JETIR.ORG ISSN: 2349-5162 | ESTD Year : 2014 | Monthly Issue

JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR)

An International Scholarly Open Access, Peer-reviewed, Refereed Journal

AN ANALYTICAL STUDY ON THE JUDICIAL IMPLEMENTATION OF THE UNIFORM CIVIL CODE.

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"Injustice Anywhere Is A Threat To Justice Everywhere"-

Martin Luther King.

ABSTRACT: Part IV of the Indian constitution provides for directive principles of state policy. Though these principles are guidelines and are not enforceable in a court of law, they are indispensable in the governance of the country. One such directive principle is given under article 44 of the constitution, which creates an obligation on the state to enact a uniform civil code. The Indian judiciary, particularly the supreme court and high court, has a significant role in the country's constitution. The supreme court's decision becomes the law of the land. The term "law declared" in article 141 implies the court's lawmaking role. 1. The supreme court and the high court have the power of judicial review. 2 (article 13) to save the constitution itself. Because of this development, the supreme court of India has been seen as the supreme court for India and has been formed as one of the strongest courts in the world. That is why the supreme court is seen as "a sentinel on the qui-vive". It has been argued that article 44, like all other directive principles, is not enforceable in court. That is, the court cannot carry out the mandate of Article 44. As a result of our discussion, the judiciary has used the directive principle to interpret the constitution and compel the government to implement it.

KEYWORDS: UNCONSTITUTIONAL CIVIL CODE, ARTICLE 44, DIRECTIVE PRINCIPLE, FUNDAMENTAL RIGHTS.

INTRODUCTION:

The Judiciary, through its various judgements time and again , has always upheld gender justice in cases pertaining to the Uniform Civil Code. The Supreme Court stated in the case of Mohammad Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556 (popularly known as the Shah Bano case) that "it is also a matter of regret that Article 44 of our Constitution has

remained a dead letter. "Though Muslim fundamentalists slammed the decision, it was viewed as a liberal interpretation of the law, as required by gender justice. Later on, under pressure from Muslim fundamentalists, the central government passed the Muslim Women's (Protection of Rights on Divorce) Act 1986, which denied the right of maintenance to Muslim women under section 125 of the Cr.P.C. The activist rightly denounced that it "was doubtless a retrograde step." That also showed how women's rights have a low priority even in the secular state of India. The autonomy of a religious establishment was thus made to prevail over women's rights. " In Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and Others (AIR 1995 SC 1531), the Apex Court directed the government to implement the directive of Article 44 and to file an affidavit indicating the steps taken in the matter and held that, "Successive governments have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44.However, **in Ahmadabad Women's Action Group (AWAG) v. Union of India, AIR 1997 SC 3614**, a PIL was filed challenging gender discriminatory provisions in Hindu, Muslim, and Christian statutory and non-statutory law. In this case, the Supreme Court became a bit reserved and held that the matter of the removal of gender discrimination in personal laws involves issues of state policy with which the court will not ordinarily have any concern. The decision was criticised because the apex court had virtually abdicated its role as a sentinel in protecting the principles of equality regarding gender-related issues and personal laws of various communities in India. vi) The Apex Court pursued the same line in **Lily Thomas, etc. v. Union of India and others. AIR 2000 SC 1650** and held that the desirability of the Uniform Civil Code can hardly be doubted. However, it can only be realised if the social climate is properly built up by society and its leaders, who, rather than gaining personal mileage, rise above and awaken the masses to accept change for the betterment of the nation as a whole.The situation regarding the personal laws for Christians in India was different. In their case, the courts seemed to be bolder and took a progressive stand in terms of gender equality. For instance, when in the case of **Swapana Ghosh v. Sadananda Ghosh, AIR 1989 Cal. 1**, the Calcutta High Court expressed the view that sections 10 and 17 of the Indian Divorce Act, 1869, should be declared unconstitutional, but nothing happened till 1995. Again, in yet another case, the Kerela High Court in **Ammini E.J. v. Union of India AIR 1995 Ker.252** and the Bombay High Court **in Pragati Verghese v. Cyrill George Verghese AIR 1997 Bom. 349** have categorically struck down section 10 of the Indian Divorce Act, 1869 as being violative of gender equality. In September 2001, a poor Muslim woman, Julekhabhai, sought changes in the divorce provisions of Muslim law as well as those on polygamy. The Supreme Court asked her to approach Parliament, which refused to entertain the petition. Julekhabhai had sought equality with Muslim men, requesting the court to declare that "dissolution of marriage under the Muslim Marriage Act, 1939, can be invoked equally by either spouse". It also requested the court to strike down provisions relating to "talaq, ila, Bihar, lian, khula, etc." which allowed extra-judicial divorce in Muslim personal law. Mohammed Abdul Rahim Quraishi, the then Secretary of the All India Muslim Personal Law Board, said that it needs to be seen that the subjects about marriage and divorce, infants and minors, wills, intestacy and succession, partition, etc., are enumerated in the concurrent list of the 7th Schedule of the Constitution and, these being concurrent subjects, both the central and state governments have the power to make laws. As a result, we find many regional variations affected by the state legislatures in the Hindu Laws. Bigamy is punishable by law in all communities under the I.P.C except the Muslims, who are governed by Sharia law. The Muslim Personal Law (Shariat) Application Act 1937 was passed by the British government to ensure that Muslims were insulated from common law and that only their law would apply to them. Bigamous marriages are illegal among Christians (Act XV of 1872), Parsis (Act II of 1936), and Hindus,

Buddhists, Sikhs, and Jains (Act XXV of 1955). The enactment of a Uniform Civil Code would abolish the Muslim right to polygamy. In almost all recent cases where the need for a uniform civil code has been emphasised, women were always found to be at the receiving end of torture in the garb of religious immunity, ultimately causing them to suffer irreparable loss and injuries in all cases. Apart from the famous **Shah Bano (1986) and Sarla Mudgal (1995**) cases, there have been numerous other pleas by Hindu wives whose husbands converted to Islam only to get married again without divorcing the first wife. To conserve the cohesion of Hindu society, the Hindu laws made allowances for customs and usages. The imposition of uniformity would have undermined Hindu social cohesion. If matters relating to family laws and customs fall under the jurisdiction of Parliament and state legislatures, the country will have a variety of regulations, thus leading to unnecessary and undue advantages for some while depriving many other people who will be left to their fate to suffer. The state amendments have made many inroads into the Hindu laws, damaging the uniformity of these laws and affecting many substantive rules as well. In a uniform civil code, which is the cherished constitutional goal, if we have a single ground of divorce, viz. that the marriage has broken down irretrievably, the scope of any controversy is ruled out. Where a marriage has broken down irretrievably, no useful purpose will be served in finding out the guilt or innocence of the parties, and in such cases, the law proceeds to cut off the tie.ix Analytical consideration of these issues reveals that there should be a single ground for divorce, namely irreversible breakdown of the marriage. Irretrievable breakdown of marriage and divorce by mutual consent should be made a universal ground for dissolving the marriage of spouses regardless of their religious beliefs.The critical analysis of the different existing grounds of divorce contained under various divorce laws shows more uniformity and less contrast in them. Therefore, the conceptual analysis of the different existing grounds for divorce paves the way to pushing through the matter of uniformity in them legislatively. In **Naveen Kohli v. Neelu Kohli (2006),** the Supreme Court boldly laid down that while permitting dissolution of a thirty-year-old mismatch, it urged the Government of India to amend the Hindu Marriage Act to make irretrievable break down of marriage a valid ground for divorce. The court held that irretrievable breakdown of marriage was prevalent as a ground for divorce in many other countries and recommended the Union of India seriously consider bringing an amendment to the Hindu Marriage Act, 1955 to incorporate an irretrievable breakdown of marriage as a ground for the grant of divorce. The court was ordered to send a copy of the judgement to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps and to accommodate such demands that arose before the court in the instant case. The express introduction of the principle of irretrievable break, which has been in place already in England, will be much more conducive and functional than merely relying on the implied principle. Besides, the administration of justice based on clearly codified law is superior to the adjudication of the case to case. For this, Parliament could reintroduce the Marriage Laws (Amendment) Bill, 1981 (No.23 of 1981), which earlier did not fructify into law for expressly introducing irretrievable break down of marriage as the singular ground for divorce, as the bill was allowed to lapse. a long ago, in **Ramesh Jangid v. Sunita (2008) (1) HLR 8 (Raj.),** the wife wanted her husband to leave his parents and live separately. The Court held that the demand of the wife was unreasonable, as the wife had been living separately for 13 years and was denying any physical relationship, so divorce was granted on the aforesaid grounds. The court observed that the differences that have grown up between the parties, the distance that has widened for over a decade, cannot be brushed aside lightly. As a result, the irreparable breakdown of the marriage is obvious, and divorce is the only option available to the parties as well as the court in such a case**. In Prabhakar v. Shanti Bai (2008) HLR 250 (Nagpur)**, the parties were married in 1955. However, they had not

stayed together since 1958, and no cohabitation had been there for the last 49 years. The court granted the decree of divorce as the marriage between the parties was irretrievably broken and it was of no use to continue with such a marriage any longer. The Law Commission of India and the Supreme Court have recommended that the irretrievable break down of marriage should be made a separate ground of divorce by the legislature. No useful purpose would be served by keeping alive de jure what is dead de facto. It is possible that if Parliament does not act on this recommendation, the legislatures of some states in India may take the lead, exercising power under entry 5 of the concurrent list of the 7th schedule. The Law Commission has suggested that immediate action needs to be taken to introduce an amendment to the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to include the irretrievable breakdown of marriage as another ground for grant of divorce. For long, Christian women too had the law loaded against them. A Christian man could obtain a divorce based on adultery; a woman had to establish an additional charge like desertion or cruelty under the Indian Divorce Act of 1869 as well. But in 1997, cruelty, physical and mental torture was made grounds enough for a Christian woman to obtain a divorce, with the Bombay High Court recognising cruelty and desertion as independent grounds for the dissolution of Christian marriage. Divorce under the Hindu Marriage Act 1955 can be obtained on the grounds of adultery, cruelty, desertion for two years, conversion to religion, an unsound mind, suffering from venereal disease or leprosy, or if the spouse has renounced the world and has not been heard from for seven years. Sir Ameer Ahmed, the founder of Islamic Studies at Oxford University, has described Islam as one of the most fascinating growth phenomena he has ever seen. "Peace and submission" is how the word "Islam" is translated by Muslims to mean "submit to God's will". In this case, the Court refused to read Article 15 personal laws. About personal laws, the courts will have to hold that only one uniform code of laws, covering all castes, creeds, or communities, is constitutional. "To say so is to deny it." A court refused to invalidate two personal laws that violated fundamental rights. However, the Bombay High Court acted following the UCC's spirit by upholding progressive Hindu social legislation. Now we'll look at some cases where the courts have ruled. In these cases, the courts upheld the secular laws' universality. After her husband's second marriage, **Shahulameedu v. Subaida Beevi** granted a bigamous Muslim wife the protections of Section 488 of the Criminal Procedure Code. Even when motivated by a high public policy, Section 488 of the Criminal Procedure Code has made such a law. An Indian court would be improper to exclude any section of the community born and bred on Indian earth from the benefits of that law," J. Krishna Iyer told a Muslim woman. The J & K courts Many of Jammu and Kashmir's courts have enforced customs and their supremacy over Muslim personal law. According to the revenue courts, "inheritance to a landed estate is governed by custom and not Shariat." Muslims inherit agricultural land under customary law, not Shariat, in Kashmir. The revenue courts have decided that custom, not personal law, is the first "rule of decision" in agricultural land inheritance Because agriculture is magnetic, females cannot inherit the land. This is not Muslim personal law. The Muslim Women's (Protection of Rights on Divorce) Act, 1986, was enacted by the Rajeev Gandhi government. Politics drove the government's decision. denouncing the state's actions. For Muslims, the Shah Bano judgement enraged them A Muslim divorcee was denied relief under section 125 of the criminal procedure code. shah bano's decision seemed to challenge an old rule of islamic law interpretation (shariat) the muslim masses and intelligentsia were kept out of power and had little say in decisions made by autocrats.

CONCLUSION:

The Court stressed the need for an Indian uniform civil code. No other person has been denied the freedom of conscience and the propagation of religion. The pro-aggressive outlook and wider approach of Islamic law cannot be squeezed and narrowed by unscrupulous litigants. The time has come to place all personal laws of all religions under a stringent check and discard all laws that are found to violate the Constitution. There is an urgent need for a blueprint for a uniform civil code based on gender justice. India needs a unified family law code under the umbrella of all its constituent religions. The Judiciary, through its various judgements time and again, has always upheld gender justice in cases about the Uniform Civil Code. In the case of **Mohammad Ahmed Khan v Shah Bano Begum (1985) 2 SCC 556**, popularly known as the Shah-Bano case, the Supreme Court held that it is. In **Sarla Mudgal (Smt), President, Kalyani and others v. Union of India and Others (AIR 1995 SC 1531),** the Apex Court directed the government to implement the directive of Article 44. The decision was criticised because the apex court had virtually abdicated its role as a sentinel in protecting the principles of equality. In September 2001, a poor Muslim woman sought changes to the divorce provisions in Muslim law. The Supreme Court asked her to approach Parliament, which refused to entertain the petition. As a result, we find many regional variations affected by the state legislatures in the Hindu Laws. The need for a uniform civil code has been emphasised in almost all recent cases. The state amendments have made many inroads into the Hindu laws, damaging the uniformity of these laws. Irretrievable breakdown of marriage and divorce by mutual consent should be recognised as grounds for dissolving the marriage of spouses regardless of their religious beliefs. The court held that the irretrievable breakdown of marriage was prevalent as a ground for divorce in many other countries. The court recommended that the Union of India seriously consider bringing an amendment to the Hindu Marriage Act, 1955. Parliament could reintroduce the Marriage Laws (Amendment) Bill, 1981 (No.23 of 1981) as the bill was allowed to lapse. Divorce under the Hindu Marriage Act 1955 can be obtained on the grounds of adultery, cruelty, desertion for two years, conversion to religion, suffering from venereal disease or leprosy, or if the spouse has renounced the world. A uniform family law code based on the principles of all of India's constituent faiths is required. A single code must be formed for citizens of all religious origins to promote national unity and solidarity.

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