

78. Continuance in force of existing rules: Until rules are framed under Sections 75,76 and 77 and until notifications are issued under Section 68, the rules and notifications now in force in respect of matters referred to, in those sections, shall, insofar as they are not inconsistent with this Act, continue to be in force.

79. Repeal and Saving: The Court Fees Act, 1870 (Central Act VII of 1870), in its application to the State of Andhra and in relation to the fees and stamps other than fees and relating to documents presented or to be presented before an officer serving under the Central Government

and the Suits Valuation Act, 1887 (Central Act VII of 1887), in its application to the State of Andhra are hereby repealed.

(2) All suits and proceedings instituted before the commencement of this Act and all proceedings by way of appeal, revision or otherwise arising therefrom, whether instituted before or after such commencement, shall, notwithstanding the repeal of the Court-fees Act, 1870 (Central Act VII of 1870), and the Suits Valuation Act, 1887 (Central Act VII of 1887), be governed by the provisions of the said Acts and the rules made thereunder.

UNIFORM CIVIL CODE - A NATIONAL FAMILY LAW : SOME THOUGHTS

By

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“Let us forget I am a Hindu, you are a Muslim’

Let us think ‘I’ and ‘mine’ in a common Indian Nationality”.

—Mahatma Gandhi

The Constitution of India, under Article 44 has directed that “The State shall endeavour to secure for the Citizens a Uniform Civil Code throughout the territory of India”.

The Constitution of India is not to be construed as a mere law, but as the machinery by which laws are made. It is rightly observed that the laws of the land are not sealed in a book, they grow and develop and it is a perennial process. Constitution is a living and organic thing which of all instruments has the greatest claim to be construed broadly and liberally, *Good Year India v. State of Haryana*, AIR 1990 SC p.781

Part-IV of the Indian Constitution contains the Directive Principles of State Policy. The object of the Directive Principles of State Policy is to embody the concept of a Welfare State. The provisions contained in Part-IV shall not be enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the Country and it shall be the duty of the State to apply these principles while making laws. In many of decisions of the Apex Court, it observed that the Directive Principles have been held to supplement Fundamental Rights in achieving a Welfare State, and the Parliament is within its right to amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not touch the basic features of the Constitution of India, *Lakshmi Kanth v. Union of India*, AIR 1987 SC p.232 .

More than Five decades have passed, we the people of India have yet to give a practical meaning to the spirit of Article 44 of the Constitution. This is indeed a very sad state of affairs. The State is not bound to bend before group of fundamentalists who have chosen to resist this welfare legislation, without any rhythm or reason. Whenever any progressive judgment is delivered by the Supreme Court for the implementation of Article 44 of the Constitution, we hear the cries of resistance from those quarters who either do not understand properly the utility of this welfare legislation or have some vested interest in creating confusion and misleading the innocent and ignorant citizens of a particular community.

In *Shah Bano Begum* case, the Supreme Court headed by Mr. Y.V. Chandra Chud, the then Chief Justice confirmed the findings of the Madhya Pradesh High Court granting maintenance to *Shah Bano Begum* under Section 125 of the Code of Criminal Procedure. Those who had been constantly opposing the introduction of Uniform Civil Code opposed the judgment of the Supreme Court. The Government, unfortunately bent its knees down before a truncated group of a particular community, and brought in a Bill popularly known as the Muslim Women's Protection Bill to dilute the judgment of the Supreme Court in *Shah Bano Begum's Case*, *Mohammad Ahmad Khan v. Shah Bano Begum*, AIR 1985 SC 945. Almost all the eminent secular Muslims supported the judgment of the Supreme Court in this case. Even one of the Cabinet Ministers in late *Rajiv Gandhi* Government, Mr. *Arif Mohammad Khan* tendered his resignation as he felt that the Government had unnecessarily bowed down before a few fundamentalists who had no love for the welfare of the country.

In a far reaching and historic judgment, the Supreme Court has directed the then Prime Minister Mr. *P.V. Narasimha Rao* to take a fresh look at Article 44 of the Constitution and endeavour to secure for the citizens a Uniform Civil Code throughout

the territory of India while also mentioning that nothing had been done by the previous Governments till date. The Court opined that the Uniform Civil Code will protect the oppressed community and promotes unity and integrity of the Nation. The Court directed the Union Government through the Secretary to the Ministry of Law and Justice to file an affidavit by August 1995 indicating the steps taken and efforts made by the Government towards securing a Uniform Civil Code for the Citizens of India, *Sarala Mudgal, President, Kahani v. Union of India* AIR 1995 SC 1531. In this case, where the husband had converted himself to Islam with an intention to marry again, the Court said that such marriage is bigamous and the husband would be guilty under Section 494 of the Indian Penal Code, since his first marriage has not been dissolved and by doing this the husband misused the object of the conversion. Even though Freedom of Religion was the core of our culture and the slightest deviation will shake the social fibre, religious practices, violation of human rights and dignity and sacerdotal suffocation of civil and material freedoms are not autonomy but oppression.

Since 1950 number of Governments have come and gone but they have failed to make any efforts towards implementing the constitutional mandate under Article 44 of the Constitution. Consequently, one of the problems today is that many more Hindus have converted to Islam and other religions. The Islamic Personal Law permits more than one wife to the extent of four. Having four wives at a time is legal and hence valid. So, these people have converted to Islam not because of the influence of traditions, rites and rituals but in some cases only for the purpose of escaping the consequence of bigamy. Justice *Kuldip Singh* said that Article 44 of the Constitution is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, divorce, adoption, succession and other matters are of a secular nature and therefore, they can be regulated by legislation.

Recently, a three Judge Bench of the Supreme Court headed by the Chief Justice *V.N. Khare* with his colleagues *S.B. Sinha* and *A.R. Lakshmanan*, JJ allowing a writ petition, which was filed by a Christian Priest *John Vallamattom*, challenging the provisions of Section 118 of the Indian Succession Act, 1925 as it described against Christians bequeathing their property for charitable and religious purpose. The Bench declaring it as unconstitutional on the ground that the provisions of the said Section were arbitrary and irrational and hence violated Article 14 of the Indian Constitution. Article 14 said that the State should not deny to any person equality before the Law or the Equal protection of the Laws within the territory of India. In this regard, the Apex Court has also suggested that Parliament to frame Common Civil Code for the Country, as that would help the cause of the National integration. Section 18 of the Indian Succession Act, 1925 says that “no man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than 12 months before his death and deposited within six months from its execution in some place provided by Law for safe custody of the will of living persons”.

The Bench said that while Article 25 of the Indian Constitution guaranteed freedom of conscience and free profession, practice and propagation of religion, Article 44 divested religion from social relations and personal law. The Apex Court observed that “It is no matter of doubt that marriage, succession and the like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution *i.e.*, the right to freedom of religion”.

Form the above discussion, it was evident that the Indian Judiciary positively responded for the need of introducing Uniform Civil Code in secular India. Before Independence as well as after the enactment of Indian Constitution, India was under the control of

Mughuls and Britishers. They tried to implement uniformity among the Personal Laws concerned. The main reason for the failure of their efforts was religious sentiments and beliefs of various communities of India, those are more powerful than that of *lex loci* law.

During the British regime, some steps were taken to bring uniformity in law, which could govern the whole citizens of British India, excluding the Princely States. However, the Britishers were conscious of their limitations in doing this exercise. Therefore the Personal Law applicable to such community was not interfered with it. What was tried by the British Rulers was, to achieve uniformity in other secular laws such as Criminal Procedure Code, Civil Procedure Code, Evidence Act, Law of Contracts and Transfer of Property Act. The British Rulers took a decision not to interfere with the religious sentiments of the native Indians and further assured that their religious beliefs and sentiments would be scrupulously honoured.

It was evident that the Muslim community raised the main objection to the Uniform Civil Code. Their main objection is that the Muslim Law is based on the principles of religion exclusively, hence interference with their Personal Law is nothing but an interference with their religion, thus contravening the fundamental right guaranteed by Article 25 of the Indian Constitution. Their next objection is that their Personal Law is directly flowing from the Holy Quran and no legislature in the World has power to codify or amend their Personal Law.

In this connection, the following are the views and thoughts of various personalities on Uniform Civil Code.

Views and Thoughts :

1. Justice Mohammad Hidayatullah : If the injunction of the Quran and Hadees are not lost sight of, it is possible to make changes by legislation in a widening area. The later day writers like *Ameer Ali*, *Iqbal* and

reformers like *Mohammad Abu* maintained the possibility of reform. The lead is coming from Muslim Countries, and is to be hoped that in course of time the same measures will be introduced in India.

2. Kausar Azam : The absence of a *Mahatma Gandhi* or a *Raja Ram Mohan Roy* among the Muslims has slowed social reform. The solution will have to be found by the Muslim themselves.

3. Sanawar Khanim : Talak is the rarest of the rare, ugliest of the ugly thing in our religion. But once the man divorces his wife, he must make reasonable provisions for his divorced wife until she remarries. If a woman becomes incapable due to old age, or ill health, the husband, under no circumstances, can divorce her. It is 'Haram' in that situation.

4. Syed Mohammad Nazmuddin : Mullahs opposing the judgment on Muslim Personal Law are hypocrites. In the 19th Century the Mullahs had accepted without demur the abolition of Islamic Personal Law to impose a common Penal Code all over the country, for all communities. Did that too not amount to interference in the Shariat?

5. Khan Abdul Gaffar Khan : Islam has been politically used by some vested interest for their own purpose.

6. Danial Latifi: The Muslim Women's Bill is un-Islamic.

7. Reshma Arif : The Muslim Women's Bill will mean a death warrant for the Muslim women.

8. Prof. Munis Raza : In India, the Muslim Community is the smallest minority group.

9. Soli Sorabji : The new mentality of religion is frightening. It is a threat to the secular values, taunt to the Judges and a challenge to the judiciary.

10. Justice M.C. Chagla : The Muslim Law was very progressive in its day, but that

it had to be adopted to modern standard of justice in this country.

11. Asgar Ali Engineer : It would be no exaggeration to say that the agitation against the *Shah Bano Begum's* case judgment is politically rather than religiously motivated. The Indian Constitution is secular to its fingertips. The minorities, especially the Muslims, have undoubtedly benefited from the provisions of eminently secular Constitution. Equality of political status and universal franchise is one among them.

12. Justice V.R. Krishna Iyer : The Bill to kill *Shah Bano* decision of the Supreme Court is the unfortunate political product of a creative genius for multi-dimensional injustice.

13. Report of the National Commission on Woman : Most Muslim countries such as Turkey, Iraq, Syria, Tunisia, Indonesia and Pakistan have introduced reforms of varying degrees to collect the abuse of polygamy, but no legislative measures have been taken so far in India ameliorate the hardships caused to Muslim Women by the institution of polygamy.

14. Asgar Ali Engineer, a Muslim Social reformer, had some findings. Firstly, according to him one should not talk of Uniform Civil Code at this juncture, as there was a lot of misunderstanding about it in Hindu as well as Muslim Communities. The point has been thoroughly communalized and it is not being debated on merits. Secondly, according to him, there was no draft code on the basis of which debate could be held. He further stated that 'Nikah', 'Talak', laws of inheritance, 'Khula' are non-negotiable aspects of Muslim Law. He, however, insisted that Uniform Civil Code prevalent in Goa should not be disturbed. On the other hand, he reiterated that application of such a code does not make any one a Non-Muslim. According to him, the Law of Adoption should be made optional. As far as maintenance is concerned, the Muslim women also to be governed by

Section 125 of the Code of Criminal Procedure. He was of the view that Muslim Women's Bill was a retrograde step. Polygamy should be seriously restricted through Courts, if altogether banned. It should be allowed only in exceptional cases, and that too with the permission of the first wife. Triple divorce should be abolished. Law of inheritance should not be disturbed.

15. Mr. K.J. Gandhi, Secretary of Federation of Parsi Joroastrian Anjuman of India, reiterated that Parsis do not believe in conversion, as conversion to Joroastrian is prohibited by religion. Therefore, Uniform Civil Code with communities that accept conversion will not be acceptable to this lobby. In case of Adoption, he stated that Parsis would not like to adopt a non-Parsi child, because it is only a Parsi who is entitled to visit the fire temple and to get the benefits from the private Parsi trusts. They would want full adoption, but in that case, the adopted child must necessarily be a Parsi, and adoption must be by Parsi parents. In marriages, according to him, the Parsi rituals must be protected, and the rest is secular. Polygamy was non-existent in Parsis. In fact it was a ground for divorce under the Parsi Law. He justified the Parsi Matrimonial Courts, where there is a system of delegates or jury. According to him, the prohibited degrees should be brought to minimum, as the Parsi community is numerically very small in India numbering about 22,000. On Uniform Civil Code his view was that though it was desirable, it was not feasible.

16. Mr. Kolet, a Jew, representing a very small community numbering about 10,000 and odd, stated that because the community was very small, the prohibited degree in marriage should also be curtailed to keep the community in tact.

17. Father George Kureethra of Vidya Jyoti St. Luke's Church, was all in favour of Uniform Civil Code applicable to all

citizens in this country. The only rider he put was that it should not be an encroachment on his fundamental right to practice and propagate his religion.

18. Mr. V.M. Tarkunde, an eminent Jurist, was of the view that the Uniform Civil Code has to be achieved by stages, unless one talking of an optional Civil Code. The Civil Code would comprise of the best, from different personal laws. It will be more innovative and will take the best personal laws into consideration, including the laws of the foreign countries. He was of the view that the compulsory laws require a good deal of popular support if they are too effective. He also insisted that more liberal interpretation of Quran is necessary.

There is a great misunderstanding in the minds of the Muslim community that under the garb of the Uniform Civil Code, the Hindu Community wants to foist its own law on the Muslims. This is perhaps, the greatest misconception that the Muslim community is harbouring. When the Hindu Code Bill was drafted, many basic changes, which were unknown to Hindu Law previously, were introduced. Some concepts were borrowed from other personal laws, particularly the Muslim Law, and were grafted into the Hindu Law. They did not resist upon the retention of the concepts, engrafted into Hindu Law, which were borrowed exclusively from Muslim Law. Under old concept of the Hindu Law, the marriage among Hindus is a sacrament and sacrosanct. But today the concept is given up, and now, even in Hindu Law, marriage is a contract like Muslim marriage.

Uniform Civil Code is a welcome step deserving appreciation from all religions. The real concept of the Uniform Civil Code if implemented will neither be a Hindu Law nor a Muslim Law nor a Christian Law nor a Parsi Law nor a Jewish Law. But it would be entirely an Indian Law *i.e.*, the "National Family Law".