

Essay on A Necessity Uniform Civil Code

"Religion must be restricted to spheres, which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, into a strong and consolidated nation." –KM. Munshi

In almost all countries there is one civil code for all the citizens. The basic ideology behind the formulation of a civil code is to end discrimination based on religion. It is a cruel fact that women are the worst victims of discrimination under personal laws. Though Muslim women are the worst affected under the Muslim personal law, yet it cannot be negated that women, Hindu, Muslim, Christian, Sikh are virtually losers under the respective personal laws. Gender discrimination persists despite the constitutional prohibition.

Article 44 of the Constitution says that the State shall endeavor to secure for the citizens a Uniform Civil code, throughout the territory of India, yet it has continued to be a highly controversial issue and always politicized and communalized by the vested interests.

Since independence, we have been debating on the necessity of application of Uniform Civil Code for all the citizens, but even after 55 years, we have this paradoxical situation to continue, where Indian citizens are discriminated against on the basis of gender and religion.

On July 23, 2003, the Apex Court pleaded for a Uniform Civil Code, while declaring Section 118 of the Indian Succession Act 1925 as unconstitutional, as it was arbitrary, irrational, and violates

Article 14 of the Constitution. Article 14 says that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Section 118 of Indian Succession Acts applicable only to Christians provides “No man having a nephew or niece or nearer relative shall have the power to bequeath any property to religion or charitable uses, except by a will executed not less than 12 months before his death and deposited within six months from its execution in someplace provided by law for the safe custody of the will of the living person.

The three-judge Bench said that while Article 25 of the Constitution guaranteed freedom of conscience and free profession, practice, and propagation of religion, Article 44 divested religion from social relations and the personal law. The Bench was of the view that marriage, succession, and the like matters of secular characters cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution.

The declaration made by the Bench was very important that the right to follow one's personal law is not a fundamental right. It means that the right of the Christians to follow the Canon law or the Muslims to follow Shariat Law does not form part of Fundamental Rights, guaranteed in Part III of the Constitution. The right of equality is held high by the Apex Court and if any member of a community is discriminated against because of certain provisions of the personal law, he or she can approach the Supreme Court to strike down the unconstitutional part of the personal law. On this basic principle, the court has already struck down some provisions of the Indian Divorce Act which was applicable to Christians.

Whenever the court impresses upon the desirability of having one code, an acrimonious debate once again starts. The various political and religious leaders give arguments as per their political thoughts

and religious fanatical approaches. It was a very paradoxical situation when the constitutional makers had emphasized the necessity of one Uniform Civil Code, the vested interests are opposing it for taking political mileage. This is not a weapon directed against any particular or any minority community. It is simply a code that puts all the citizens equal before the law, irrespective of caste, community, religion, or gender.

Way back in 1985, the then Chief Justice Mr. Y.V. Chandrachud, in such a controversial case of Shah Bano asserted that a Uniform Civil Code would remove disparate loyalties to laws that have conflicting ideologies. The Court has time and again emphasized the desirability of adoption of the Uniform Civil Code for all citizens. An eminent retired judge of the Supreme Court Mr. Justice V.R. Krishna Iyer and others have been espousing the cause of a uniform Civil Code for years together. The basic and fundamental idea behind the formulation of a Uniform Civil Code is to enable easy interpretation and end discrimination. A well-known jurist Mr. Rajeev Dhavan says “the genuine concern is that many personal laws relating to marriage, inheritance, guardianship, divorce and maintenance and property matters in all communities are unjust, especially to women. Women are the worst victims of the personal laws, especially Muslim women.

The fact is that, when the changes are made step by step, these have been accepted without much opposition. The core issue that emerges is the extent to which the scriptures and traditions of any religion should be allowed to thwart the values and goals embedded in the Constitution in a secular democratic setup. No religious community should be granted the right to pit its regressive practices against constitutional mediates. No religious community can claim that injustice and gender base discrimination are so basic to its identity that they must be allowed to exit at the cost of the unity and integrity of the nation.

Undoubtedly there is a need to give legislative effect to the constitutional mandate set out in Article 44, but this sensitive task is carried out with due preparation. The perpetrators of communal aggression, intimidation, and blackmail must be reined with due strictness of provisions. An all-out effort to reassure the minority communities that their Human and Constitutional Rights will be protected at all costs needs to be made.

It is the sacred duty of the State that every citizen must get equal protection of the law and every woman, be she a Hindu, Muslim, or Christian, feels that she is equal to man in all matters, pertaining to marriage, divorce, succession, inheritance and other matters of secular importance. It is the need of the hour, that we must have an open debate by all concerned political parties, religious leaders, so that we have one common civil law for all. The debate must be free from political bias.

No faith, no religion, can allow discrimination based on gender. No secular State should allow discrimination based on religion, community, gender. When our Constitution guarantees equality, then allowing discrimination against women, is totally unlawful and unconstitutional. The time is ripe that all the political and religious leaders should come together, for the well-being of all the people, to come to a consensus for adopting the Uniform Civil Code for all the citizens of our great Nation.