

## OPPRESSION OF WOMEN: THE DESIDERATUM OF UCC

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### Abstract

The question that arises here is that even after 75 years of Independence does women of independent India enjoys their rights at the full extent. As we all know that in the present legal system the personal laws govern the matters related to marriage, divorce, inheritance and succession and it is quite clear that there is connivance between the personal laws and patriarchy. Presently, due to the political situation women's rights continues to be conquered by the discussion of majority and minority in the sake of vote bank policy, there is a need to make a paradigm shift towards the protection of rights of women. It has been seen very often that somewhere the Gender Equality stands settled by personal laws in India and in the sake of the political vote bank even the legislature don't dare to amend the discriminatory personal laws.

UCC which means uniform law for all is envisaged under Article 44 of the Constitution of India which states that "it is the duty of the State to secure for the citizen a Uniform Civil Code throughout the territory of India."<sup>471</sup> UCC forecast the idea of governing all people belonging to different religion and regions under same law. The eminent feature of UCC is that it has the ability to restore the concept of women empowerment which India always concerned about. It aims to replace the customary personal laws which are discriminatory on the basis of gender. This paper tries to analyze the oppression of women under personal laws and how it can be curbed out by the implication of UCC. This paper will also put a light on the history of personal laws and different landmark cases which dealt with the constitutionality of particular provisions of personal laws.

Keywords: Personal laws, UCC, Women, Rights, Oppression

GRASP - EDUCATE - EVOLVE

<sup>471</sup> INDIA CONST. Art. 44

## Introduction

The rights of the women in India is rooted in the personal laws from a long time. In India social institutions like marriage, divorce, inheritance is dealt with the different personal laws of different religions. Although it is the personal laws which lays down the legal curves of women in these social institutions. As compared to western countries India does not poses homogenous nature. As a country of diverse culture, tradition and religion a person living in Kerala will have different existential realities than a person living in Bihar. UCC formulates the idea of uniform law for all irrespective of their religion, caste. The code is envisaged under Article 44 of the Constitution which lays down that *"it is the duty of the State to secure for the citizen a Uniform Civil Code throughout the territory of India"*<sup>472</sup>. BJP was the first party which raised the agenda for the implementation of UCC if they win the election as it was the part of their 2019 Lok Sabha election manifesto. In such a landscape, a formula of a uniform personal law is introduced and uniformity is presented as a solution to undo all the repressive evils that have crept inside our existing personal laws. UCC as envisaged under our Indian Constitution is time and again hailed to be the miraculous cure for all the social problems faced by the Indian women. The Indian Supreme Court has been incessant in reminding the legislature the glorious promise of a uniform civil law which was deferred to the future by the makers of our Constitution.

The persecution of woman seems to be very common in a patriarchy society and if we go deep into this, we can clearly see that what seems similar in nature is actually very different. It can not be denied that personal laws are not oppressive towards women. Even after several amendments it took years of years of battles in almost all religious cases. Many tries to defend it in the name of custom and rituals and many in the name of personal laws. The necessity of UCC came into light after the Triple Talaq

judgement. This judgement instigated the activists around the country and they started questioning all other discriminatory practices associated with personal laws like cruel practices of polygamy, unilateral divorce and depriving women under Islamic law. However, this discrimination or oppression is not only limited to the Muslim personal law.

The discussion on the implementation of UCC every time invokes the question related to secularism. Secularism has different interpretations because of which the UCC has been glorified and criticized at the same time. Some people think UCC is anti-secular while some thinks that it is necessary for the better development of the society. DPSP was envisaged under the constitution for the better social and economic conditions of the society so people can live a good life. Article 44 was inserted under the constitution with the objective to address the discrimination against pregnable groups and harmonize diverse cultural groups across the country.

Dr. B R Ambedkar, while formulating the Constitution had said that a UCC is desirable but for the moment it should remain voluntary, and thus the Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.

Ambedkar in his speech in the Constituent Assembly had said, "No one need be apprehensive that if the State has the power, the State will immediately proceed to execute...that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so."<sup>473</sup>

<sup>472</sup> INDIA CONST. Art. 44

<sup>473</sup> Business Standard, <https://www.business-standard.com/about/what-is-uniform-civil-code> (last visited 2/09/2021)

## Uniform Civil Code – Reasons for Implementation

The Colonial India witnessed many of her laws getting codified by the British such as the criminal law, the law of contract and transfer of property etc. These laws were made by the British while divesting away with all religious, cultural factors. Hence, we observe that the law of contract is purely along the law that existed in Great Britain around that time. The only sphere which was left behind was the personal laws which governed various aspects of the lifestyles of the people, such as marriage, family, succession etc. The British considered such civil topics to come within the purview of the religion and thus specific religious principles should govern these civil laws. The transfer of sovereignty from the colonisers to the colonised in our nation was marred by the high communal tensions. Restoration of communal harmony which was weakened to a very great extent was in the mind of the Constitution makers. Article 35 of the draft Constitution of India was added as a part of the directive principles of the state policy in part IV of the Constitution of India as article 44. It was incorporated in the Constitution as an aspect which would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made. However, after 66 years of the adoption of our Constitution, UCC remains to be a constitutional dream to be fulfilled. The judiciary has time and again reminded the legislature the need to have a UCC through its various judgments.<sup>474</sup> How judiciary has stated UCC to be a necessity in Indian polity has to be understood as well.

## Uniform civil code and constituent assembly debates

As referred before, UCC was originally encapsulated in article 35 of the Draft Constitution. There was a demand to add a proviso in article 35 which would make the UCC,

whenever it would have been enacted, not obligatory in nature and personal laws be kept out of its purview. The proviso read as, "Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."<sup>475</sup> UCC was considered to be a threat to the religious freedoms envisaged by the Constitution. However, there were many reasons given in favour of a common civil code. K.M. Munshi took a very rigid view in negating the claims of majoritarianism over sweep over the minorities. He states:<sup>476</sup>

It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. Munshi presented the unifying force of secularism, that one way of life shall be the way of life for all. However, this view is the most controversial of all since it seems to muffle the voice of diversity. The other reason backing the UCC was the issue of empowerment of women. Since right to equality was already acknowledged to one of the most coveted rights, the unequal footing of genders through the word of law could no longer be validated. Thus, the practices which undermined a woman's right to equality would necessarily be done away with. A common civil law governing the personal matters would bring all the women under one single umbrella and irrespective of

<sup>474</sup> Mohd. Ahmed Khan v. Shah Bano, AIR 1985 SC 945, Ms. Jorden Diengdeh v. S.S. Chopra, (1985) 2 SCC 556, Sarla Mudgal v. Union of India, (1995) 3 SCC 635.

<sup>475</sup> Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

<sup>476</sup> Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.

race and religion the discriminatory practices would be put to an end.<sup>477</sup>

Shri Alladi Krishnaswamy Ayyar gives a much more realistic reason to aim for a UCC and bases his argument on the fallacy of having strict water tight existence of the communities. He states that in a country like India there is much interaction between the various different communities which leads to the altercations between specific personal laws. Not only altercations but one legal system gets influenced by other legal system. He states:<sup>478</sup> In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue. He questions the very core of the dialogue of excessive cultural relativity and the cons of it. Having separate personal laws governed entirely by religion, which has as many interpretations as its followers, would limit the scope for reform. He took the dialogue of K.M. Munshi to another level by treating uniformity not as a necessary evil unlike Munshi who gave examples of other Islamic countries where forceful application of the majoritarian law was considered to be justified by him as long as it brought reform. B. R. Ambedkar was also a staunch supporter of the UCC. He denied the claims that a common civil code in a vast country, like India, would be impossibility. He stated that the only sphere which did not have

a uniform law was that of marriage and succession; rest all areas of civil law, such as transfer of property, contract, the Negotiable Instrument Act, easement act, sale of goods etc. were uniform in nature.<sup>479</sup> Let us not forget that Ambedkar was a man who believed in reform along the western line. He differed from Mahatma Gandhi in this respect and considered the western model of law and social relations to be an apt reference point to bring social reforms in Indian setup. He did not wish to add the proviso to the already unenforceable article 35, but was open to the slow inclusion of the communities with their voluntary consents once the legislature fulfils its promise to have a UCC. He stated:<sup>480</sup> I quite realize their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary.

Parliament may feel the ground by some such method. This is not a novel method. (Emphasis Supplied). It is a well-known fact that Ambedkar has always been a great critic of the dominant Hindu religion. In 1936 he had already underlined one of the many dogmas that infested Hinduism, i.e., casteism and untouchability, to the extent that he went on to denounce himself as a Hindu.<sup>10</sup> Yet in the Constituent Assembly he denied the claims of UCC being a mouthpiece of the majority, or the tyranny of the majority. He stated that the manner in which the Shariat Act, 1936 was made applicable to all the Muslims in India was nothing but an example of how convenient

<sup>477</sup> *Ibid.*

<sup>478</sup> *Ibid.*

<sup>479</sup> Constituent Assembly Debates (Proceedings), Volume VII, Tuesday 23rd November, 1948.

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uniformity in laws is and was welcomed by the Muslim brethren. The Muslims which were being governed by the Hindu laws in certain specific areas were all collectively and uniformly brought under the purview of this uniform law, for their own benefit. Similarly, if certain principles of the majoritarian religion, i.e. Hinduism would be incorporated in the UCC, it would be not by virtue of them belonging to Hinduism, but because they were suitable to the progressive society. This should not be qualified as a tyranny of the majority. He stated:<sup>481</sup> Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindu law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community. This statement made by Ambedkar speaks loudly for itself and his commitment towards having a UCC to bring about the much necessary changes in the personal dimensions of an Indian irrespective of her religion and community. Post-Independence his tooth and nail fight to pass the Hindu Code Bills, which also lead to his resignation from the cabinet, is yet again a proof of his drive to bring UCC. Although the proposed amendment to article 35 was not passed, yet there was no clear cut majority on the issue of the UCC, some of the reservations echo even in the debates of 2016.

### The Intent of the Judiciary

The Supreme Court of India has always been an ardent supporter of the UCC. It was the legendary case of *Mohd. Ahmed Khan v. Shah Bano*<sup>481</sup> (hereinafter referred as Shah Bano case), that once again brought the issue of UCC on the preface. In this much celebrated case the Supreme Court brought a divorced Muslim woman within the cover of section 125 of the

Code of Criminal Procedure, 1973 and declared that she was entitled for maintenance even after the completion of her iddat period. Although Supreme Court had assumed the role of a social reformer in many other previous cases,<sup>482</sup> Shah Bano case usurped a landmark position in the history of debates on religion, secularism and the rights of women. If we carefully sidestep the political drama that later unfolded, we would be able to trace the problems the courts of our country have been facing due to the separate conflicting personal laws. As pointed out in the Constitutional Assembly debates, there already exist a number of uniform laws in our country. The courts were taken by surprise in situations where such uniform laws came at loggerheads with the various personal laws, as was the case in Shah Bano. With articles 14<sup>483</sup>, 15<sup>484</sup> on one hand and article 25<sup>485</sup> on the other, the courts found themselves in a fix so as to decide to give precedence to which fundamental right. The Supreme Court's use of a uniform law to provide remedy to Shah Bano proved to be a much easier path to protect the basic rights of women. Had the Supreme Court taken recourse to the specific personal laws, it might have found itself embroiled in debates of theology thus neglecting the plight of the women. The court has stated:<sup>486</sup> Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. What difference would it then make as to what is the religion professed by the neglected wife, child or parent? Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of section 125. Such provisions, which are essentially of a prophylactic nature, cut across the barriers of religion. True, that they do not supplant the personal law of the parties but, equally the

<sup>482</sup> *Fazlunbi v. Khader Ali*, 1980 SCR (3)1127

<sup>483</sup> INDIA CONST. Art. 14

<sup>484</sup> INDIA CONST. Art. 15

<sup>485</sup> INDIA CONST. Art. 25

<sup>486</sup> *Supra note 10.*

<sup>481</sup> *Supra note 3.*

religion professed by the parties or the state of the personal law by which they are governed, cannot have any repercussion on the applicability of such laws unless, within the framework of the Constitution, their application is restricted to a defined category of religious groups or classes. The liability imposed by section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion. (Emphasis Supplied). Shah Bano case highlights the need for a uniform law which addresses the core need of a woman in distress. It tries to state that it is the suffering of the woman that should be at the core of any gender justice law. The refusal of the husband to maintain his wife after conveniently giving her a divorce is the issue which the law should address rather than addressing what the specific religion has laid down for that woman.

### Conclusion

At last, I would like to conclude my paper by stating that I found in my research is that somewhere UCC may violate the idea of Secularism but we cannot deny this fact that word secular was added by 42<sup>nd</sup> Amendment 1976 while the UCC was there in the draft of the constitution under Article 35 and somewhere it is important to implement UCC for the development of the society and eliminate the patriarchy and discrimination against women in society.

