

UNIFORM CIVIL CODE AND CONFLICT WITH PERSONAL LAWS

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“Our ability to reach unity in diversity will be the beauty and the test of our civilization”

- Mahatma Gandhi

ABSTRACT

India has always been a torchbearer of “unity in diversity”, in the world. Keeping in mind, our age-old traditions, the legal system of India has always upheld the concept of legal pluralism, which means every religion will have a place for its personal laws. Uniform civil code, envisaged in article 44 of the constitution of India, in the directive principles of the state policy, can be considered as foundation stone placed for the achievement of the uniform laws in the country. Since the inception of the constitution, it has been a topic that has been highly debated. It comes into a sharp contradiction with the concept of legal pluralism. Given the intricacies of the issue, the constituent assembly vested the responsibility in the upcoming generations, to deal with the issue of UCC, so for the time being it was placed in part 4 of the constitution, for being one of the guiding principles for the state to maintain the law and order. The implementation of UCC is not an easy task given the nature of secularism that has been followed in India. The debates that arose during the constituent assembly have been never settled and continue even today, the main concern being in which situation the unity and the harmony of the nation can be maintained. This article focuses on the conflict of the uniform civil code and the personal laws of the various religious communities, the debate between the fundamental rights and the directive principles as well as the implementation of the UCC.

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CONSTITUENT ASSEMBLY ON THE UCC

India takes pride in being multi-religious country. The constituent assembly took up the responsibility for drafting the constitution of the newly independent India. Like every other article or provision, the concept of UCC was also discussed, deliberated, and debated in the parliament. The constituent assembly was a democratic platform that stood high in the principle of listening to all the members and their views, to have the best possible results. During the committee stage, every sub-committee of the constituent assembly was vested with the respective task. Similarly, the sub-committee on the fundamental rights was given the task of coming up with a list of fundamental rights, that the committee members thought to be included in the category of fundamental rights. The members were asked to come up with drafts. This was also the time when in the assembly deliberations were going on regarding splitting the fundamental rights into two sections, one would be justiciable and the other would be non-justiciable. During these debates, certain members had given the view that relying on the history of our nation, they said, that something which has always threatened our nation was our own disunity and therefore, if there will be space given to the personal laws then the seeds of disunity will be sown again. According to them, the religious laws would have held back India from achieving true nationhood. Article 44 of our constitution replicates the draft Article 35 which proposes *that the state shall endeavor to secure a civil code for citizens of the country*. A proviso was proposed to be added which reads as “*Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law.*”² Dr. B.R Ambedkar who was also a staunch supporter of UCC stated:

“I quite realize their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavor to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens.”

3

An objection was raised mainly by the Muslim community in the assembly, that such a provision would be tyrannical for the communities and will be obstructing the fundamental

² Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948

³ Constituent Assembly Debates (Proceedings), Volume VII, Tuesday 23rd November, 1948.

Uniform Civil Code and Conflict with Personal Law

rights of the people. Mr. K.M. Munshi responded, that it was not understood by him, how UCC can be tyrannical when all the communities will be governed by a uniform and secular set of laws. He said that even many Hindu laws are discriminatory, especially towards women, which is totally against the equality principle. He also specified, that religion can be limited to certain spheres of life. Few assembly members from the Muslim community proposed an amendment that the UCC should leave the personal laws aside. They said, that UCC will create a form of disharmony among the Muslim community. To this K.M. Munshi said, that not just the Muslim community but every community will be affected by it, but it is important, as there should be no need for personal laws when we have a common law. As per Hindu law, some parts of India follow the “Mitakshara” school of law, some follow the “Dayabhaga” and there are different schools of thoughts with different interpretations which further creates ambiguity. There should be a uniform mode of inheritance and succession. After this debate, it was reminded Dr. B.R. Ambedkar, that article 35, is optional, thus they will be putting it in the directive principles of state policy which will act as a guiding principle for the upcoming government to make sure that they have to achieve the uniformity of the laws, some-day, depending on how evolved as a society we become, to accept such changes.⁴

FUNDAMENTAL RIGHTS VIS-À-VIS FUNDAMENTAL DUTIES

Article 25 talks about the freedom of the religions to practice, profess, and propagate them. So, going with the constitutionalism, we as citizens of India have given ourselves the constitution which will in turn, like all our rights, will protect our right to religion, but the question always arises that whether enforcing the fundamental duty would abridge the fundamental right or vice-e-versa. It has been debated whether the fundamental rights will be preferred over the directive principles of state policy or the other way round. In the case of the *State of Madras v. Champakam Dorairajan*⁵ where the fixed quota was placed for Harijans, and the same was said to be done as per article 46, which is the part of DPSP, the court said that in no case, the DPSP can supersede the fundamental rights, the DPSP has a duty to conform to the fundamental rights and only then they can be enforceable, otherwise, they will be declared unconstitutional. Here, the courts raised the status of fundamental rights in comparison to the directive principles, but now, the status of directive principles will be

⁴ DR. B.R. AMBEDKAR, THE ANNIHILATION OF CAST: THE ANNOTATED EDITION, 11 (Navayana Publication, New Delhi, 2014)

⁵ State of Madras v. Champakam Dorairajan, 1951 SCR 525

questioned. Therefore, even after this judgment, it has always been a go to approach of the courts, that the fundamental rights and the directive principles have to be balanced with each other and become supplementary to each other, as the directive principles act as the guiding principles for the government, that makes it equally important, albeit they can't be enforced directly in the court of law as said in the case of *Chandra Bhavan boarding and lodging v state of Mysore*⁶. Lastly, in the case of *Minerva Mills v Union of India*⁷, the court said that a harmony should be there in between the fundamental rights and the directive principles of state policy. Similarly, the debate between the personal laws, which are granted a fundamental right as per article 25 and article 44 of the DPSP, can be solved by creating a balance between the two. Putting them on scales and weighing them in such as to neither of them gets curbed, always has been the motive of the courts. But, at times, where any discriminatory practice of religion is said to violate article 14, 19, and 21, then the courts have taken, step up to ensure that that the basic rights of human beings are not overshadowed and there the secular laws come into place which can be said to be extracts of the UCC.

INCIDENTS OF CONFLICT WITH PERSONAL LAWS

India has been a home to many faiths, religions, and communities. Apart from the criminal law, a major part of the civil law, concerned with the issues of marriage, divorce, inheritance, succession, guardianship, and adoption is governed by the personal laws of the communities. The sources of these personal laws are mostly the holy texts or the customs that have been practiced in a certain community, and we know if a custom has been practiced for a long period, without a question being raised and is not violating the law of the land in any case, then the same can be incorporated in the law. Despite, these criteria, there are certain laws of the communities which are felt to be discriminatory, towards a certain caste or a gender or a community. For example, practices like sati and abandonment of widows continued for a very long time, despite being discriminatory. Thus, to avoid these discrepancies, it is felt by a certain section of people that this is where UCC needs to be applied because it will be inherently discriminatory, where each community gets to rule by their code of conduct, rather than the common law. An approach that the courts have tried to take up, is trying to do away with the

⁶ Chandra Bhavan Boarding & Lodging, Bangalore v. the State of Mysore (1969) 3 SCC 84

⁷ Minerva Mills Ltd. v. Union of India, (1986) 4 SCC 222

Uniform Civil Code and Conflict with Personal Law

discriminatory practices of the personal laws, which violate the basic rights as mentioned in articles 15, 14, 19, and 21.

When it comes to personal laws, the courts rather than asking the legislature to implement the UCC, have tried to carve out a balance, many times through section 125 of the CrPC, *which talks about a wife who is without any income, has no source of income and is neglected by her husband is entitled to maintenance, which includes a divorced wife who is not married*.⁸ Here, the religious laws of maintenance may come at loggerheads with secular law like section 125 CrPC. Since it's secular law, it will apply to people of all religions, this has quite often sparked controversy. In the case of ***Mohd Ahmed v. Shah Bano***,⁹ where a 60-year-old woman was divorced by her husband, and he gave her maintenance only till the duration of the "Iddat period". The issue was raised by Shah Bano, that she has no one to maintain her and the maintenance duration should be increased by the courts so that she has the basic necessity to survive herself. The court issued that if after the iddat period the wife will be able to maintain herself then there is not a problem but if she can't then the same has to be provided by the husband and the principle of iddat as given by the Muslim law will be superseded by section 125 of the CrPC. Here the court said that the authority of the "Holy Quran" will be greater than that of Muslim personal law and further solidified that whenever there is a collision between CrPC and Personal Laws the former will prevail as both statutes cover different subject areas. Also, the court said that it has to be the duty of the legislature to make way for the uniform civil code which has remained a dead letter since the adoption of the constitution. In another case of ***Pannalal Bansilal v. State of Andhra Pradesh***,¹⁰ where it was raised that since the constitution has guaranteed articles 25 and 26, article 15 should be declared unconstitutional. The case was concerned with the authority of the religious charitable institutions to manage their funds and administration, where an attempt was made by the government to unify the administration of all the charitable organizations. On this, the court had said that a uniform civil code at this state will be acting as a threat to the unification of the nation, as all the communities are existing at peace because their laws have been given a place in the country. ***John Vallamotham v. Union of India***,¹¹ was a case where two Christian priests had challenged section 114 of the Indian Succession act, which they felt was discriminatory towards the Christians as it somehow imposed restrictions on the Christians in the matters of donation of

⁸ Code of Criminal Procedure, 1973, Section 125

⁹ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556

¹⁰ Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498

¹¹ John Vallamattom v. Union of India (2003) 6 SCC 611

the property, which was to be done for the religious and charitable purposes. The court agreed to the same and struck down section 114 of the Indian Succession Act, and said that it is sad that hitherto, UCC has not been put into place. In, *Commissioner of Police v Acharya Jadvisharanand Advutha*¹², a matter was raised that whether the “tandava” dance which was performed in public by the people of Anand Margi community, forms an essential part of their faith or not, to which the court had said that it is not so and to determine what forms an essential part of the religion, the difference between the integral laws of the religion and the secular laws has to be seen and owing to such confusions, the court again emphasized the need for UCC.

It is important to understand that at times, the conflict between two personal laws also takes place, which was found in the case of *Sarla Mudgal v. Union of India*,¹³ where the Validity of the second marriage of a Hindu was in question and the same was allowed under the Muslim law. The court said that in such cases where such a situation arises then the personal law which will be suiting the best of the interest of the parties will be chosen and, in such cases, again the courts say that UCC is the need of the hour. Finally, very recently in the case of *Shayara Bano v. Union of India*,¹⁴ it was held that the practice of triple talaq is discriminatory towards the women of a certain community and therefore it was criminalized, but there was a wide debate on the topic and the need for the criminalization of the same. The courts have tried to suggest amendments to the Hindu personal law. One such example is the Hindu Succession Amendment Act of 2005, where the court had declared that even the daughters of the coparceners will have the coparcenary rights in the joint property of the Hindu undivided family. This paved the way for equal property rights of the females in the natal home. The concept of Karta was for the eldest son of the family, given to the circumstances these days the courts realized that the females can also be recognized as the Karta, so with the amendment of 2005, since the daughters were recognized as the coparceners and only a coparcener can be a Karta so the daughter got the responsibility of the Karta of the family too which was further clarified in the 2020 case of *Vineetha Sharma v. Rakesh Sharma*.¹⁵ These cases present in front of us the different lenses of the courts. At times the courts have emphasized the need of the UCC or without making a change to the personal laws, referred the victim to secular law

¹² Acharya Jagdishwaranand Avadhuta v. Commr. of Police, (1983) 4 SCC 522

¹³ Sarla Mudgal v. Union of India, (1995) 3 SCC 635

¹⁴ Shayara Bano v. Union of India, (2017) 9 SCC 1

¹⁵ Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1

Uniform Civil Code and Conflict with Personal Law

or they have completely agreed that personal laws are important for the maintenance of peace and tranquility in the country.

IMPLEMENTATION OF THE UCC

Implementing UCC can help the confusion regarding a variety of personal laws, to be done away with. As it was seen in the case of Sarla Mudgal where the doubt arose whether the second marriage of Hindus during the subsistence of their first marriage, be allowed or not as the same can be allowed in Islam. So, cases like this are bound to come up and create confusion. Also, as rightly pointed out by Mr. K.M Munshi, discriminatory practices of all kinds need to be done away with. They can't be allowed to exist if we are in the favor of articles 14 and 15 of the Indian constitution. Most of the religious practices are found to be discriminatory towards women. In the case of John Vallamotham, section 114 of the Indian succession act, which applies to all the faiths except to the people of Islam, there was a discriminatory practice that did not allow the Christians to donate money or property for religious or charitable purposes. This was struck down by the court as the same should not be allowed. If the same criminal law can apply to all the people, then why not a uniformity can brought when it comes to the personal laws. On the other hand, given the diversity of the land, we are a part of, incorporating almost every faith into a secular law is a tedious task. Many times, they overlap, but many times their practices are widely different and at these junctures finding an integral part of all the personal laws will be very difficult. Religion is a very sensitive issue as well as a social construct closest to the people. Moreover, in India, we declare ourselves as a secular nation, but we have never followed the western models of secularism, which asked for a complete separation of the church and the state, which meant that the state will not have recognition for the religion of the people. As a result, the same can be continued only in the private spheres and the people will be subjected to a common set of laws in the state. In the Indian model of secularism, the state is not biased towards any one religion, but it also does not completely shun away the religions. For the state of India, every religion is equal in the eyes of law, due to which the existence of various personal laws comes into being. The state has to give respect to religious identities. Technically, the enforcement of UCC, won't bar the people from professing and propagating their religion as the only laws related to the sphere of family and marriage will be presented under an umbrella. UCC, won't stop anyone from going to their own place of worship. The implementation of UCC in a country like India is a huge

task given to the diversity that we accommodate but this diversity has always added to the beauty of the nation. Our unique model of secularism has helped us to grow as individuals as well as a nation.

CONCLUSION

Uniform civil code has always been one of those grey areas where debates have taken place as both standpoints are equally valid. Given the history, where the erstwhile east India company, found it comfortable to divide and rule us on the basis of religious differences, the fear of the leaders was true. *“Iyer J insists that cultural autonomy is not an absolute anathema to national unity. However, religious practices cannot be justified and upheld by sacrificing the human rights and human dignity.”*¹⁶ Religion cannot and should not be allowed to suffocate dignity and freedoms of the citizens. Even today, the presence of various personal laws is giving legitimacy to many discriminatory practices. As emphasized by K.M Munshi, there is no need for religious affairs to interfere with marriage, inheritance, and succession issues, but on the other hand, in a country as wide and diverse as well as democratic as ours, if people from all the communities and religions will not be given acceptance and their values and ideas will not be embraced then disunity can again creep up. Every time success of other countries where uniform laws are applicable is cited but it is equally important to study the society of which we are a part. To solve the issue the legislature can take into consideration all the stakeholders and the views of the common people can also be invited to assess what can be the solution to the issue. The 270th law commission of India, after studying all the aspects has indicated that even if a talk has to be started on the UCC then it will be concerned with the family laws, but as per the law commission at the very present moment, UCC is not needed as well as it will not be desirable. The law commission would have surely investigated and deliberated on the issue and concluded as to why UCC will not be suited for the social structure of the Indian society. Therefore, officially the debate is put at a halt for now, but there is always a scope for discussion. Maybe, society is not ready for the UCC right now, but it can be in the future. This readiness is nothing but the idea of people being comfortable by being governed by a common law about marriage and family issues, which is yet a far-fetched idea given to the ascribed status of religion, with which a person is born and governed since they are born.

¹⁶ V. R. Krishna Iyer, *The Muslim Women (Protection of Rights on Divorce) Act*, 32 (Eastern Book Company, Lucknow, 1987)

Uniform Civil Code and Conflict with Personal Law

Like every coin has two sides, even UCC will give way to positive and negative consequences, but it has to be weighed, analyzed and decided how the positive outweighs the negative. And as it has been said by Heller Keller, “*Alone we can do so little, together we can do so much*”

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