



AN EXPLORATION OF CONSTITUTIONAL ASSEMBLY DEBATE ON UNIFORM CIVIL CODE

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ABSTRACT :

Recently Supreme Court of India has declared the practice of Triple Talaq as unconstitutional by 3:2 majority. Justices Kurian Joseph, U.U Lalit and RF Nariman delivered the majority Judgment. Chief Justice Khehar and Justice Abdul Nazeer dissented.

KEYWORDS : issue of uniform civil code , constitutional maker , fundamental rights .

INTRODUCTION

This once again has woke up the issue of uniform civil code. Since several decades the Supreme Court has been kept us felling about the necessity of the same. But due to certain political rezones it is difficult to implement the policy of uniform civil code and therefore it appeals to analyze about the intension of the constitutional maker in including the provision of uniform civil code and as such the prominent glimpses.

GLIMPSES FROM CONSTITUTIONAL ASSEMBLY DEBATE ON UNIFORM CIVIL CODE.

MR. MOHAMMED ISMAIL SAHIB (MADRAS)

"Sir, I move that the following proviso be added to Article 35 (Present Article. 44).

"Provided that any group, section or community of people shall not be obliged to give up its own law in case if it has such a law. The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justifiable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time. "

SHRI SURESHCHANDRA MAJUMDAR (WEST BENGAL)

"On a point of order, what is being said now is a direct negation of Article 35 and cannot be taken as an amendment. The Honorable member can only speak in opposition. "

MR. MOHD. ISMAIL SAHIB (MADRAS)

"Sir, what I submit is that for creating and augmenting harmony in this land it is not necessary to compel people to give up their personal law. I request to accept the amendment."

MR. NIZAMUDDIN AHMED

"Sir, I beg to move."

"That to article 35, the following proviso be added; namely

"Provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law." "In moving this, I do not wish to confine any remarks to the inconvenience felt by the Muslim community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws. Certain Civil Laws inseparably connected with religious beliefs and practices. I believe that in framing a Uniform Civil Code, these religious laws should be kept out of its way. There are several reasons

which underlie this amendment. One of them is perhaps it clashes with Article 19 of the draft constitution. In article 19, it is provided that, subject to public order, morality and health, and to the other provision of this part all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. In fact this is not fundamental that the drafting committee has very rightly introduced this in this place. Then in the clause (2) of the same article It has been further provided by way of limitation of the right that nothing in this article shall affect the operation of any existing law or preclude the state from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. I can quite see that there may be many practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2)."

"I submit Sir, there are certain aspect of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of the British rule, they did not interfere with certain fundamental personal laws. They have enacted the "Registration Act", "The Limitation Act", "The Civil Procedure Code", "The Criminal Procedure Code", "The Penal Code", "The Evidence Act", "The Transfer of Property Act" and "Various other Acts". They have been imposed gradually as occasion arose and they were intended to make the laws in form although they clash with the personal laws of a particular community. But take the case of marriage practices and the laws of inheritance. They have never interfered with them." "As I have already submitted the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent."

MR. MAHBOOB ALI BAIG SAHIB BAHADUR,

"Sir, I move that following proviso be added to Article 35."

"Provided that nothing in this article shall affect the personal laws of the citizens".

"My view of article 35 is that the whole Civil Code, do not cover the strictly personal law of the citizen. The civil code covers laws of this kind, laws of property, transfer of property, laws of contract, laws of evidence etc. The law as observed by a particular religious community is not covered by Article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason, the framers of the article have got in their minds that the personal law of the citizen is also covered by the expression civil code, I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as Muslim are concerned their laws of succession, inheritance marriage and divorce are completely dependent upon their religion."

MAHBOOB ALI BAIG SAHIB BAHADUR

"Sir, I know that Mr. Ayyangar has always queer ideas about the laws of other communities. It is interpreted as contract, while the marriage amongst the Hindus is a samskara and that among Europeans it is matter of Status. I know that very well, but this contract is enjoined on the Muslims by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this Jaw. has been practiced by Muslims and recognized by all authorities in all states. If today Mr. Ayyangar is going to say that some after method of marriage is going to be introduced, we repose to abide by it, because it is not according to our religion.. It is not according to our code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated lightly."

SHRI L. KRISHNASWAMI BHARTI,

"It sought to be done only by consent of all concerned."

MR. VICE PRESIDENT

"Mr. Bharti, the majority community has always been so very indulgent that I would ask you as a personal favor to give the fullest possible freedom to our Muslim brother to express their views. I would ask you to exercise patience for a little while. I knew they feel very strongly on this matter."

SHRI L. KRISHNASWAMY BHARTI

"My point was Sir, that it was not an attempt of imposition if anything is done, it will be done only with the consent of all concerned and the Honorable member need not only labour that point."

MAHBOOB ALI BAIG SAHIB BAHADUR,

"Now Sir, people seem to have very strong ideas about secular state, people seem to think that under a secular state, there must be a common law observed by citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular state. In a secular state, citizens belonging to different communities must have the freedom to practice their own religion observe their life and their personal laws should be applied to them. Therefore, I hope the framers of article have not in their minds that the personal laws of the people do cover the words 'Civil Code' with this observation, I move that it may be made clear by this proviso."

B. POCKER SAHIB BAHADUR

"Mr. Vice President, Sir, I support the motion which has already been moved by Mr. Mohd. Ismail Sahib, to this effect 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".

Sir, if the framers of this article say that the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a dishonor to call it a democracy if the majority rides over the rights of the minorities. Therefore, I would submit to you and all the members of this house to take very serious note of this article."

VICE PRESIDENT

"That may be taken up of the proper time,

MR. HUSSAIN IMAM (BIHAR)

"Mr. Vice President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the centre in matters of succession, marriage, divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. The apprehension felt by the members of the minority is very real. Secular state does not mean that it is antireligious state. It means, that it is not irreligious but non-religious and as such this is a word of difference between irreligious. I, therefore, suggest that it would be a good policy for the members of the drafting committee to come forward with such safeguards in this provision as well as meet the apprehension genuinely felt which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find out a solution for this."

SHRI K. M. MUNSHI (BOMBAY GENERAL)

"Mr. Vice President, I beg to submit a few considerations. This particular clause which is now before the house is not brought for discussion for the first time. It has been discussed in several committees and at several places before it came to the house. The ground that is now put forward against it is firstly that it infringes the Fundamental Right mentioned in article 19 and secondly it is tyrannous to the minority. As regards article 19 the house accepted it and made it quite clear that, Nothing in this article shall affect the operation of the existing law or preclude the state from making any law. Therefore house has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would allow the parliament to make law about it without infringing the fundamental right of minority."

SHRI ALLADI KRISHNA SWAMY AYYAR (MADRAS)

"Mr. Vice President, after the full exposition of my friend the Honorable Mr. Munshi, it is not necessary to cover the whole gourd. But it well to understand whether there can be any objection to article as it runs."

"The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

"A civil code as has been pointed out, runs into every department of civil relations, to the law of contract, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that state, shall endeavour to secure a uniform civil code through out the territory of India?"

"The second objection was that religion was in danger, that the communities cannot live in minority if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are source of the factors which contribute to the differences among the different people of India. I, therefore, submit that the house may unanimously pass the article which has been placed before the members after due consideration."

The Honorable Dr. B. R. Ambedkar,

"Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether the country should have a civil code or it should not. That is the matter, which I think, has been dealt with sufficiently for the occasion by my friend Mr. Alladi Ayyar.

When the amendment to certain fundamental rights are moved, it would be possible for me to make a full state may on this subject and I therefore do not propose to deal with it here.

My second observation is to give them assurance. I quite realize their feelings in the matter, but I think they have read rather too much with article 35 (Now 44), which merely proposes that the state shall endeavour to secure a civil code for the citizens of this country. It does not say that after the code is framed that state shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the code shall apply to only those who made a declaration that they are prepared to be bound by it so that at the initial stage the application of the code may be purely voluntary.

It would be perfectly possible for parliament to introduce a provision of that sort, so that fear my friends have expressed here will be altogether nullified. I therefore, submit that there is no substance in these amendments and I oppose them."

"The motion was adapted and article 35 was added to the constitution Thus, The Article 35 (Now 44) stands part of the Constitution".

Thus, having explored the whole situation it is humbly submitted that although constituent assembly, in spite of strong opposition from some section of the society had finally passed the resolution pertaining to uniform civil code and enshrined it in the constitution as one of the Directive Principle of State Policy under Article 44, but thereafter no efforts were made to transform it into practical reality. The concept of the UCC has become just a show piece in the book. Although the state is reluctant to impose uniform civil code on diverse people, the minimum it should do is to generate those conditions that will make a progressive and broad minded outlook of the people. Education and social enlightenment obviously can play a vital role in this regard. It is duty of the state to raise the social, educational and economic standard of the ignorant masses which will ultimately make them aware of their rights and obligation.

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