
A CRITICAL STUDY ABOUT THE UNIFORM CIVIL CODE IN INDIA

Dr. Kailash Kumar

Lecturer in Law at University Institute of Law & Management Studies (A Maintained Institute of Maharshi Dayanand University, Rohtak) Sector-40 Gurgaon, Haryana

Introduction

Uniform civil code means law of the nation is equal to everyone and it should be applicable on all the citizens of India. Nobody is superior and nobody is inferior in the eye of law. All the laws which are enacted by the Parliament time to time will be applicable all the people of India except Jammu and Kashmir. When this statement comes all the laws applicable on all citizens of India except the state of J&K, then it seems that there is no uniformity in India.

Uniform civil code on the ongoing point of debate within India mandate to replace the personal laws based on the scriptures and customs of all major religious community in India with a common set of rules governing every citizen. Article 44 of the Directive Principles sets its implementation as duty of the State. Apart from being an important issue regarding secularism in India & fundamental right to practice religion contained in Article 25, it became one of the most controversial topics in contemporary politics during the Shah Bano case¹ in 1985. The debate then focused on the Muslim Personal Law, which is partially based on the Sharia law and remains unreformed since 1937, permitting unilateral divorce, polygamy in the country and putting it among the nations legally applying the Sharia law. The Bano case made it a politicised public issue focused on identity politics by means of attacking specific religious minorities versus protecting its cultural identity.

Personal laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance. Goa has a common family law, thus being the only Indian state to have a uniform civil code. The Special Marriage Act, 1954 permits any citizen to have a civil marriage outside the realm of any specific religious personal law.

The demand for a uniform civil code was first put forward by women activists in the beginning of the twentieth century, with the objective of women's rights, equality and secularism. Till Independence in 1947, a few law reforms were passed to improve the condition of women, especially Hindu widows. In 1956, the Indian Parliament passed Hindu Code Bill amidst significant opposition. Though a demand for a uniform civil code was made by Prime Minister

¹ AIR 1985 SC 945.

Jawaharlal Nehru, his supporters and women activists, they had to finally accept the compromise of it being added to the Directive Principles because of heavy opposition.

During British Period Uniform Civil Code in India

The debate for a uniform civil code dates back to the colonial period in India. Prior to the British Raj, under the East India Company (1757-1858), they tried to reform local social and religious customs. Lord William Bentinck, the Governor-General of India, tried to suppress *sati*, the prescribed death of a widow on her husband's funeral pyre, and passed the Bengal Sati Regulation, 1829. This was later extended outside Bengal to all English territories in India.

The Lex Loci Report of October 1840 emphasised the importance and necessity of uniformity in codification of Indian law, relating to crimes, evidences and contract but it recommended that personal laws of Hindus and Muslims should be kept outside such codification. According to their understanding of religious divisions in India, the British separated this sphere which would be governed by religious scriptures and customs of the various communities (Hindus, Muslims, Christians and later Parsis). These laws were applied by the local courts or panchayats when dealing with regular cases involving civil disputes between people of the same religion; the State would only intervene in exceptional cases. Thus, the British let the Indian public have the benefit of self-government in their own domestic matters with the Queen's 1859 Proclamation promising absolute non-interference in religious matters. The personal laws involved inheritance, succession, marriage and religious ceremonies. The public sphere was governed by the British and Anglo-Indian law in terms of crime, land relations, laws of contract and evidence all this applied equally to every citizen irrespective of religion.

Throughout the country, there was a variation in preference for scriptural or customary laws because in many Hindu and Muslim communities, these were sometimes at conflict; such instances were present in communities like the Jats and the Dravidians. The Shudras, for instance, allowed widow remarriage completely contrary to the scriptural Hindu law. The Hindu laws got preference because of their relative ease in implementation, preference for such a Brahminical system by both British and Indian judges and their fear of opposition from the high caste Hindus. The difficulty in investigating each specific practice of any community, case-by-case, made customary laws harder to implement. Towards the end of the nineteenth century, favouring local opinion, the recognition of individual customs and traditions increased.

The Muslim Personal law (based on Sharia law), was not strictly enforced as compared to the Hindu law. It had no uniformity in its application at lower courts and was severely restricted because of bureaucratic procedures. This led to the customary law, which was often more discriminatory against women, to be applied over it. Women, mainly in northern and western

India, often were restrained from property inheritance and dowry settlements, both of which the Sharia provides. Due to pressure from the Muslim elite, the Shariat law of 1937 was passed which stipulated that all Indian Muslims would be governed by Islamic laws on marriage, divorce, maintenance, adoption, succession and inheritance.

After Independence Uniform Civil Code

Our Indian Parliament discussed the report of the Hindu law committee during the 1948 to 1951 and 1951 to 1954 sessions. The first Prime Minister of the Indian republic, Jawaharlal Nehru, his supporters and women members wanted a uniform civil code to be implemented. As Law Minister, B. R. Ambedkar was in charge of presenting the details of this bill. It was found that the orthodox Hindu laws were pertaining only to a specific school and tradition because monogamy, divorce and the widow's right to inherit property were present in the *Shashtras*. Ambedkar recommended the adoption of a Uniform Civil Code. Ambedkar's frequent attack on the Hindu laws and dislike for the upper castes made him unpopular in the parliament. He had done research on the religious texts and considered the Hindu society structure flawed. According to him, only law reforms could save it and the Code bill was this opportunity. He thus faced severe criticism from the opposition. Nehru later supported Ambedkar's reforms but did not share his negative view on Hindu society.

The Hindu bill itself received much criticism and the main provisions opposed were those concerning monogamy, divorce, abolition of coparcenaries (women inheriting a shared title) and inheritance to daughters. The first President of the country, Rajendra Prasad, opposed these reforms; others included the Congress party president Vallabhbhai Patel, a few senior members and the Hindu fundamentalist parties. The fundamentalists called it "anti-Hindu" and "anti-Indian"; as a delaying tactic, they demanded a uniform civil code. The women members of the parliament, who previously supported this, in a significant political move reversed their position and backed the Hindu law reform; they feared allying with the fundamentalists would cause a further setback to their rights.

Thus, a lesser version of this bill was passed by the parliament in 1956, in the form of four separate acts, the Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act. It was decided to add the implementation of a uniform civil code in Article 44 of the Directive principles of the Constitution specifying, "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India." This was opposed by women members like Rajkumari Amrit Kaur and Hansa Mehta. According to academic Paula Banerjee, this move was to make sure it would never be addressed. Aparna Mahanta writes, "Failure of the Indian state to provide a uniform civil code, consistent with its

democratic secular and socialist declarations, further illustrates the modern state's accommodation of the traditional interests of a patriarchal society".

After the passing of the Hindu Code bill, the personal laws in India had two major areas of application: the common Indian citizens and the Muslim community, whose laws were kept away from any reforms. The frequent conflict between secular and religious authorities over the issue of uniform civil code eventually decreased, until the 1985 Shah Bano case². Bano was a 73-year-old woman who sought maintenance from her husband, Muhammad Ahmad Khan. He had divorced her after 40 years of marriage by triple *Talaq* (saying "I divorce thee" three times) and denied her regular maintenance; this sort of unilateral divorce was permitted under the Muslim Personal Law. She was initially granted maintenance by the verdict of a local court in 1980. Khan, a lawyer himself, challenged this decision, taking it to the Supreme Court, saying that he had fulfilled all his obligations under Islamic law. The Supreme Court ruled in her favour in 1985 under the "maintenance of wives, children and parents" provision (Section 125) of the Criminal Procedure Code, 1973 which applied to all citizens irrespective of religion. It further recommended that a uniform civil code be set up. Besides her case, two other Muslim women had previously received maintenance under the Criminal code in 1979 and 1980.

Impact of Shah Bano Case

The Shah Bano case soon became nationwide political issue and a widely debated controversy. Many conditions, like the Supreme Court's recommendation, made her case have such public and political interest. After the 1984 anti-Sikh riots, minorities in India, with Muslims being the largest, felt threatened with the need to safeguard their culture. The All India Muslim Board defended the application of their laws and supported the Muslim conservatives who accused the government of promoting Hindu dominance over every Indian citizen at the expense of minorities. The Criminal Code was seen as a threat to the Muslim Personal Law, which they considered their cultural identity. According to them, the judiciary recommending a uniform civil code was evidence that Hindu values would be imposed over every Indian.

The orthodox Muslims felt that their communal identity was at stake if their personal laws were governed by the judiciary. Rajiv Gandhi's Congress government, which previously had their support, lost the local elections in December 1985 because of its endorsement of the Supreme Court's decision. The members of the Muslim board, including Khan, started a campaign for complete autonomy in their personal laws. It soon reached a national level, by consulting legislators, ministers and journalists. The press played a considerable role in sensationalising this incident.

² Ibid

An independent Muslim parliament member proposed a bill to protect their personal law in the parliament. The Congress reversed its previous position and supported this bill while the Hindu right, the Left, Muslim liberals and women's organisations strongly opposed it. The Muslim Women's (Protection of Rights on Divorce) was passed in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women. The debate now centred on the divinity of their personal law. A Muslim member of parliament made a claim emphasising the importance of the cultural community over national by saying that only a Muslim judge could intercede in such cases. Bano later in a statement said that she rejected the Supreme Court's verdict. It also led to the argument defining a woman's right according to her specific community with political leader Jaffar Sharief saying, "today, in the Shah Bano's case, I am finding that many people are more sympathetic towards Muslim women than their own women. This is very strange."

The politicisation led to argument having two major sides: the Congress and Muslim conservatives versus the Hindu right-wing and the Left. In 1987, the Minister of Social Welfare, Rajendra Kumari Bajpai, reported that no women were given maintenance by the Wakf Board in 1986.

The debate for a uniform civil code, with its diverse implications and concerning secularism in the country, is one of the most controversial issues in twenty-first century Indian politics. The major problems for implementing it are the country's diversity and religious laws, which not only differ sect-wise, but also by community, caste and region. Women's rights groups have said that this issue is only based on their rights and security, irrespective of its politicisation. The arguments for it are: its mention in Article 44 of the Constitution, need for strengthening the unity and integrity of the country, rejection of different laws for different communities, importance for gender equality and reforming the archaic personal laws of Muslims which allow unilateral divorce and polygamy. India is, thus, among the nations that legally apply the Sharia law. According to Qutub Kidwai, the Muslim Personal laws are "Anglo-Mohammadan" rather than solely Islamic. The Hindu nationalists view this issue in concept of their law, which they say, is secular and equal to both sexes. In the country, demanding a uniform civil code can be seen negatively by religious authorities and secular sections of society because of identity politics. Goa is the only state in India which has a uniform civil code by Akshay Nair. The Goa Family Law, is the set of civil laws, originally the Portuguese Civil Code, continued to be implemented after its annexation in 1961. Sikhs and Buddhists objected to the wording of Article 25 which terms them as Hindus with personal laws being applied to them. However, the same article also guarantees the right of members of the Sikh faith to bear a Kirpan.

In another case³ the Supreme Court held that the question regarding the desirability of enacting a Uniform Civil Code did not directly arise in that case. The questions which were formulated for decision by Kuldip Singh, J. in his judgment were these:

"Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage dissolved under law, would be a valid marriage dissolved under law, would be a valid marriage qua the first wife who continues to be Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?"

³ Ahmedabad Women Action Group ... vs Union Of India on 24 February, 1997