



Human Rights - Uniform Civil Code

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KEYWORDS

Soon after independence in 1948, the Constituent assembly, for about two years, made deliberations regard the draft Constitution. The Framers envisaged the constitution as vision zed in the Preamble - a Sovereign, Democratic, Republic - JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual. This vision of the framers forms the Grundnorm of the Indian fabric. Grundnorm coined in German language means "fundamental norm." The jurist and legal philosopher Hans Kelsen coined this term to imply fundamental norm, order that forms an underlying basis for a legal system. The whole system of a country derives its sanctity and power from its Grundnorm.

Further the deliberations incorporated the various articles elaborating the rights of the citizens, one of which was the Right to Freedom of Religion 25(1) "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." This was an extension of the preamble to bring in the different religious groups into the Indian fabric, to make them feel comfortable. It is noteworthy that in fact this was the prevalent practice during the British rule and the Indian Constitution by adopting it approved that it was important for smooth functioning of any Government. This was one of the main reasons that the British Government could rule India for such a long period. Even a study of the Roman civilization gives a picture of the various laws they applied in diverse situations. They never disturbed the religious aspect of their colonies. They allowed the local religious law to prevail when it came to their personal laws. Jus Gentium was termed as the law applied to these gentiles which were a mixture of local law and the natural law termed Jus Naturale.

During the discussions of the draft committee the matter concerning Uniform Civil Code was thoroughly debated. The present Article 44, a directive principle simply puts the vision in a single line reference stating that "State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no reference to it anywhere else. The constituent assembly debate reflects the uproar it caused on the floor of discussions. The fact that the concept of Uniform Civil Code was reduced to a directive principle shows the less emphasis given to it in comparison to Article 25. The Constituent Assembly debated the Uniform Civil Code during which Mohammad Ismail from Madras advocated that the right to follow his own personal laws was one of the fundamental rights. Nazir Alimad moved a proviso which read: Provided that the personal law of any community cannot be changed except with the previous approval of the community ascertained in such a manner as Union legislature may determine by law. M.A. Ayyanger member emphasised that in a secular state like India different communities must have the freedom to practice their own religion and culture. They should be allowed to observe their own personal law. Finally Dr.B.R.Ambedkar concluded the debate by stating that he respected all the laws of different religions. He closed by these

words- "Sovereignty is always limited , no matter even if you assert that it is unlimited , because sovereignty in the exercise of power must reconcile itself to the sentiments of different communities . No government can exercise its power in such a manner as to provoke the Muslim communities to rise in rebellion. I think it would be a mad government if it did so. But that is a matter which relates to exercise of power and not the power itself." He also assured the Muslim members "Not to read too much into Article44". He also affirmed that it would be applicable only to those who accept it.²

The Indian Constitution acknowledges such personal laws as is evidenced under the protection given under Entry 5 List III of Seventh Schedule, together with Article 372.Entry 5 of List III , which is the concurrent list provides that in "Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law". Article372-

(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority .

Position in Hindu Law – Modern view

The contention that Hindu law is codified and therefore other religious personal laws should also fall in line is absolutely unwarranted. Hindu Marriage Act 1955 recognizes customary law to a very large extent. Section 5 enumerates five essentials for a valid marriage, one of which states that the parties to marriage are not to be within the prohibited degrees of relationship nor within the sapinda relationship. But the same section gave exception to this rule where custom or usage governing each of them permitted a marriage between the two. Section 7 of the Act does not prescribe any particular form of marriage. Any customary practice of marriage is recognized and includes saptapadi as one of the several customs by which a Hindu marriage can be solemnized. Section 8 provided for registration of the marriage in 1955 but this provision actually came into vogue after the decision of Supreme Court in Smt. Seema v. Ashwani Kumar.³ In this case the Apex Court ordered compulsory registration of marriage irrespective of religious background and directed the Government to bring this into effect within three weeks of the judgment. Even in the case of inheritance it was the Mitakshara and Dyabhaga School of inheritance which prevailed through the years even after Hindu Succession Act was enacted in 1956. Only in 2005 the government finally brought equality among men and women in inheritance of ancestral law.

Law Commission of India

The Law Commission of India sought for a public vote on the implementation of the Uniform Civil Code (UCC) in the

country. It released a questionnaire on Friday, 7, October, 2016 that can be filled out by anybody and sent back within 45 days. Justice BS Chauhan, who heads the panel, made an appeal asking the public to cooperate with it for a “comprehensive exercise of the revision and reform of family laws”. He also outlined the objective of the questionnaire, writing that it was to “address discrimination against various groups and harmonise various cultural practices”. The Commission also invited suggestions on “all possible models and templates” of a common civil code.” The Commission hopes to begin a healthy conversation about the viability of a uniform civil code and will focus on family laws of all religions and the diversity of customary practices, to address social injustice rather than plurality of laws,” law panel chairman Justice BS Chauhan (retd) said.⁴

Conclusion

This matter has always given in wrong apprehensions in the mind of the minorities regarding their freedom of religion. The question of triple talak is an offshoot of this large subject. As pointed out by the Dr Ambedkar, no law regarding personal law can be enforced until there is acceptance by the community for which it is intended. The failure of the Hindu Marriage Act 1955 and the Hindu Succession Act 1956 concerning the matters referred above till 2005 – when finally the legislature and also the Supreme Court found the community mature and receptive to the modern code, which finally brought into effect the modern Hindu law in some aspects is an example. This is a perfect example that customary law has more social acceptance among the respective community irrespective of its human right or other aspects. The failure of the Shah Banu case wherein the Supreme Court ordered Maintenance under the secular Act – Code of Criminal Procedure 1973, section 125 in defiance to the Shari at law is a model case. This decision caused riots and the Government passed the Muslim Women (Protection of Rights on Divorce) Act in 1986 to invalidate the decision of the Supreme Court in Mohammed Ahmed Khan v. Shah Bano Begum, in which the Court observed that where a Muslim woman is not remarried and cannot maintain herself, she can claim maintenance from her former husband as long as she remains unmarried, under the Code of Criminal Procedure 1973, a secular Act.

Therefore in these sensitive matters the government needs to be very cautious and take the respective community into confidence. Anything other than that will arouse the wrong sentiments of the community and also goes against the tenets of a democratic government which is based on the trust of the people it rules.

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