



Uniform Civil Code as a means to achieve Equality and Gender Justice

Siji Rachel George

Research scholar in political science
Vaikom Sathyagraha Smaraka Cultural
and Research Centre Vaikom, Kottayam
Dt. Affiliated to M G University,
Kottayam (Assistant Professor, Dept. of
political Science, St. Cyril's College,
Adoor) Email;

sijirachelgeorge@gmail.com

DR.S. Uma Devi

Research Guide in Political Science
Former Associate Professor
S.D. College, Alappuzha

ABSTRACT

This paper primarily talks about the concept of “Uniform Civil Code as a mean to achieve equality and gender justice”. The term Uniform Civil Code connects the idea of some set of civil rules for the citizens irrespective of their religion, caste etc. Under Article 44 of Indian constitution state shall endeavor to enact a Uniform Civil Code for citizens throughout the country. This civil code ,if enacted will deal with the personal laws of all religious communities relating to marriage, divorce, adoption, custody of children, inheritance, succession to property etc., which are all secular in character of Indian state and to enhance fraternity of unity among by providing them with a set of personal laws which incorporates the basic values of equality. This paper discusses about Uniform Civil Code, equality and gender justice and also how the implementation of Uniform Civil Code may lead to the equity of the nation. This paper aims to spread knowledge and make the readers inquisitive about their approach and the topic of Uniform Civil Code as a means to achieve equality and gender justice.

Key words: Uniform Civil Code, equality, personal laws, gender justice, secularism.

INTRODUCTION

India is a unique country not only in terms of its geography but also in its social scenario. It is a land of various religions and different cultures. Diversity in social life is an important aspect of Indian society. The Indian culture emphasizes the spirit of unity in diversity, the goal of unity and equity of the country had become the primary consideration for framers of the constitution. The pluralistic feature of the constitution is evidenced through the different provisions of the constitution; especially those contained in part III, IV and IV A of the constitution of India. The pluralistic and multicultural feature is, in fact part of the Indian secularism which is one of the basic characteristics of the Indian constitution. The constitution of India has clearly envisaged a pluralistic and multicultural society. The constitution of India guarantees equality and equal protection to all persons. The provisions which are deals with women's rights are as follows. Article 14 of Indian constitution says that “the state

shall not deny to any person the equality before law and equal protection of laws with in the territory of India.” Article 39 (a) of the constitution provides that “the state in particular direct its policy towards securing that citizen, men and women equally have the right to an adequate means of lively hood” . Article 51 (e) of the constitution provides that “it will be the duty of every citizen to renounces practices derogatory to the dignity of women”ⁱ Thus, all persons irrespective of their religion, culture, ideology or belief are equal. This principle of equality is the basis for the pluralistic principle in our constitution.

OBJECTIVES OF THE STUDY:

This research work has two specific aims:

- 1) To analyze the concept of Uniform Civil Code and to evaluate whether the existing personal laws are a burden to the concept of equality and gender justice.
- 2) To evaluate the constitutional provisions and discuss about the relationship between Uniform Civil Code and gender justice.

RESEARCH METHODOLOGY

In order to carry out the study both historical and descriptive analysis methods have been used. In order to follow the historical method, the researcher has consulted materials like Judicial Proceedings, letters, books, journals and articles. The primary data is the court orders related to Uniform Civil Code.

GENDER EQUALITY

The terms gender and gender equality imply concern for both men and women, and the relationship between them. There is need for specific attention to women’s needs and contributions which are typically required in order to address the array of gender gaps, unequal policies and discrimination that historically have disadvantaged women and distorted development in all societies. Gender is important not only for its own sake as a human rights issue of gender inequalities but also because of the interactions between gender inequalities. The root cause of all the discriminatory practices faced by the women are illiteracy, economic dependence, caste restrictions, religious prohibitions, lack of leadership qualities and apathetic and callous attitude of males in the society. Globally, the United Nations has established a strong mandate for Gender Justice. The focus on gender equality and Gender Justice has been there since the inception of the U N in 1946. A separate body was formed to work on the advancement of women. With the establishment of National and State Human Rights Commissions and National Commissions for Women, gender issues are receiving greater attention.

In all the contemporary societies the legal system attempts to achieve the goals of equality and gender justice. These twin principles have become so important that these are now the standards to judge the progressiveness of a society. So for Indian constitution is concerned, the concept of equality along with gender justice have been given due recognition under the chapters of fundamental rights and directive principles of state policy. Apart from direct provisions the concept of Uniform Civil Code also aims to achieve these principles. Jurisprudentially, the concept of equality includes the principle of gender justice as well. The concept of equality has two aspects; uniformity between communities and uniformity with in the

communities. (Between men and women) The talks of the Uniform Civil Code have been going on long since the Constitutional Assembly Debates. The Judiciary has played a very active role in trying to enforce the same, through several judgments and opinions. Very recently, the Supreme Court asked the central government whether it was willing to bring a Uniform Civil Code to ride over inconsistent personal laws in different religionsⁱⁱ. There was “total confusion” over the incoherent stipulations about marriage, divorce, adoption, maintenance and inheritance, the court said, and asked the solicitor General of India to come back in three weeks with instructions on the government’s view. This was the third time this year that the apex court had spoken on the Uniform Civil Code: on the previous two occasions, it had suggested there should be uniformity in personal law; this time it wanted a categorical answer from the Government. The framing Fathers of our constitution, which saw the Uniform Civil Code as a means to achieve national unityⁱⁱⁱ.

The Indian judicial system has independently and effectively intervened on the issue of women emancipation. There are various legislations that have been passed in India with a view to curb the imbalance in gender hierarchy and aid in women empowerment. The constitution of India guarantees various rights for women in this regard. Uniform Civil Code of India is a term referring to the concept of an overarching Civil law code in India. A Uniform Civil Code administrates the set of unified civil laws given to all people irrespective of their religion, caste and tribe. These laws are distinguished from public laws and cover marriage, divorce, inheritance, adoption and maintenance^{iv}. The word uniform in article 44 means that all communities must be governed by uniform principles of gender justice and human justice.^v

NEED FOR UNIFORM CIVIL CODE

The need for Uniform Civil Code has been felt for more than a century. The country has already suffered a lot in the absence of a Uniform Civil Code for all. It is rather a pity that the longest and most elaborately written constitution in the history of mankind, is responsible for creation of erosion in the society. Even at present, in India, there are different laws governing rights related to personal matters or laws like Marriage, divorce, maintenance, adoption and inheritance for different communities. Thus, the laws governing inheritance or divorce among Hindus are, very different from those pertaining to Muslims or Christians and so on, in India, most family laws are determined by the religion of the parties concerned Hindus, Sikhs, Janis and Buddhists, which come under Hindu laws, whereas Muslims and Christians had their own laws. Muslim law is based on the Shariat. In all other communities, laws are codified by an Act of the Indian parliament. India has a long history of personal laws and it cannot be given up easily. Unless a broad consensus is drawn among different communities, the Uniform Civil Code cannot do much good to the country.^{vi} The reality in India is much more complex than western societies which have been totally secularized. The need is to work on the existing laws in such a way that they do not go against any particular faith or religion. Therefore, there is the demand for a Uniform Civil Code for all religions. Also Uniform Civil Code will help to promote gender equality.

However this concept has also faced unjustified criticisms. Uniform Civil Code does not insist people from one religion to start practicing rituals of other religions. All it says is, with changing living styles along with the time, there should be a Uniform Civil Code irrespective of all religions as far as ethics are concerned^{vii}. One reason why personalized laws based on religion is not favored is because religious laws tend to be highly gender based.

India is a religiously pluralist society. The preamble to the constitutions asserted that India is a secular nation. Therefore, there is no necessary relationship between personal laws and religion. The laws implicitly require the state and its institutions to recognize and accept all religions, enforce parliamentary laws instead of religious laws and respect pluralism. The people of India have freedom of right to equality, and the state treats all Indians as equal citizens regardless of their caste, gender or religion. In matters of law in modern India, however, the applicable code of law is unequal, and India's personal laws on matters such as marriage, divorce, inheritance, varies with an individual's religion. The attempt to respect unequal, religious laws has created a number of issues in India such as acceptability of child marriage, polygamy, unequal inheritance rights, and extra judicial unilateral divorce rights favorable to some males, and conflicting interpretations of religious book. Article 44 of the directive principles of state policy provides for a Uniform Civil Code for the whole of India. However unfortunate that even often 71 years of independence we could not create such a Uniform Civil Code.

The Supreme Court of India underlined the importance of Uniform Civil Code, in the famous Shah Bano case, Supreme Court chief justice, Chandrachud observed,

“A common civil code will help the cause of national integration by removing desperate loyalties to laws, which have conflicting ideologies. No communities likely to bell he 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 legislative competence to do so.”^{viii}

The Uniform Civil Code has become relevant today because it is a linkage of justice and equality. It will also lead to the removal of gender bias, iniquitous and in egalitarian provisions in personal laws. And also the enactment of Uniform Civil Code is the best way to protect the interest of Indian women.

CONCLUSION

From the above discussion, it is clear that Uniform Civil Code is the need of the hour. It has become very relevant today. The issues of inequality had raised its ugly head in many aspects of the socio-political life since Independence. With the existing personal laws it will be very difficult for India to survive as a unified nation. Equality and gender justice are very important and they are the standards to judge the condition of the nation. So, it is very important for India to survive as a unified nation with equality among citizens. Thus, Uniform Civil Code is the only available option. The problem could find a solution only when a secularized Uniform Civil Code is implemented, which will lead to equality and justice. Let us tie up our hands to walk towards a secularized and unified nation with equality as the main agenda.

- ⁱ Durga Das Basu (1997), Introduction to the Constitution of India, Prentice-Hall, New Delhi
- ⁱⁱ Sanjana Agnihotri (2015), SC declines to direct parliament to form Uniform Civil Code ,India Today ,New Delhi
- ⁱⁱⁱ V.Dhagamwar (1989), Towards the Uniform Civil Code ,N M Tripathi, Bombay
- ^{iv} Nithya N. R (2013), Uniform Civil Code for India: Prospects and Constrains, GRA, Vol. 2, September, ISSN NO22778160
- ^v S P Sathe (1995), uniform civil code implication of Supreme Court intervention ,Economic and political weekly, September 2
- ^{vi} Kartikey chauhan, Uniform Civil Code
- ^{vii} Vimal Balasubrahmanyam (1985), Women, Personal Laws and the struggle for secularism, Economic and Political weekly, Vol. 20, No 30 JUL.27
- ^{viii} Mohd Ahmed Khan V Shah Bano Begum and others (1985), SC 1945