

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 23: DPSP and Uniform Civil Code

Greetings to all of you. We are now moving to module 4 where we shall be discussing the approach of the three branches of the state, the legislature, the executive and the judiciary towards the directive principle. In this we shall be identifying some key provisions of DPSP and examine the role of the three institutions of the state on such provisions. So, in today's session we shall look at the very significance of the uniform civil code under the Indian Constitution and how this subject matter has been addressed through the legislative processes or judicial interventions in last 7 decades or so. So, in today's session we aim to cover that what is this idea of uniform civil code, what was debated in the Constituent Assembly on this subject matter. How the judiciary has responded on the uniform civil code as and when the judiciary has been asked to look into the subject matters disputes subject matter disputes of marriage, inheritance, maintenance. So, what the court has said in such references on the uniform civil code. And we shall also look at that how the entire discussion on the uniform civil code has evolved in last 7 decades and for that we have divided the study under 3 phases. Now, the very idea of a uniform civil code is based on the very premise that certain spheres of personal matters must be governed through a law that treats every individual equally. Under the uniform civil code idea, it is strongly advocated that the religious distinction and belief should not be allowed to govern certain affairs of an individual which has got a very visible impact on the self-development of an individual, the relationship between individual and the society and the possible role of the state to address such religious issues and the very expectation of enacting the law which shall treat individuals on equal parameters on certain subjects.

Article 44 of the Indian Constitution is based on this premise where it is suggested that there shall be a common set of laws that governs personal matters such as marriage, inheritance, divorce and adoption for all citizens regardless of the religious belief or faith of those

individuals. Now, the issue to the major issue with regard to the implementation of the of the uniform civil code is a conflict between personal laws which is primarily rooted in religious doctrines and the very promise of the state to establish a secular polity and in that promise the role which law and legal system shall play in establishing such polity. In India as we know is a country of multiple faiths, is a country known for religious diversities, known for wide ranging customs and traditions. Individuals they get governed on the aspects of marriage, adoption, inheritance based on the individuals faith. In order to address the issues of incoherence in the system being followed in relation to the family matters in relation to matters of inheritance or adoption it was strongly advocated that there shall be a law which shall equally govern every individual on the subject matters and such laws shall be enacted for the very purpose of following egalitarian system in the country.

Now, this very premise is easier to say, but difficult to implement, because the very promise of having a set of laws to be applied equally on every individual on personal matters very obviously is going to get the strong resistance from religious leaders or institutions. And that is the reason where you find that the one who objects the codification of personal having the same parameters for every individual that such laws are in nature of violation of the religious freedom guaranteed to individual or goes contrary to the cultural autonomy of various communities. Whereas those who advocate for the uniform civil code they say that uniform civil code is much desirable step towards fostering equality for establishing egalitarian system and also to address the issue of unjust practices being followed in the name of religious belief.

So, uniform civil code embodies the conflict or the tension between tradition and modernity. It is about individual rights particularly the right to religious freedom on the one hand and on the other hand it is about the very effort to attain or acquire national identity or collective identity. When you look at the structuring in the Constitution you find there has been debated in the Constituent Assembly as Constituent Assembly and the discussion in the Constituent Assembly was very critical and vehemently presented from two diametrically opposite perspectives. The one who advocated for codifying the personal law by naming it as an uniform civil code, stressed on the need of such code to bring in unity and to fortify the secular character of the nation.

And the one who objected to the codification said that it is a direct impingement upon religious freedom which is a right guaranteed. Some of the members have been very categorical in objecting to the proposal of codifying personal laws. Mr. Mohammad Ismail Khan moved an

amendment to Draft Article 35 where he suggested that that the adoption of the personal law shall be not made obligatory. He suggests that let a proviso be added we shall 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." Here he argues that that right of a community to follow its personal law is a right given as a fundamental right.

It has been made justiciable and thus this kind of concession must be given to the individuals or the groups who are governed as per their personal laws. So, primarily it was argued that the very argument to introduce uniform civil code as one of the aim under the Constitution is in conflict with the right to religious freedom. And very presence of such provision would legitimize the action of the state which otherwise amounts to violation of the right granted to individual to pursuit once religious belief. Mr. Mahboob Ali Baig, also suggested an amendment on a similar line where he suggested that a proviso to be added as: "Provided that nothing in this article shall affect the personal law of the citizen." While there was voices to oppose uniform civil code, this proposition also attracted very strong support from some of the prominent members of the Assembly, because the members were

that fragmented unequal positioning of individuals on the matter of personal law would not go well for the development of the country. It would not really be a good sign for creating a sort of national identity and a strengthening unity of the country. So, Mr. KM Munshi argued in favor of the code by saying that "The whole object of this article is that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country." Supported by Mr. Alladi Krishnaswami Ayyar who argued that this article actually aims at amity. It does not destroy amity. Because when the Constitution was being made, when the process was on the country witnessed partition on the religious lines and thus the framers were very clear that there is a dire need to address the role of a religion in the affairs of individual. Dr. Ambedkar also supported the very idea of codification of uniform law on personal matters. If I quote Dr. Ambedkar he says: "*I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is*

covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.”

So, he gives the references of civil matters other than personal matter where laws are already there which apply uniformly to the individuals. For example, when you look at Transfer of Property Act, which is a pre-colonial law. So, laws were already made having inform applicability. Now, this subject matter has also attracted the attention of the judges, when the matter has come before the judges either of maintenance, marriage and succession. The court has highlighted the very significance of the uniform civil code and suggested the government to take necessary steps for the codification In *State of Bombay v. Narasu Appa Mali*, (1952), suggested to be the first prominent case on the debate between personal law and fundamental rights.

The court acknowledges that the task of evolving a uniform civil court is not easy. Possibly this the court has said, because this case has come before the court within a short span of time when India got partitioned, when there were apprehensions on the issue of the state regulating religious affairs, mistrust or excessive intervention. But on a but in a very important case on maintenance and the applicability of section 125 CRPC the court in *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985), states that “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies”. Similarly, is the case when you find in reference to the Indian Divorce Act, 1869, the court says in *Jorden Diengdeh v SS Chopra*, (1985) that unsatisfactory state of affairs concerning uniform civil court is not very pleasant. Efforts must be done for making the code.

In *Sarla Mudgal v. Union of India*, (1995) again the court highlighted the very need of identifying the common parameters related to personal matters. So, that on the basis of such parameters a uniform law can be made. The court says that “Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27”. So, in this case the court highlights that matter of religion and personal law is two different thing and there is a possibility of making uniform laws on subject matters which are getting address through personal laws be it codified or un codified. Because, certain aspects of secular certain aspects of personal laws are secular in character. They are not connected with the religious belief of an individual. For example,

the relationship between two individuals getting solemnized and being called as marriage or for example, the devolution of property.

These issues are more of governing two individuals or governing set of individuals based on the very norms which are acceptable in civilized system or civilized society, which inspired by the value of equality, the value of liberty or the value of dignity. In *Pannalal Bansilal Pitti v. State of Andhra Pradesh*, (1996), the court argues that “directive principles of the Constitution themselves visualise diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go”. So, there is an apprehension raised that if such attempts were being made will be some kind of resistance and resistance would be primarily based on maintaining the diversity that such uniformity would neutralize the diversity which is the strength of this country.

John Vallamattom v. Union of India, (2003) is again a case related to succession. The court empathetically stress the need of framing the code as it was stated in *Sarala Mudgal* case. On the issue of *Juvenile Justice (Care and Protection of Children) Act 2000*, the court has said in *Shabnam Hashmi v. Union of India*, (2014) that this law has to be seen as a secular law and to be made equally applicable to the followers of every religion, because this kind of laws are to be seen laws made in pursuant to Article 44 of the Constitution they are religious neutral laws. When I try to understand the very issue of addressing the codification process as envisaged under Article 44.

We divide the reading in three phases. First phase (1952-1955): right after the independence where attempts were being made to bring in reform in personal laws of majority community. Second phase (1985-1986): where significant judicial pronouncements were made and third phase (2015-till date) where you find that the debate on the formulation of uniform civil code got a fresh armory with the agenda of the current government. So, first phase you find that that an attempt has been made to codify Hindu customary practices where it was suggested that let there be some beginning and let the beginning start with detaching personal laws with religious affairs. Even though this experiment is done aiming a majority community, but it is a good step. Some of the members objected to it like first president, first home minister were not of the opinion were not in favor of codifying the customary practices of Hindus. Dr. Ambedkar was also unsatisfied because of the very dilution which has been done in the text of the law.

But then finally, 1956 we got a law even though Dr. Ambedkar did not approve the same and objected to it. For expressing his disagreement, he resigned from the cabinet. But what we experience is that the four laws were enacted on the matter of marriage, adoption, succession to codify personal laws of Hindus. Reforming Muslim personal laws was not attended considering the turbulent situation of that time considering the very fact that there was a still the issue of mistrust issue issue of the very horrible experiences of the partition it was decided to not to touch upon the matter of Muslim personal law until the community demand for such codification. Because you said that it should not be seen as majoritarian are imposing the reform on minority particularly in the background of the partition and the sufferings connected with the such partition. So, if you find that personal law of Hindus were codified, but then because of the non codification of personal laws of other communities, the question was raised on the possible conflict between the personal laws followed in the name of religion and secular practices secular practices of maintenance divorce succession and this is what was highlighted in Shah Bano case. The third phase, you would find where on the issue of getting divorce in the Muslim community when the court has been asked to look into the issue of the very practice of triple talaq in Shayara Bano v. Union of India. The court highlighted on the very legality of such practices and decided against such practice along with that the court also opined that uniform civil court may give a solution to sufferings particularly to women. And this very advisory from the judiciary coupled with the political agenda of the then elected government played a significant role on instrumental role in bringing the codification of the personal laws at the center of the political debate and discourse in this country. Because activists started approaching the judiciary for getting necessary direction

For example, in Farha Faiz v. Union of India or in Mayra @ Vaishnvi v. State of Uttar Pradesh, where the issues were being taken up. Then the Law Commission in the Consultation Paper, on reform of family law also suggested amendments to codified laws. But then 21st Commission which has got a tenure between 2015 to 2018 refrain from making a very determinative statement on the need of the uniform civil code. It said that UCC is neither necessarily not desirable at this stage. If I read it says *“While diversity of Indian culture can and should be celebrated, specific groups, or weaker sections of the society must not be disadvantaged in the process. Resolution of this conflict does not mean abolition of difference. This Commission has therefore dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage. Most countries are*

now moving towards recognition of difference, and the mere existence of difference does not imply discrimination, but is indicative of a robust democracy”.

The 22nd Law Commission took up the matter of uniform civil code again. The Commission decided to solicit the views and ideas of the public along with the recognized religious organization and a public notice was issued. The individuals, organizations they have submitted their views on the issue of implementing Article 44. It has been witnessed that some of the states have taken up the very task of enacting the uniform civil law as the subject matter is placed in the Concurrent List Entry 5 and both the Centre and the States have got a competence to make law on personal matters, family, marriage, divorce, succession. Uttarakhand enacted the law - Uniform Civil Code, Uttarakhand, 2024, where the law applies informally to everyone except to Scheduled Tribes. A comprehensive law has been made, these are the salient features of the law, where it says that solemnization of marriage shall take place as per the practices of the parties or it can be done through a neutral process of getting it registered, but the law has made the registration of marriage compulsory. It has prohibited polygamy it has prohibited child marriage it has come up with a provision of permanent alimony and maintenance and it has also standardized the grounds of divorce under the law which are to be equally applicable regardless of the faiths of individual.

So, in conclusion one may say that the very argument on codifying uniform civil code is based on two competing interests, secularism on the one hand and maintaining religious autonomy on the other hand. Time to time the judiciary has reminded the lawmakers on the very responsibility to enact a law on the subject in order to focus on the subject matter of national unity and not to allow discriminatory personal laws to get implemented in the name of religious faith or religious belief. Along with the judiciary, Law Commission has also taken initiative where an attempt has been made to take everyone on board before providing a framework of a law at the national level.

References for this session are here.

Thank you very much.