

Challenging aspects Of Uniform Civil Code In India

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Abstract— Part IV of the Constitution of India contains the Directive Principles of State Policy. In spite of the fact that these principles are non-enforceable yet are crucial in the administration of the nation. One such principle is given under Article 44 of the Constitution which makes an obligation on the state to establish a Uniform Civil Code. Throughout the years different directions have been issued by the Judiciary for its execution. Be that as it may, because of exorbitant politicization it is as yet a far off dream. India being a diverse nation with different people governed by their own personal laws it is at times, difficult to provide justice equally to the different people governed by their different personal laws. The need of great importance is to authorize a Uniform Civil Code yet that ought to be done gradually and steadily subsequent to making the general population particularly the minorities, understand about its scope and extent.

Index Terms—Administration, Article 44, Directive Principles, Judiciary, Personal Laws, Politicization and Uniform Civil Code.



1 Introduction

India is a country of multi-religious and multi-languages. India being a diverse nation with n number of people having their own culture, traditions, customs and religion, are governed by their own personal laws. There are different codes for different communities like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act, Hindu Guardianship Act, and Muslims and Christians are governed by their personal laws.

But due to the different codes and personal laws, it is at times difficult to distribute justice based on religion; therefore, decisive steps were taken towards national consolidation in form of idea of Uniform Civil Code, which was for the first time mooted seriously in the Constituent Assembly in 1947.

In the Constitution of India, Uniform Civil Code is envisaged in Article 44, which covers every aspect of law except matrimonial laws. The object of Article 44 is that, as and when, the majority of Parliament thinks proper, an attempt may be made to unify the Personal laws of the country, i.e., uniformity in law in matters of marriage, divorce, succession, irrespective of religion, community, etc.

The Constitution of India in article 44 enjoins, The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India. But it is more than 60 years, yet we have not been able to attain that level of sophistication to accept and adopt the Constitutional mandate. It is crystal clear that the term uniform civil code was used in relation to the personal laws of different communities.

2 Historical Backgrounds and Philosophy of Uniform Civil Code

2.1 Origin of the Idea of Uniform Civil code in India

The idea of Uniform Civil Code was introduced into the national political debate in 1940, when a demand for such a code was made by the national planning committee appointed by the Congress. The sub-committee for the 'women's role in planned economy' was specifically directed to study the role women would play in future independent India.

2.2 Constitutional Amendment and Uniform Civil Code

The directive to enact a Uniform Civil Code in the constitution was included as a result of the efforts of Minoo Masani, a member of sub-committee on Fundamental rights, he moved on 28th March, 1947, that the state should be made responsible to enact a Uniform Civil Code in order to break down the barriers between various communities.

2.3 Philosophy of Uniform Civil code

Under Art 44 of the Constitution of India, the state is under constitutional obligation to make earnest efforts towards the establishment of one civil code for all persons, yet if these provisions come in direct conflict with provisions in Part III of the Constitution of India, then Judiciary has been given regulatory powers, and also vide power to expound the provisions and bring into practice the basic philosophy underlying the provisions.

2.4 Secularism vs. Uniform Civil Code

Preamble of the Constitution states that India is a Secular democratic Republic. The word Secular was inserted by the 42nd

Constitutional Amendment, 1976. This means there is no state religion. The process of secularization is intimately connected with the goal of Uniform Civil Code like a cause and effect.

The secularism in India is different from that of Doctrine of Secularism by America and some European states. As America and some of the European states have undergone the stages of renaissance, reformation and enlightenment, therefore, they can enact a law stating that the state shall not interfere with religion, but in India the state has to interfere to remove the impediments.

In the Constitution of India, Article 14, 15, 16, 25, 26 and 27 makes clear that the state is barred from patronizing any religion. Uniform Civil Code is not opposed to secularism and will not violate Article 25 and 26 of the Constitution of India. Article 44 of the Constitution of India is based on the concept that there is no necessary connection between Religion and Personal laws in the civilized society.

3 India's commitment to Human Rights: Constitution guarantees and International Human Rights Conventions

There is a compelling need to study personal religious law from a human rights perspective. Principles of equality, non-discrimination and fairness which form an essential part of the Human Rights discourse are enshrined in the Preamble of the Constitution, which are the matter of debate regarding personal law of India. Thus, we see that Article 15(3) of the Constitution empowers the State to make special provisions for protection of women and children. Article 25(2) mandates that social reform and welfare can be provided irrespective of the right to freedom of religion. Article 44 which directs the state to secure for its citizens a Uniform Civil Code throughout the territory of India is the cornerstone for women's equality in the country and must be urgently implemented so as to eliminate antiquated discriminatory norms of religion laws.

3.1 The Convention on the Elimination of All Forms of Discrimination against Women

CEDAW is a unique international convention in which it was held that there's a need for special formulation that would assert, protect, promote women's Human Rights.

India declares that, with regards to articles 5(a) and 16(1) of the Conventions, "it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent".

4 Uniform Civil Code- Judicial Approach

Article 44 of the Indian Constitution makes it obligatory on the part of the state to secure for all its citizens a Uniform Civil Code- throughout the territory of India and Judicial craftsmanship of the High Court and Supreme Courts.

The judiciary has always tried to narrow the gap between the general provision of law and the personal law. It is crystal clear from **Bhagwan Dutt v. Smt. Kamala Dev**, wherein the apex court ignored the personal law and stressed that provisions under Criminal Procedure Code must be made applicable to all irrespective of their religious beliefs. Listed below are some landmark cases decided by the Judiciary.

1. **State of Bombay vs. Narasuappa Mali**- in this case the legislative provisions modifying the old Hindu law were challenged on the ground of being violative of Articles 14, 15 and 25 of the Constitution, the Bombay High Court held that the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 was *intra vires* to the Constitution, as it violated Article 25 and permitted classification on religion grounds only, forbidden by Articles 14 and 15.

C.J. Chagla considered that: "Article 14 does not lay down any legislation that the state may embark upon must necessarily be of and all embracing character. The State may rightly decide to bring about social reform by stages, and the stages may be territorial or they may be community wise, and that the discrimination may be by the Act between the Hindus and the Muslims does not offend the equality provisions of the Constitution."

2. **Mohd. Ahmad Khan vs. Shah Bano Begum**- in this case the court held that, the statement in the text books viz., Mulla's Mohammedan Law, Tyabi's Muslim Law and Dr. Paras Diwan's Muslim Law are inadequate to establish the proposition that Muslim husband is not under an obligation to provide for the maintenance of his divorced wife, who is unable to maintain herself.
3. **Sarla Mudgal vs. Union of India**- the Personal laws of Hindus, Muslims and Uniform Civil Code were touched and the judgment favored the enactment of Uniform Civil Code. Supreme Court held that 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 law in a civilized society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion.
4. **Makku Rawther's Children vs. Manapara Charayil**- Justice Krishna Iyer clearly opined that the provisions of personal law must always run in accordance with the provisions of the Constitution. It is the function of judiciary to construe the

words of personal laws with the passage of time which is the need of the hour in the light of constitutional mandate. It is now a high time to read the personal laws in the light of the philosophy contained in the Article 44.

Thus, whenever the constitutionality of any provision(s) of any personal law was challenged on the ground of being violative of fundamental rights, the court exercised self-restraint and left the matter for the wisdom of the legislature, the court practiced poise and left the issue for the insight of the legislatures saying that it involves state approaches, with which the court isn't normally, concerned.

5 Conclusions

Our Constitution guarantees freedom of conscience and free profession, practice and propagation of religion and freedom to manage religious affairs by Article 25 and 26. Article 44 also does not say that all personal laws should be repealed and that the proposed uniform civil code be imposed on all citizens. As rightly assured the Constituent Assembly by Dr. Ambedkar, that the citizens would be required to declare voluntarily that they would be governed by such code when enacted and not imposed on all citizens.

However, a section of people misinterpret this Article and urge the government to abolish the Muslim personal law and enact a uniform civil code, thus, this has caused threat to the national unity or integration.

Not much progress has been made towards achieving the ideal of a uniform civil code; the only tangible step taken in this direction has been the codification and secularization of Hindu law. The codification of Muslim law still remains a sensitive matter.

The very object of inserting Article 44 has already been achieved by the Special Marriage Act, 1954 and the Hindu code, which is applied to the majority of Indians. Those having any objection to their personal law can register their marriages under the Special Marriage Act and enjoy its benefits with regard to matters connected with marriage; and of Indian Succession Act, 1925 regarding succession to property.

There is no justification for denying this protection to the personal laws of those to whom the Hindu Succession Act, 1956, is not applicable, by the Legislature. Article 44 of the Constitution has lost all its significance and become redundant.

It is necessary that law should be separated from religion. With the enactment of a uniform civil code, secularism will be heightened; the differences between various religious groups will disappear and India will emerge as a much more cohesive and integrated nation.

6 References

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