

THE UNIFORM CIVIL CODE IS THE NEED OF THE HOUR BY MS. SEEMA MODI*

India is the universe of diversities. The people living here belong to different castes, creeds and races. The law has allowed them to follow their own rules and rites in certain matters like marriage, adoption, inheritance and maintenance etc. These matters are called personal matters of the communities. The laws dealing with these matters are called personal laws. The difference between laws is allowed based on it, but the fact is that these personal laws cause disparity among the communities, for example, polygamy, unilateral divorce etc. Such differences in laws are the biggest obstacle in the way of providing women's rights, equality and secularism.

So, to fight these problems and bring justice in real sense, it is the need of the hour that uniform civil code (UCC) should be implemented. Now the question arises what the UCC is. The term 'UCC' means unifying all the personal laws to have one such law that would apply to all the citizens of India irrespective of their religion or community.

The importance of the UCC has been realized from the time of drafting the Constitution of India. That's why Pt. Jawahar Lal Nehru supported it, but had to face opposition from some senior leaders. Consequently, **the UCC was added just as a direction to the States under the Directive Principles of State Policy (DPSP) under Art. 44 of Part-IV of the Constitution of India.** Art. 44 reads thus:

"Uniform Civil Code for the citizens- The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Though the DPSP are fundamental in the governance of the country, they are just directions and not enforceable by law. That's why the UCC could not be made even after 65 years of the enforcement of the Constitution.

Here a very crucial question arises, i.e., why the UCC could not be prepared. If we talk from the very beginning, the codification of law was given by the British rule. Prior to them, the disputes were resolved according to the rules of the community the disputant parties belonged to, be it civil or criminal or family matter. It was only on the initiation of the British Empire that a common law on crime 'IPC' could be drafted in 1860. From its very inception, it is equally applicable on every person in India irrespective of his/her community. Besides it, the Code of Criminal Procedure, the Code of Civil procedure, the Contract Act, the Transfer of property Act etc. are other examples of law made and enforced in the British rule. All the personal laws have provisions regarding the matters dealt with in these laws, but the British succeeded in making secular laws and convincing people to follow them. Here, my point is that if British wished, they could implement the UCC. Though initially, people would resist, but later on, they would accept it as above mentioned laws. But they did not prefer it because they did not want resistance from any community leaders. Thus, for personal interest, they discarded it and played divisive politics.

* D.P.M.,LL.M.,NET-JRF, Asst. Professor, Dewan Law College, Meerut, U.P.-250103

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In this regard, **the Portuguese**, another colonial power should be appreciated which **dared to introduce common civil code. They had their colony in Goa and even today, in India, Goa is the only State which has the UCC.**

Today, our present political leaders are playing the same game of bad politics. For the sake of their vote bank, they don't take any step towards it, as they know that the people will be annoyed if they have to sacrifice their liberty given under their own religion, for example, polygamy under Muslim Law. It would definitely affect their vote bank. They assure, from time to time, to make the UCC but actually, do nothing to execute it.

It is general perception that if the UCC is applied, the Muslims will be affected to the highest extent. But it is not so. In the UCC, the positive and progressive points will be taken, be it taken from Hindu, Muslim, Christian, Parsi or Jewish personal law to make the law really uniform, secular and well wisher.

Prof. **M P Jain** has rightly stated:

"It is necessary that law be divorced from religion. With the enactment of the UCC, secularism will be strengthened; much of the present day separation and divisiveness between the various religious groups in the country will disappear; and India will emerge as a much more cohesive and integrated nation."¹

Even our Judiciary has also realized the importance of UCC and has emphasized to establish it for many times. In **Sarla Mudgal Case**², the Supreme Court has emphasized that **UCC is imperative both for the protection of the oppressed and promotion of the national unity and solidarity.** Justice Kuldeep Singh even lamented that Indian government, even after 47 years of independence, had failed to enact a uniform civil code. **The same was held in Lily Thomas v. Union of India**³.

Again, in **Mohd. Ahmad Khan v. Shah Bano Begum**⁴, the Hon'ble Justice Y V Chandrachud, the then Chief Justice of India has stated thus:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so."

Stressing for making UCC, the Supreme Court has stated in **John Vallamattom v. union of India**⁵ thus:

¹ Indian Constitutional Law, 5th Ed., at 1386.

² AIR 1995 SC 1531

³ (2000) 6 SCC 224

⁴ AIR 1985 SC 945

“Rather absence of UCC allows violation of Constitutional Fundamental Rights to Equality under Art. 14, Right to life under Art. 21 and Judicial Review of Art. 13.”

Some people who oppose the UCC argue that UCC would be in violation of the Right to Freedom of Religion guaranteed under Art. 25 which assures the freedom of conscience and free profession, practice and propagation of religion. This contention is baseless. Firstly, the UCC is being proposed to be made regarding marriage, divorce, adoption, inheritance etc. These matters are of secular nature and are in no way, related to the right to religion. Secondly, even if in any way, it affects the right to freedom of religion, this right is itself subject to public order, morality, health and other provisions of Part III of the Constitution of India. So, if polygamy or unilateral divorce is restricted, it would rather be helpful in controlling population explosion, maintaining public order and providing right to equality.

Rather, I think, the UCC is favorable in all respects. It would be helpful in achieving the goals mentioned in the Preamble of the Constitution of India. It declares India to be a secular State. A secular State is one which does not discriminate among people on the ground of religion. So, on the one hand, we are restricting bigamy declaring it to be an offence under Sec. 494 of IPC, 1860 and simultaneously, on another hand, allowing polygamy, though limited (a Muslim male can contract four marriages at a time), only because he is a Muslim. Are we justified? Is it equal treatment? Are we acting in consonance with the concept of secularism? Certainly NOT.

Moreover, Art. 14 guarantees the right to equality. In Islam, a male can contract four marriages at a time, but a female is restricted only upto one marriage. Is it right to equality? Further, if a Muslim male contracts more marriages than one, but does not treat equally with all of his wives, it gives mental agony to that wife who is being ignored. Sometimes, her life becomes miserable. It is clear violation of her right to life guaranteed under Art. 21. In the same way, Muslim male has unrestricted right to divorce his wife even without giving any reason. Divorce spoils the whole life of women. After divorce, husband is bound to maintain his wife only upto the period of Iddat. Thus, customarily, on the one hand, unrestricted rights are given to male and no protection is given to females. Is it equal treatment? Is it reasonable to give protection to such law?

To make the UCC is legislative act, but legislature has not taken much interest in it. If it had made efforts, it would have certainly succeeded. It is evident from the fact that it could have successfully codified Hindu law in 1955-56. Prior to it, laws applicable to Jains, Sikhs and Buddhists were also different. They all compromised upto some extent and consequently, today, along with Hindus, they are being considered under the same law. Prior to the Hindu marriage Act, 1955, polygamy was allowed to Hindus also, but now, monogamy is the rule having no exception to it. Today the people have become used to it. So, there is no resistance for its implementation. The same formula may be applied for the UCC also.

The legislative competence is one thing and political courage to use it is another one which is not had by our political leaders. Sec. 125 of the CrPC, 1973 lays a good example of it. Sec. 125 provides for the maintenance of wife, children and parents. This law is of secular nature and is equally applicable to all including Muslims. Under Muslim personal law, husband is bound to maintain his divorced wife only during Iddat. The Supreme Court

⁵ AIR 2003 SC 2902

showed the courage to provide maintenance even to divorced wives of Muslims in Shah Bano Begum case. But due to great upheaval and considering the political interests, the Muslims were exempted from this provision by passing the Muslim Women's (Protection of Rights on Divorce) Act, 1986⁶. The Child Marriage Restraint Act, 1929 is another authentic example of it. This is a secular law which prohibits the child marriage. A blank space has been left in this Act. This Act does not invalidate the child marriage, if it is permissible under the customs of the parties to the marriage. The punishment provided for child marriage is so nominal that this law has proved to be totally fruitless. Thus, though some laws have been made, but they have proved to be weak ones.

So, when the legislature could not do well for the UCC, the Judiciary had to come further and adopt another way to implement it, e.g., adoption is not allowed under Muslim personal law. But, **the Supreme Court passed a salutary decision in Shabnam Hashmi v. Union of India⁷ allowing adoption even to Muslims under Sec. 40 of Juvenile Justice (Care and Protection of Children) Act 2000 and held thus:**

“The personal beliefs and faiths, though must be honoured, cannot dictate the operations of the provisions of an enabling statute.”

Recently, in **Khursheed Ahmad Khan v. State of U.P. and Others⁸**, the Hon'ble Supreme Court upheld the validity of the rule that prohibits second marriage during the subsistence of first marriage without the permission of the government and held that this provision affect the rights of the Muslims at all. Thus if the legislature has not made direct laws for the UCC, the Judiciary has taken good step by interpreting the secular laws in such a way that they help in implementing it.

Though it is good that the Judiciary has come forward, but legislative work has its own value. So, laws should also necessarily be made to implement the UCC.

Dr. Tahir Mahmood⁹ has made a powerful plea for framing a uniform Civil Code for all citizens of India. He says: "In pursuance of the goal of secularism, the State must stop administering religion based personal laws". He wants the lead to come from the majority community but, we should have thought that, lead or no lead, the State must act.

Even it is stated in **Sarla Mudgal v. Union of india¹⁰**:

“When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of "uniform civil code" for all citizens in the territory of India.”

For it, I have some suggestions. First of all, the marriages should be made compulsorily registrable. The registration of a marriage has a great evidentiary value to ensure the prevention of child marriage, checking illegal bigamy/polygamy, enabling married women to claim their right to live in the matrimonial house, maintenance etc., empowering

⁶ See Sec. 3(1)(a)

⁷ 2014 SC; Writ Petition (Civil) No. 470 of 2005

⁸ Civil Appeal No. 1662 of 2015 (Judgment on 9th Feb., 2015)

⁹ Muslim Personal Law, 1997 Ed., at 200-202

¹⁰ Supra 2

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widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husbands, deterring men from deserting women after marriage and preventing guardians from selling young girls to any person under the garb of marriage.

Secondly, the UCC should be blend of all personal laws picking up the best elements from them and should adhere to constitutional mandate. It should be based on gender equality and impartiality with regard to religious or political consideration.

The Special Marriage Act, 1954 is a good example of it. It provides for a marriage outside the realm of any specific religion. It applies to whole of India except the State of Jammu and Kashmir irrespective of the religion, community or caste etc. Under this Act, polygamy is illegal and succession is governed by the Indian Succession Act, 1925. Such law, with necessary modification if necessary, may be compulsorily applicable to all.

Thus, the UCC is imperative for the country. It may successfully be made and enforced by reconciling the divergent laws and formulating a common code acceptable to all the communities. The State should do no more delay in formulating it and should take prompt action for it.