

UNIFORM CIVIL CODE FOR GENDER JUSTICE

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Abstract: *The Constitution of India enshrines the philosophy of an egalitarian society. The dream of the framing fathers of the Constitution of India was to establish India a state where all people irrespective of their religion, caste, sex, place of birth shall have equality before law and equal protection of law. To secure these objectives, various provisions have been made so that India, as an independent state shall not make any discrimination among its citizen on the ground of religion, race, sex and place of birth. The directive principles of state policy are another set of example where this constitution itself gives some direction to the state to implement these policies towards the attainment of the goal of an egalitarian as society.*

Although, the constitution says about equality and justice among all, do women have equality in true sense of term? In India, nearly, half of the population consists of women and suffered from patriarchy which is supported by tradition, religion and culture. Tradition, religion and the culture of Indian society subordinated women to men. Women had to struggle for equality, liberty and justice. Women are often victimized, ignored, Religion, has however, proved to be a formidable barrier to recognize the rights of women within family as well as in society. Women suffered from gender based prejudices and therefore they are marginalized. Gender equality is embodied as ideal in the constitutional provisions and that is to be achieved by special affirmative action.

Key words- Constitution, egalitarian society, right to equality, gender justice.

I. INTRODUCTION

Gender equality is one of the objectives of the Constitution of India which envisages equal rights of women with man. Gender equality is considered as basic human right unless women are allowed to live with dignity in the society.¹ The Constitution of India enumerates various provisions to ensure gender equality in Part III as well as in Part IV. Part IV provides for Directive Principles of State Policy and these directives are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making law.

The State so far made laws to implement various Directive Principles. Some of the Directive Principles which aimed at gender equality such as Art.39 and 42 has been implemented by enacting legislation but the state however, even after 66 years of the commencement of the Constitution of India have not taken any step to implement the Directive Principles of State Policy provided under Art.44 of the Constitution of India. Art.44 provides for the Uniform Civil Code throughout the territory of India.

Uniform Civil Code is a proposal to replace the personal laws which govern the different religious communities in India with a common set of rules governing marriage, divorce, inheritance, adoption and maintenance.

A personal law in India is based on religion, tradition, scripture and culture. Personal laws contain some provisions which are unjust to women e.g. a Muslim husband can marry four wives, he can divorce his wife unilaterally by the word 'Talaq' thrice, her right to receive adequate maintenance from the husband after divorce is not recognized. Many provisions of Muslim personal law are discriminatory towards women and based on patriarchal ideology. Personal laws relating to Hindu were also discriminatory, however, with the codification of Hindu Personal law many reforms have taken place in order to provide equal rights to Hindu women. But it cannot be said that the Hindu Personal law has completely been reformed because in different parts of India some customary law prevails. This customary law is based on caste, belief and tradition and plays a vital role in regulating family affairs which are derogatory towards the rights of women. The state should make an endeavor to reform personal laws of the communities in India in order to ensure gender

¹ Sathya Narayan, selected works of S.P.Sathe, Social Justice and Legal Transformation, Vol.3, Oxford University Press, 2015, p.251.

equality. Reform of the personal law should be made in conformity of various Fundamental Rights of the Constitution which seeks to promote gender equality and social justice.²

II. RESEARCH METHODOLOGY

Research is an enquiry for the verification of a fresh theory or for supplementing prevailing theories by new knowledge. Research is the sense of the development, collection and reinforcement of principles together with the collection and use of empirical materials to aid in the process of research. Research methodology is a systematic investigation to gain new knowledge about the phenomenon or problem in question. In its wider sense, methodology includes the philosophy and practice of the whole research process. It provides the standards which the researcher uses for integrating data and research conclusion.

The subject for this study has been selected in order to analyze the need of Uniform Civil Code for securing gender justice and to find out the suitability of Uniform civil code to the changing needs, ideals and aspirations of the contemporary society.

The researcher duly applied doctrinal method in the course of study. Materials are collected from the Secondary sources such as the law journals and reports including All India Reporter, Supreme Court Cases, Journal of Indian Law Institute and other journals, research publications in this area, major Acts, Governments publications, Constituent Assembly debate. The additional sources include authentic books, relevant publications, articles, features, reports of various commissions and unpublished work.

III. WHAT IS UNIFORM CIVIL CODE?

The Constitution of India under Article 44 requires the state to strive to secure for the citizens of India a uniform civil code throughout the territory of India . The Constitution, however, have not mentioned whether there shall be one single codified law to be applicable to different communities. The meaning of “uniform” is not provided in the Constitution of India and there is also difficulty in application of a single codified law to the large diverse population in India. The word “Uniform” in Art 44 means that all communities must be governed by the uniform principles of gender justice and human justice. A uniform law would not necessarily mean a common law but different personal law based on uniform

² Art.14, 15 and 16 of the Constitution of India.

principles of individual liberty and equality. Such uniformity can sustain the diversity in law³. For better understanding of Uniform Civil Code we must study the Constitutional Background of the provision Art.44 of the Constitution and objectives behind its incorporation in the Directives Principles of State Policy.

In the Constituent Assembly objection was raised by the several Muslim members on the Uniform Civil Code on two grounds viz., it would infringe the fundamental right to freedom of religion and secondly, it would be a tyranny to the minority⁴. The first objection was met by pointing out that India had already achieved a uniformity of law over a vast area and that though there was diversity in personal laws, there was nothing sacrosanct about them. The secular activity such as covered by personal law should be separated from religion⁵. Clause(2) of Art.25 specifically saves secular activities associated with religious practices from the guarantee of religious freedom contained in Art.25(1).

As regards the second objection, K.M.Munshi, member of the Drafting Committee of the Constituent Assembly argued that the framing fathers of the Constitution are going to consolidate and unify the personal law in such a way that the way of life of the whole country as may in course of time be unified and secular. Further, he gave the example of Europe which have

a civil code and everyone who goes there from any part of the world and every minority, has to submit to the civil code. It is not felt tyrannical to the minority, and therefore there is no reason to feel that Uniform civil code is an attempt to exercise over a minority.⁶

In the Constituent Assembly debate in support of UCC ,Dr.B.R.Ambedkar said ‘‘*I don’t personally understand why religion should be given this vast, expansive jurisdiction so as to cover the whole life and to prevent the legislature from encroaching upon that field. After all, what we are having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequalities, discriminations and other things, which conflict with our fundamental rights.*’’⁷

³ Supra Note1, pp.91-92

⁴ Mahendra Pal Singh ,V.N.Shukla’s Constitution of India, ,12th edition 2016,Eastern Book Company,Lucknow.

⁵ M.P.Jain,Indian Constitutional Law,Lexis Nexis, 7th Edition 2015,p.1430.

⁶ Constituent Assembly Debate,Vol.VII,547-48.

⁷ ibid

The Constitution makers incorporated Uniform civil code in the Constitution with a view to segregate law from religion and to promote equality among its citizens which ultimately will lead to establish India into a strong nation. However, issue of gender justice was not much prominent in the debate of constituent assembly.⁸

The observations made by the framing fathers of the Constitution have not lost their relevance in the present time but no solid steps have been taken by the State to provide a Uniform civil code. The present Bharatiya Janta Party Govt. strongly speaks for a uniform civil code in their political agenda but no progress has so far been in that direction.

In absence of UCC, however, The Supreme Court of India in reliance of Art. 44 of the Constitution of India liberally interpreted many provisions of the personal laws of Hindu as well as Muslim to protect the rights of women in matrimonial cases.

IV. UNIFORM CIVIL CODE AND THE SUPREME COURT OF INDIA

The desirability of Uniform Civil code was declared by the Supreme Court of India in 1985 in the case of *Md.Ahmed Khan Vs Shah Bano Begum*.⁹ In this case the Supreme Court of India held that a Muslim divorcee was entitled to get maintenance from the former husband beyond the period of Iddat under Section 125 of the code of criminal procedure, if she had not married and could not maintain herself from the dower received at the time of divorce. Where this decision gave Muslim women great relief but on the other it irked Muslim fundamentalist which led to the enactment of Muslim women (protection of Rights on divorce)Act,1986 which excluded divorced women from the purview of Sec.125 of Cr.P.C. This Act was severely criticized and it was a glaring example of injustice and gender inequality. The Muslim fundamentalist criticized the supreme court of India as the court had unnecessarily interfered with their personal laws.

But in *Danial Latif's*¹⁰ case, the supreme court liberally interpreted S.3 of the Act,1986 and has ruled that a Muslim husband is liable to make provision for the future of the divorced wife even after the Iddat period.¹¹

⁸ Supra Note1,p.139.

⁹ AIR 1985 SC 985.

¹⁰ (2001) 7 SCC 740,757.

¹¹ Ibid.

The Supreme Court of India though appreciated the difficulties involved in bringing persons of different faith and belief under one common code but it regretted that Art.44 remained as a 'dead letter.'¹²

The Supreme Court of India has emphasized that the steps be initiated to enact UCC by the State as it has the legislative competence to enact it.

In the absence of such a code or a general matrimonial law, some individuals are taking advantages and in order to escape liability under Hindu personal law, they get converted into Islam to solemnize second marriage.¹³ In such Cases, the question was whether second marriage without the first marriage has been dissolved, would be a valid marriage qua the first wife who continued to be a Hindu. The Court was of the opinion that such marriage will be void in terms of Sec.494 of Indian Penal Code. But the court refused to declare polygamy and certain aspect of Muslim personal law as void under Art. 14 and 15 of the Constitution of India. The court, however, pleaded for a Uniform civil code for the protection of oppressed and for the promotion of national unity and solidarity¹⁴.

In *Sarla Mudgal*¹⁵ the court emphasized that there is no relation between personal law and religion in a civilized society. Marriage, succession and like matters are of secular character and cannot be brought within the guarantee enshrined in Art.25,26 and 27. The court pointed out that the Hindu personal law has been reformed to make it secular but Muslim personal law is yet to reform to divest it from religion. The court urged the govt. to have a fresh look at the issue of Uniform Civil court. But the court in a subsequent case clarified that it has not issued any direction to the govt. for enactment of Uniform civil code.¹⁶

The Supreme Court of India, though, considered it as a serious inaction on the part of the Government but the court is yet to interpret the meaning of the provision contained in Art.44.

From the above judicial decisions, it can be stated that the court is reluctant to interfere with the matters fall within the realms of religion. Religion has however proved to

¹²Supra note9.

¹³ *Sarla Mudgal Vs. Union Of India*,AIR 1995, SC 1531,*Danial Latif Vs.Union of India*, (2001) 7 SCC 740,757.

¹⁴ M.P.Jain,Indian Constitutional Law,Lexis Nexis, 7th Edition 2015,p.1431.

¹⁵ AIR 1995 SC 1531.

¹⁶ *Lily Thomas Vs.Union of India*,AIR 2000 SC 1650.

be a formidable barrier to reform the laws in respect of marriage, divorce, adoption, succession, maintenance and guardianship. The best example in this regard is the case of Shah Bano Begum. In this case what was recognized by the Supreme Court of India through judicial interpretation that was sought to be nullified by the Govt. by enacting Muslim Women's Rights Act, 1986.

The successive governments in India have neglected the issue and take no steps to reform Muslim law as a result of which women are being often victimized. The successive governments in India are compromising the issue of Uniform civil code in order to remain in power and they do not like to hurt the religious sentiments of communities by making a uniform civil code.

V. CONCLUSION

India is a welfare state. The preamble of the Constitution of India says that the people of India have given themselves the Constitution which promises to provide for liberty, equality, fraternity and justice. To create these values in a society necessary endeavour should be made by the govt. to mitigate social and economic inequality and to take steps towards a social order based on justice social, economic and political.

The term 'social justice' includes gender justice. The idea of gender justice prohibits discrimination on the ground of sex, be it social, political and economic. The anti discriminatory provisions are applicable to the actions of the state and the word "state" has been defined under Art.12 of the Constitution which includes all governments, semi-govt., statutory bodies which act as instrumentalities and agencies of the state. To prohibit discrimination on the ground of religion, race, caste, sex etc¹⁷ the state has made uniform laws for all matters other than a uniform law relating to marriage, adoption, inheritance etc. The state has, however, made many changes in the Hindu law of those practices which were manifestly unjust e.g. the practice of untouchability, prohibition of Sati practices, permission to widow's remarriage, prohibition of child marriage, Women's right to inheritance, prohibition of practice of polygamy etc. These have been done by the parliament of India immediately after the independence of India. Enactment such as Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu adoption and maintenance Act, 1956 has eliminated the diversities in Hindu law which was prevailed among the various communities in different

¹⁷ Art.14,15,16,17 of the Constitution of India.

parts of India. In recent times, these laws have further been amended in order to recognize equal rights of Hindu women such as divorce have been liberalized and the mutual consent theory have been recognized by amending Hindu Marriage Act in 1976. The other important step towards gender justice is the amendment of Hindu Succession Act, 1956. The Act was amended in 2005 to recognize daughter's right over Hindu coparcenary property under Mitakshara law. Law of adoption has also been changed considerably to recognize a Hindu women right to adopt a Hindu child. These steps have been taken by the state to humanize and to make Hindu personal law as gender just.

The state, however, has not make any notable changes in Muslim and Christian Personal law of the country. Muslims are governed by the law of Shariat which is the personal of Muslim and Christian's are governed by the Indian Divorce Act, 1869 which has been recognized as the personal law of Christian people in India. The Indian Divorce Act, 1869 was amended several times by the Parliament to make changes of the provisions to humanize the law. But the governments have not started any process to make changes in the Muslim personal law. This is a lacunae on the part of the government and the do not like to interfere with the personal law of Muslim because such interference would bring criticism against the govt. and it would be considered as an encroachment upon the freedom of religion. The duty on the part of the government is to mould healthy public opinion to separated law from religion and certain practices which are considered to be religious practices falling in the domain of family affairs and derogatory towards women should be washed away.

The Special Marriage Act, 1956 was indeed a good step to secularized law of marriage, but that law is not sufficient to protect the rights of women.

The reluctance and inaction on the part of the governments has increased the plight of Muslim women especially in the name of 'Triple Talaq'. Hence, it can be stated that the time has come for the State to take some positive action to reconsider the issues of Uniform Civil Code. Though it may not be possible to have one Uniform Civil law for all due to the existence of diversities in culture and tradition, but the state should take solid steps to codify and modernize personal law specially Muslim personal law to make it gender just and to promote equality. Reformation in order to modernize and codification of law may pave the

way for practical realization of the values of gender justice enshrined in the Constitution of India.

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