia Law which is divine law.

Another issue is with regard to its implication on various religious groups and their sentiments. Having a new law for all personal matters like marriage, divorce, maintenance and inheritance, etc. would also imply that the existing corpus of law which has existed over the years would become obsolete. Also, the male fraternity, who has been able to effectively dominate upon women may counter and demonstrate agitation on being deprived of certain privileges and immunities under certain personal laws.

These, among many others, are few considerations that operate as hurdles in practically working upon the concept of a Uniform Civil Code

**The Judicial Response**

The Indian Courts have time and again made assertions with regard to the need for having a common civil code for the whole of India. It has been notably observed that even after several

years of the coming in of the Indian Constitution, the provisions enshrined under Article 44 have not yet been brought into action. This point towards the failure of the State to implement an important Directive Principle of State policy. In the famous case of Mohammad Ahmed Khan v. Shah Bano Begum\(^5\) (commonly known as Shah Bano’s case) a Muslim woman, who was left unmaintained by her husband who contracted a second marriage, claimed for maintenance under section 125 of Code of Criminal Procedure. As per the Muslim personal laws, a woman was entitled to maintenance only up to the iddat period. However, Section 125 had no such bar. The Supreme Court granted her the maintenance under Section 125 of Code of Criminal Procedure. The Court held that it was a secular piece of legislation and even a Muslim woman could be entitled to the benefit of the same. With regard to the Uniform Civil Code, the Supreme Court observed that “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter.” In response to the decision of Supreme Court, great outrage was shown by the Muslim community, owing to which the central Government was compelled to enact the Muslim Women’s (Protection of rights on Divorce) Act 1986, which explicitly denied right of maintenance to Muslim women under Section 125 of the Code of Criminal Procedure and made the husband liable for maintenance only up to the period of iddat. Had the Congress Government not enacted a law to overturn the Supreme Court judgment and dilute its effect, the Congress government would have faced decimation in the next polls. The Opposite parties, namely BJP, called it an act of “appeasement” by the Congress government towards the minority community. This highlights the fact that women’s rights hold less importance even for the secular state of India. It was the personal laws which were allowed to prevail over a secular piece of legislation and ultimately undermined women’s rights.\(^6\)

Further, in the case of Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India\(^7\), the court discussed the issue of bigamy and highlighted the conflict that exists between the personal laws on matters concerning marriage. In this case, the petitioner filed a case against his Hindu husband who converted to Islam and contracted a second marriage by relying on the provision of Muslim personal laws which provide for polygamy. The Court was compelled to hold that the first marriage, being a Hindu marriage, has to be dissolved under the Hindu Marriage Act, 1955 before contracting any other marriage. The man’s first marriage would therefore, still be valid and under Hindu law. However, his second marriage would be unlawful by virtue of Section 494 of the Indian Penal Code, 1860. The Court observed 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\(^8\), a Public Interest Litigation was filed. The gender discriminatory provisions of the Hindu, Muslim and Christian codified and un-codified law were challenged. The Court held that the matter of removal of gender

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\(^5\) 1985 SCR (3) 844
\(^7\) 1995 SCC (3) 635
\(^8\) AIR 1997, 3 SCC 573
discrimination in personal laws “involves issues of State polices with which the court will not ordinarily have any concern.” The Court withdrew its support from the goal of protecting the principles of equality regarding gender related issues of personal laws of various communities in India. It was observed that “the desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.”

Further, an important development in view of Uniform Civil Code was the ruling of The Supreme Court in the case of Seema v. Ashwani Kumar⁹, wherein the Court held that all marriages irrespective of their religion shall becom pulsorily 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.” This decision of the Supreme Court is considered as a first step towards the formulation and enactment of a Uniform Civil Code. The Supreme Court ruled that all the marriages irrespective of their religion, becom pulsory registered. This is a step towards having a common rule for all communities, irrespective of the provisions of their personal laws.

Situation in India and the Need for UCC

Recently, there has been great uproar and debate on the issue of Uniform Civil Code with regard to the concepts of polygamy and triple talaq among Muslims. The government and Supreme Court have expressed their approval and consent towards having a Uniform Civil Code and for the same reason, the Central Government directed the Law Commission to ascertain the effectiveness of a Uniform Civil Code which would incorporate the best elements from all religious communities and their personal laws. The basic ground of argument is that the concept of triple talaq and polygamy has undermined the interest of Muslim women and has made their position insecure and vulnerable. This is the basic argument which relates Uniform Civil Code to the idea of gender justice. It does not imply that other religious communities and their personal laws do not have such gender discriminatory provisions, but that it would be a major step towards protecting the interest of women across all communities and groups if there is a common code to govern all of them equally. However, the Muslim minority has strongly opposed this idea by suggesting that the very idea of having a Uniform Civil Code is in conflict with their personal laws which are based on divine law and cannot be altered.¹⁰ They have asserted that the Muslim women have been following the personal laws since times immemorial and that they have no objections to it. They also suggest that any attempt to bring in the Uniform Civil Code shall be interference into their personal Laws.

The Centre has made deliberate efforts to establish the viability and possibility to have an effective Uniform civil Code by means of deliberations and questionnaires, etc. However, the

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⁹ 2006 (2) SCC 578
intensity and the manner of resentment and reluctance shown by the religious communities have made it clear that it is not an easy task to achieve the goal of having a Uniform Civil Code.

However, owing to the following reasons, the State shall still strive towards enforcing the same in future:

- Bringing uniformity in all personal laws by having a single set of secular laws to regulate the various aspects which would be applicable to all the citizens of India uniformly, irrespective of the group or community they belong to.
- Women empowerment and gender equality - Women across the country anticipate the enforcement of a gender just Civil Code in order to enjoy equality and justice, without having any reference to the community they belong to.
- The Uniform Civil Code is needed in order to ensure:
  (a) uniformity of laws between different communities, and
  (b) uniformity of laws within each community so as to ensure equality between the
  (c) rights of men and women.
- Removing patriarchal society is another goal that is intended to be attained by means of having a uniform code.
- Establishing complete secularism by removing religious differences in matters relating to marriage, divorce, inheritance, maintenance, etc.

However, it is pertinent to note that the words of Article 44 are cautiously drafted and casts a duty upon the State only to ‘endeavor’ to secure this Uniform Code. It is neither compulsive in nature, not prescribed with a fixed period within which the provision has to be given effect. It is also not a Fundamental Right that could be enforced in a Court of law. Thus, the only resort available to the society is to hope that a uniform code is actually enforced in the near future.

Conclusion

An analysis of the situation in India clearly suggests that it is not easy to bring in a Uniform Civil Code in the near future. The gravity of opposition to the very idea in itself is also alarming. The primary reason that appears from the analysis of the above scenario is that the religious communities believe that Uniform Civil Code is largely about imposing Hindu personal laws universally. However, they do not identify the fact that it is a Constitutional directive. Also, there exists an apparent conflict of laws where the personal laws of each community fall in direct clash with a uniform code.