



SHAH BANO TO SHAYARA BANO JOURNEY : IMPLEMENTATION OF UCC IS URGENTLY NEEDED

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ABSTRACT :

The concept of Uniform Civil Code (UCC) is incorporated under Article 44 of the Constitution of India. Article 44 is one of the Directive Principles of State Policy Incorporated under Part IV of the Indian Constitutions.

KEYWORDS : Uniform Civil Code (UCC) , Directive Principles , State Policy.

INTRODUCTION:

Article 44 requires the state to secure for the citizens a Uniform Civil Code throughout the territory of India.

OBJECTIVES

- To consider the meaning of UCC.
- To study the need of UCC.
- To discuss on "Uniform Civil Code and Indian Constitution."
- To analyse Shah Bano Case and Shayara Bano case.
- To highlight the need of implementation of UCC.

HYPOTHESIS

Implementation of UCC is urgently needed as it is essential and significant for the removal of religious inequality amongst various religions in the field of marriage, divorce, maintenance and succession.

RESEARCH METHODOLOGY

Research Methodology adopted for the writing this research paper is Doctrinal Research Method.

MEANING OF UCC

Uniform Civil Code is the ongoing point of debate within Indian mandate to replace personal laws based on the scriptures and customs laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen.



Need of UCC

There is a need of UCC in India due to various factors such as –

- Implementation of UCC will enhance the spirit of unity and integrity of nation in the minds of its citizens.

- Personal laws are with religious inequalities. UCC will bring equality amongst all Indian Citizens in the matters of marriage, divorce, maintenance and succession. It will lead towards women empowerment. It will promote real secularism.

Uniform Civil Code and Indian Constitution

The Indian Constitution, in its Part IV, Article 44 directs the State to provide a Uniform Civil Code throughout the territory of India. However it is only a directive principle of State policy, therefore it cannot be enforced in court of law. It is the prerogative of the State to introduce Uniform Civil Code. The Constituent Assembly Debates clearly show that there was a wide spread opposition to the incorporation of Article 44 (Art. 35 in the Draft Constitution), particularly from the Muslim members of the Assembly.¹ Naziruddin Ahmed, Mohd. Ismail Sahib, Pocker Sahib Bahadur and Hussain Sahib etc., made a scathing attack on the idea of having a Uniform Civil Code in India on the grounds that the right to follow personal law is part of the way of life of those people who are following such laws, that it is part of their religion and part of their culture, that it would lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country and that in a country so diverse it is not possible to have uniformity of civil law. However, one of the most illustrious members of the Assembly, K.M. Munshi strongly felt that if the personal law of inheritance, succession etc is considered as a part of the religion, the equality of women can never be achieved.²

The Chairman of the Drafting committee Dr. B.R. Ambedkar stated that in our country there is practically a Civil Code, uniform in its content and applicable to the whole of the country. He cited many instances like Uniform Criminal Law, Transfer of Property and Negotiable Instruments Act which are applicable to one and all. However he conceded that the only province, the civil law has not been able to invade so far is marriage and succession. He also dispelled the arguments of certain Muslim members that the Muslim law is immutable and uniform throughout India. He cited the example of the North West Frontier Province which was not subject to the Shariat Law prior to 1935 and until then followed the Hindu Law in the matter of succession etc.³ Similarly, in the North Malabar region of Kerala, the Marumakkutayan Law applied to all, not only to Hindus but also to Muslims.

But unfortunately the common civil code / uniform civil code has not come in existence even today.

Article 45 contains the provision for free and compulsory education for all children till an attainment of age of fourteen years. All children mean both male and female children. Article 46 provides for the educational and economic empowerment of women and to protect them from social injustice. It is well accepted that women are weaker sections of the society that are socially backward classes and frequently subjected to social injustice. The provision under Article 51A(e) protects the dignity of women which is a bedrock in the field of women empowerment. Reservations under Articles 243D(3), D(4), T(3) and T(4) are significant for the political empowerment of women.

Thus, from the aforesaid discussion it is clear that the constitutional provisions are adequate and sufficient for the empowerment of women in almost all fields of life if implemented properly. The Constitutional provisions under Part III of the Constitution are exclusively important for the welfare of women in various fields with enforceability. The provisions under Part IV of the Constitution are equally significant as pursuant to these provisions, various women welfare legislations have been enacted such as the Workmen's Compensation Act, 1923, the Minimum Wages Act, 1948, the Maternity Benefits Act, 1961, the Equal Remuneration Act, 1976 etc. These legislations have been enacted on the basis of the provisions under Articles 42, 39(e), 14 and 16. Article 51-A(e) protects the dignity of women. It states that, "It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood among all the

¹ See CAD Book No.2, Vol. III pp. 538-552

² CAD, Vol. III p. 548.

³ CAD, Vol. III p. 550.

people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women.”

Thus, the Constitutional provisions provide for the gender equality and gender justice as the ultimate goal to be achieved.

Shah Bano Case

In Shah Bano Begum⁴, the Supreme Court declared that a Muslim husband having sufficient means must provide maintenance to his divorced wife who is unable to maintain herself. The court further held that a Muslim divorced women who cannot maintain herself is entitled to maintenance from her former husband till the time she gets remarried. The court rejected the contention that maintenance is payable for the iddat period only while declaring this verdict, the court had referred the ayats of the Quran and concluded that the Quran imposes an obligation to provide maintenance to the divorced wife.

The Court also held that if there is any conflict between personal law and Section 125 of Cr. P.C., then Section 125 of Cr. P.C. shall prevail.

However, the verdict of the Supreme Court in the present case was severely criticized by the Muslim Community on the ground that it is violative and against the personal law i.e. Muslim law. After that the Central Government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986 to set back the impact of the judgment of the Supreme Court in the present case. However, the said Act gives an option to the parties (i.e. a divorced Muslim woman and her husband to be governed by Section 125 of the Code of Criminal Procedure.

From the aforesaid discussion it is submitted that if the judgment of the Shah Bano case had implemented with full impact, it would have resulted in the empowerment of Muslim women in true sense.

Danid Latif

In Danial Latif v. Union of India⁵ the Constitutional Bench of the Supreme Court upheld the Constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and held that a Muslim divorced women has right to maintenance even after Iddat period under the 1986 Act.

Seema v. Ashwani Kumar⁶

In Seema v. Ashwani Kumar. The Supreme Court has held that all marriages, irrespective of their religious, be compulsorily registered. This was first step towards uniform civil code.

Shayara Bano Case⁷

It is popularly known as Triple talaq case.

Triple talaq is known as talaq-e-biddat or instant divorce or irrevocable divorce. It is a form of Islamic divorce which allows any Muslim man to legally divorce his wife by stating the word talaq three times in oral, written or more recently, electronic form.

In Shayara Bano case, the five judge Constitution Bench by a 3-2 majority judgment said “There is no constitutional protection for triple talaq. In this landmark verdict, the Supreme Court held that instant triple talaq is “unconstitutional”, “arbitrary” and “not part of Islam”. There is no constitutional protection for instant triple talaq. The three judges (majority view) also said the practice of divorce through triple talaq is manifestly arbitrary and violative of the Constitution and must be struck down.⁸

⁴ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 1243.

⁵ AIR 2001 SC 3262.

⁶ AIR 2006 SC 1158.

⁷ Shayara Bano v. Union of India and Others Writ Petition (C) No. 118 of 2016. (2017 Judgment.)

⁸ www.timesnownews.com

Significance of the Judgment

- In this case the Supreme Court of India has exhaustively examined the nature and scope of various existing Acts, legislations, personal laws, constitutional provisions and International Conventions such as the Muslim Personal Law (Shariat) Application Act, 1937 / the Shariat Act, Section 11 of the Contract Act, 1872, the Dissolution of Muslim Marriages Act, 1939, various foreign legislations such as Code of Family Law 1984 as amended in 2005 (Algeria), Law of Personal Status 1929 as amended in 1985 (Egypt), Code of Personal status of amended in 1987 (Iraq), Code of personal status 1976 (Jordan), Code of Personal Status 1984 (Kuwait), Family Rights Law 1962 (Lebanon), Family Law 1984 (Libya), Code of Personal Status 2004 (Morocco), Law of Talaq 1935 (Sudan), Code of Personal Status 1953 as amended in 1975 (Syria), Code of Personal Status 1956 as amended by Law 1981 (Tunisia), Law of Personal Status 2005 (United Arab Emirates), Decree on Personal Status 1992 (Yemen), Law of Marriage 1974 (Indonesia), Marriage Regulations 1975 (Indonesia), Islamic Family Law Act, 1984 (Malaysia), Code of Muslim Personal Law 1977 (Philippines), Muslim Family Laws ordinance 1961 (Pakistan and Bangladesh), Muslim Marriage and Divorce Act, 1951 as amended in 2006 (Sri Lanka) etc., Section 125 of the Code of Criminal Procedure, Articles 14, 15(1), 21, 25, 26, 29, 32 and 44 of the Constitution, the Family Courts Act, 1984, ICESCR, UDHR, CEDAW & its optional protocol (1999), the Convention on the Political Rights of Women 1952, Universal Declaration on Democracy, 1997, the Second World Conference on Human Rights, held at Vienna in June 1993, the Fourth World Conference on Women, held at Beijing in 1995, Uniform Civil Code (Article 44 of the Constitution of India), the Indian Penal Code, 1860, Article 372 of the Constitution of India, the Divorce Act, 1869, the Indian Divorce (Amendment) Act, 2001, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954, the Foreign Marriage Act, 1969, the Indian Divorce, 1869, the Hindu Marriage Act, 1955, the Hindu Adoptions and Maintenance Act, 1956 etc.
- The judicial pronouncement pronounced by the Court in the present case has encouraged and inspired the implementation and enforcement of Uniform Civil Code in India as prescribed by the constitutional makers under Article 44 of the Constitution of India. Article 44 is contained under Part III of Indian Constitution which is legally enforceable in nature. However, Uniform Civil Code has not implemented in India yet. Shayara Bano Case has paved a way for an implementation of UCC⁹ in India.
- The present judgment has encourages for the promotion of gender equality in India.
- Shayara Bano verdict is one of the most landmark verdicts pronounced by the Supreme Court of India in the field of women empowerment.
- Through this judgment the Supreme Court of India has protected the various rights of Indian Muslim women such as right to live with dignity, right to get protection from cruelty, gender equality etc. Right to equality and right to live with dignity are the valuable human right as well as these rights are fundamental right enshrined under Part III of the Indian Constitution.

Need of Implementation of UCC

In Sharaya Bano judgment the Supreme Court of India has declared triple talaq as unconstitutional. But the Act for the abolition of triple talaq couldn't get passed yet. Other issues are polygamy, halala etc.

Implementation of UCC is urgently needed to remove religious inequalities such as triple talaq, pologamy, halala etc.

CONCLUSION

Implementation of UCC in India will lead towards women empowerment by protecting their rights in the fields of marriage, divorce, maintenance and succession.

⁹ Uniform Civil Code.

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