

## UNIFORM CIVIL CODE: PROSPECT OF GENDER EQUALITY

Mr. Zubair Ahmed Khan\*

---

### Abstract

The term Uniform Civil Code is used to cover the entire set of laws governing rights relating to personal matters like marriage, divorce, maintenance, adoption and inheritance. The idea of a Uniform Civil Code flows out of Article 44 of the Constitution of India, 1950 that is a Directive Principle of State Policy. Will it bring uniformity in bringing social transformation? Will it become an important step in freeing women from the shackles of a patriarchal society?

In this paper the authors took the analytical approach to understand why the civil code couldn't be established by the legislation till now, even after more the half a decade of our independence, further in this paper an important section is devoted to the historical aspects of the Uniform Civil Code starting from the period of Muslim Personal Law Application Act (1937) covering various historic judgments (*Shah Bano* case, *Sarla Mudgal* case, *Daniel Latifi* case and various other judgments) Finally this paper has an elaborate section regarding the Portuguese Civil Code of 1867 and an analytical study regarding its pros & cons and discussion on its success in Goa. No gender justice could be rendered in its comprehensive sense, unless we have a Uniform Civil Code containing the best provisions taken from all the religions, with the sole aim of doing gender justice. Unless the women, irrespective of their religious affiliation have been conferred equal rights on par with men in personal matters, the constitutional mandate of right to equality of status and opportunity cannot be implemented.

### Introduction

India being a developing state has a history of one of the best civilizations in the world. Multilingualism and multiculturalism has given the shape of different diversities. It has been realized in the due course of time that it is very important to uphold the standard of uniformity in every dimension of the society. Keeping in the mind with the same objective, Constituent Assembly framed the Preamble of Constitution which unique features like

---

\* Assistant Professor, USLLS, GGSIP University, Dwarka, New Delhi.

democratic, secularism, socialism, equality, liberty, fraternity. Directive Principles of State Policy has imposed obligations on the state to do social reform, economic reform by implementing duties as mentioned in the Constitution. It is not an easy task to achieve even the ideal position of egalitarian society. There are several meaning tools to achieve it either through inclusive education, or procurement of equality in gender, caste, religion. History has witnessed many atrocities and exploitation against women in pre-independence & post-independence era. Anti-social practices like *sati*, child marriages are very prevalent. With pressure created by social activist, civil societies, government introduced specific legislation for the prohibition of the same malpractices which were considered as social stigma. Post-independence it has been realized that there are different classification of exploitation and sex discrimination against women in our society. Lately, some exploitation was noticed, some are unnoticed and some are considered as highly accepted social practices which become a trend. Uniform Civil Code is specifically mentioned in the Article 44 of the Indian Constitution. Introduction of Uniform Civil Code become a debatable issue since 1947 among public forum, political parties.

An equal platform in the form of legislation created for all classes of society will definitely become a challenging task. Creation of its structure, its objective and finally implementation needs a different outlook so that it won't create further discrimination and badly effect on secular character of the state.

### **Importance of *Lex Loci* report of year 1840**

It was an accepted fact that multiple diversity is nothing new in India even in the reign of colonialism. The civilization of Indian subcontinent was intermixed religious beliefs and multiple cultural practices. Britishers realized the important of codification of law to ensure uniformity in the society and to bring legislative reform. The first Law Commission prepared a document called *Lex loci* Report which bring codification. Different legislation based on crime free society, evidence, contract was brought in the form of Indian Penal Code 1861, Indian Evidence Act, 1872, Indian Contract Act, 1872 respectively. These legislations are applicable on every citizen irrespective of religion, caste. But *Lex loci* Report didn't wish to introduce any single legislation which can cover all aspects of different religion. Personal laws for Hindus, Muslims, and Parsis were introduced due to difference in their religious philosophies. Some drastic legislations were introduced to bring social transformation like Sati (Prevention) Act 1829, Hindu

Widow Remarriage Act 1856, Child Marriage Restraint Act, 1929. But social disparity remained the same due to lack of strong legislation. Post-independence, Uniform Civil Code was debated & discussed in the Constituent Assembly. It was emphasized that Uniform Civil Code shouldn't be intermingled or fused with religion. It is important for the welfare of the state that that a basic principle has to be established which shows state having religion-less position. With the same objective preamble of the Constitution was framed which specifically states about equality, fraternity and secularism. It was realized in the Constituent Assembly debates that Uniform Civil Code will promote communal harmony where there won't be any kind of discrimination against any person, religion, caste. Dr. Ambedkar promoted the idea of Uniform Civil Code. But difference of opinion among eminent members of Constituent Assembly put Uniform Civil Code in the Directive Principles of State Policy where it is the obligation of the state to bring a Uniform Civil Code under Article 44 of the Constitution which covers uniform rules related to marriage, divorce, succession, inheritance and adoption. Whereas, Article 37 of the Constitution specifically states about non-enforceability of Directive Principles of State Policy in the Court of law. The Article emphasizes on the value of the Directive Principles of State Policy being important to bring best governance in the country as mentioned in Part IV of the Constitution. In fact, the provision of Article 37 doesn't provide strong impact as such on obligatory mechanism of the state. But situation is very different especially when it has become a matter of political affair and different opinion arose. The sentiment of public is entrenched with their respective religion and faith. That is why there is reluctance in few communities to give positive feedback on Uniform Civil Code. But the fundamental principle of Uniform Civil Code is highly misunderstood by general public as it has nothing to do with religion or faith. It is important to introduce drastic improvements in all personal laws so to procure fairness and justice in case of family disputes. Gender discrimination is such one grey area in every community which needs to be looked upon with serious efforts. Violation of gender oriented personal laws and misuse of personal law related to marriage, divorce and inheritance to property become prevalent these days. Some cases are highly publicized in the media with proper notification & proper introspection. Some cases go unnoticed and unheard. So, the solution to bring specific modifications in every personal law prevailing in India may not become an effective step. Law can't become a matter of convenience and can't be put selective in case

of implementation. It is imperative to bring a common civil code to ensure uniformity and integration of people's idea.

### **Personal laws and Gender inequality**

Exploitation against women is not a new thing in every sector. Women have been a subject matter of humiliation, subjugation and discrimination in house, employment sector. Women are generally treated as inferior sex in various stratification. As a result of which they are deprived from social position, credibility in the form of prestige in the society. This type of shameful practice is increased exponentially whereby a sense of responsibility among citizens seems decreased. The alarming rate of this kind of social insecurity has misbalanced social organization and family life too, either situation has been unbearable due to constant exploitation or women become silent spectator of this gross social injustice. Women empowerment seems to be an effective step to promote gender equality and better access to gender justice. Because there is presence of many impediments which created a hopeless situation for deprived women. Creation of gender bias at every level promotes social frustration & discouragement for them. Different kind of cultural & traditional barriers has victimized deprived women in different stratification. Family being an important part of life and apprehension of losing self-esteem can create a suppressed life out of which social inequalities in various dimensions goes unnoticed. A general worry is if we have uniform criminal code in the form Indian Penal Code, uniform property law in the form of Transfer of Property Act, Indian Contract Act applicable to everyone irrespective of religion, caste, then we must have Uniform Civil Code.

The strangest part is that when the Constitution of India specifically has given a responsibility to the state to make special provision for women under Article 15(3) of the Constitution, personal laws are highly misused either due to patriarchal approach or inefficient legislation where no specific protection of women's right is there. Opponents of Uniform Civil Code have often raised unreasonable justification to hold Uniform Civil Code against the principle of secularism. Freedom to practice, propagate, profess religion under Article 25 of the Constitution can't give unreasonable liberty to exploit the human rights of women in the society. The concept and broad theme of Article 25 of the Constitution can't interpret & justified against Uniform Civil Code under Article 44 of the Constitution. In fact minorities' right to uphold & preserve culture should be protected positively under

Article 29 of the Constitution. A sense of responsibility should be realized among minorities so that right to preserve culture won't be protected at the cost of exploiting women within the family, because gender equality is important for the betterment of the society. As a whole, it means few fundamental rights in the Constitution should not be misinterpreted against the basic philosophy of Uniform Civil Code because Uniform Civil Code as mentioned in Article 44 of the Constitution has a very explicit objective to achieve uniformity and promote unity & integration. There is no scope left for any kind of ambiguity and mischievous interpretation. There is a variation in personal laws related to marriage, divorce, maintenance, succession among Hindus, Muslims and Christians. There are legislation like the Hindu Marriage Act; the Hindu Succession Act; the Hindu Minority and Guardianship Act, the Hindu Adoption and Maintenance Act which are applicable on Hindus. Similarly, the Muslim Personal Law (Shariat) Application Act, 1937, The Dissolution of Muslim Marriage Act and the Muslim Women (protection of Rights on Divorce) Act are some legislation which are applicable on Muslim community. There are separate legislations of Christians as well.

The introduction of Hindu personal laws has created a platform to bring gender based social transformation. Equal rights of women have been ensured post codification of Hindu Marriage Act, 1955. The practice of polygamy was very common before 1955, but the Act emphasizes on monogamy and put strong prohibition & punishment in case of violation of the Act. Few positive amendments were brought in the meantime which give equal right to in case of property. There is still need to bring certain changes with respect to adoption where Hindu women should be given right to adopt. The main point is codification of these legislation related to marriage, succession, adoption has taken a bold initiative to abolish few social evils and biased provisions at regular interval. Irrespective of this kind of strong initiative, few states of the country didn't adhere to the basic principle of gender equality whereby a Hindu woman can't be treated as Hindu coparcener.

### **Status of Muslim Women in India**

Muslim women enjoy an equal status in the *Holy Quran*. Dignity along with respect should be valued the most in family life and society. Muslim personal law was formulated keeping in mind the same objective. But nowadays law has to be abreast with change in time phase, because two important grey areas in personal law,

which has to be looked upon with serious outlook and introspection.

In the case of *Mohd. Ahmed Khan v. Shah Bano and Others*<sup>1</sup>, Justice Y.V. Chandrachud has realized the importance of Uniform Civil Code in the country that how such a broad mechanism with visionary approach will promote communal harmony and strengthen the spirit of unity & integrity within the nation. An unambiguous interpretation of the Uniform Civil Code will definitely resolve many internal family conflicts and social disparities. It has to be understood by the citizen of the country that Uniform Civil Code will bring social revolution to eliminate all possible kind of gender discrimination because it has to nothing do with religion or religious sentiments. In this famous case of *Shah Bano*, a divorced Muslim woman claimed the maintenance from her ex-husband. Section 125 of Criminal Procedure Code explicitly put an obligation on a husband to pay maintenance to his wife post-divorce. Criminal Procedure Code being applicable to every citizen, the main question was raised before Supreme Court that whether a Muslim man needs to pay maintenance to his divorced wife even beyond *iddat* period or not under section 125 of Cr.P.C. Supreme court clearly stated that section 125 will be applicable on him to pay maintenance beyond *iddat* period.

Unfortunately, due to political reasons, parliament passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 which specifically exempt a Muslim husband in giving maintenance to his divorced wife beyond *iddat* period. But this controversy was put to rest and resolved by Supreme Court in another landmark judgment i.e., *Daniel Latifi v. Union of India*<sup>2</sup>, where, Supreme Court scrutinized the Muslim Women (Protection of Rights on Divorce) Act, 1986 carefully and explained that it would be gross injustice if husband is only allowed to pay maintenance till *iddat* period. Section 125 of Criminal Procedure Code serves a definite purpose to abolish injustice by providing support to divorced women through ex-husband till she remarried. Maintenance to support the future of Muslim divorced women even beyond *iddat* period is treated as legitimate claim.

Similarly, in the case of *Iqbal Bano v. State of Uttar Pradesh & Anr.*<sup>3</sup>, Supreme Court of India reiterated the same stand taken in the case of Daniel Latifi. It was observed that the ambit of Muslim Women (Protection of Rights on Divorce) Act, 1986 has different

---

<sup>1</sup> A.I.R. 1985 S.C. 945.

<sup>2</sup> 2001 (7) S.C.C. 740.

<sup>3</sup> (2007) 6 S.C.C. 785.

dimension to look upon. It was explained that husband is bound to secure the future of her ex-wife after divorce by providing substantial necessities in the form of maintenance irrespective of the fact whether *iddat* period is over or not.

Sometimes, some provisions in personal laws are often misused where the most highlighted issue related to marriage and divorce in Muslim personal laws. A serious introspection is required in case of marriage where polygamy is allowed. Though, it is different thing polygamy cases are rarely found in era where expenditure can touch the sky limit and responsibilities have to be taken care sensibly. But the big question arises whether time has come to bold initiative to get away this kind anomaly? Because bigamy or polygamy will always be against the principle of gender equality and can never be justifiable in nature. Triple *talaq* (divorce) procedure is considered as the most unfortunate mechanism. Generally there is no scope of reconciliation as such. Saying *talaq* thrice either in fist of anger or provocation or even under intoxication will dissolve the marital relationship. The question is whether this kind of strange procedure should be done away with or not where there is no scope of reconciliation and tedious procedure of divorce given by Muslim woman is available?

In the case of *Sarla Mudgal v. Union of India & Ors.*<sup>4</sup>, Supreme Court of India has strongly put forward the importance of Uniform Civil Code in India. In this case, Supreme Court is appalled with non-seriousness on the part of government where their inaction has created a platform where access to injustice becomes more convenient. In this case, Hindu married male entered into second marriage by converting the religion of Islam. Question was raised whether this marriage will be considered valid or not? Supreme Court declared this marriage as void and bigamous.

It was observed in the case of *Lily Thomas v. Union of India & Others*<sup>5</sup>, Supreme Court of India discouraged the practice committing bigamy while converting religion to Islam for the purpose of marriage. But a kind of clarification was given that the recommendation of Uniform Civil Code in *Sarla Mudgal* case was independent opinion of the Court. It was also observed that unsatisfactory approach of the state towards formulation of Uniform Civil Code would disintegrate and create further family & societal conflicts.

---

<sup>4</sup> 1995 S.C.C. (3) 635.

<sup>5</sup> (2000) 6 S.C.C. 224.

In the case *John Vallamattom v. Union of India*,<sup>6</sup> It was observed that personal laws dealing with marriage, divorce, succession, adoption should be entrenched with spirit of secularism and national integration with one codified law. Freedom of religion as explained under Article 25 of the Constitution won't be implemented into it.

Uniform Civil Code will encourage integration by taking into consideration various religions, cultures and multiple diversity. It ensures certainty where there won't be any kind of compulsion for changing the faith of a person. Mandatory religious practices like *Namaz* or *puja* will not going to abolished or shifted.

### **Conclusion**

Now the time has come to realize that Uniform Civil Code should be formulated in a very systematic and strategic manner just like Goa Civil Code. It's time to shed all inhibitions and barriers in making long due mechanism a successful civil code. If Special Marriage Act, 1954 can be successful without having discriminatory provisions, then Uniform Civil Code can be created slowly by taking support and advice from different constitutional experts, representative of different religious communities, and representative of different tribal communities without hurting public sentiment. Personal laws should be regulated & changed drastically with a purpose to bring social transformation. *Fatwas* given by Qazis & verdicts given by Khap panchayat has to be properly scrutinized and regulated. Unambiguity and confusion with respect to Uniform Civil Code without any political advantage has to be removed. It has to be ensured that Uniform Civil Code will definitely increase social mobility in a way all multi-cultural practices and contemporary life practices will find a balance through constitutional protection.



---

<sup>6</sup> A.I.R. 2003 S.C. 2902.