

UNIFORM CIVIL CODE – A NEED OF THE HOUR

Abstract:

This paper primarily talks about the concept of the Uniform Civil Code and its legal dimensions. In this paper, the basic essence of the Uniform Civil Code is examined and what does it mean and its legal perspective and theories. This paper commences with the introduction to the Uniform Civil Code in which it defines the concept of the Uniform Civil Code and also discusses about its origin or where it has derived from. It further discusses the need or desire for the Uniform Civil Code under this part itself, that whether the Uniform Civil Code should be implemented or not and what are the pros and cons of the same. As we further proceed towards the approach of the research paper, this paper discusses about the relationship of the Uniform Civil Code with the Secularism and discusses how the implementation of the Uniform Civil Code may lead to the disintegration of the nation and how this will lead to the breakdown of the peace and harmony among the people.

Then it further discusses about the Uniform Civil Code and the constitutional guarantees. This paper also talks about the judgements and the take of the Indian Judiciary towards the Uniform Civil Code. Last but not the least, this paper concludes with certain sets of recommendations and conclusions.

Keywords: Uniform Civil Code, Personal Laws, Secularism, Constitution, Judiciary

INTRODUCTION:

India is a land of many religions like Hinduism, Islam, Buddhism, Jainism, Zoroastrianism, Christianity, Sikhism etc. There is no country more diversified than India. India follows secularism. It is enshrined in our Constitution and was included in the preamble after the 42nd Amendment in 1976. The term “secular” means that the State will not follow any particular religion and neither will the people be discriminated because of the religion that they follow. This means that the people will be given the freedom to follow any religion. This is also enshrined in our Constitution as a fundamental right under Article 25¹ and 26².

¹ **Art. 25. Freedom of conscience and free profession, practice and propagation of religion:**

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally

The framers of the constitution with a view to achieve uniformity of law incorporated Article 44 that runs as follows: *“The State shall endeavor to secure for all citizens a uniform civil code throughout the territory of India.”*³ Also the preamble of Indian constitution is the mirror of constitutional spirit. It emphasizes to constitute India as a Sovereign, Secular, Democratic, Republic nation. It contains those elements which are the soul of the Constitution. It ensures Justice, liberty, and equality to the citizens and thereby promote solidarity while assuring dignity of the individual and unity and integrity of the nation. Uniform Civil Code, a common code that connotes the idea of similar set of civil rules regardless of their religion, caste, sex etc. has now-a-days propounded a high-powered controversy in India. It entreats to replace all the personal laws based on customs of every religion with a common set governing each citizen. So, in this context the importance of uniform civil code can be visualized. The makers of the Indian Constitution were convinced that certain amount of modernization is required before uniform civil code is imposed upon the citizens.

As a new principle evolves and comes into the knowledge of the people several questions arise and criticisms pave their way. In unification of the personal laws, an important question that arose is what will be the ingredients of the Uniform Civil Code. Since, the personal laws of each religion contain separate provisions, their unification will bring not only resentment but also enmity in the public towards one another, therefore the Uniform Civil Code will need to bring in such laws that strike a balance between the protection of the fundamental rights and the religious principles of the different communities that exist in the country. Issues such as marriage, divorce, maintenance etc. can be matters of secular nature and law can regulate them.

HISTORY:

After India became independent Uniform Civil Code was a highly debated issue in the Parliament of India in the year 1948. On one side great personalities like Dr. B.R. Ambedkar, supported by other eminent nationalists like Gopal Swamy Iyenger, Anantasayam Iyengar, KM

entitled to freedom of conscience and the right freely to profess, practise and propagate religion

² **Art. 26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right:**

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law

³ V.N. Shukla, The Constitution of India, 308 (2001)

Munshiji and others were in favour of the Uniform Civil Code whereas it was strongly opposed by Muslim fundamentalists like Pocker Sahib and people from other religions. The argument on UCC was heated when Constituent Assembly raised the idea of Uniform Civil Code in 1947 and was incorporated as one of the directive principles of the State policy by the sub-committee on Fundamental Rights and Clause 39 of the draft directive principles of the state policy provided that the State shall endeavor to secure for the citizen a Uniform Civil Code. The feud was that the different personal laws of communities based on religion, kept India back from advancing to nationhood and the Uniform Civil Code should be guaranteed to Indian people. The Chairman of the drafting committee of the Constitution, Dr. B.R. Ambedkar, said that, "We have in this country uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the Indian Penal Code and the Criminal Procedure Code. The only province the civil law has not been able to invade so far as the marriage and succession and it is the intention of those who desire to have Article 35 as a part of Constitution so as to bring about the change."⁴ Earlier, during the rule of Congress party, it had assured Muslims to practice their Islamic personal Laws and thus the architects of the Constitution, compromised by including the enactment of a Uniform Civil Code under the Directive Principles of State Policy in Article-44 of the Constitution, i.e. it will be binding on the State to adopt the Uniform Civil Code system rather it will only act as persuasive legal provision. Nehru said in 1954 in the Parliament, "I do not think at the present time the time is ripe for me to try to push it (Uniform Civil Code) through."⁵ Since the Uniform Civil Code was a politically sensitive issue, the founding fathers of the Constitution arrived at an honorable compromise by placing it under Article 44 as a directive principle of state.

In the year 1955 Prime Minister Jawaharlal Nehru thought of codifying personal laws but it was obstructed by the orthodox elements, as it promoted monogamy, divorce and equal division of property between son, daughter and widow, adoption, maintenance to wife etc. but later Nehru was convinced and brought in the Hindu Code Bill in the same year. The major criticisms to the Code were that it did not touch upon the Muslim community and it was here that Nehru's idea of

⁴ Lok Sabha Secretariat, Constituent Assembly Debates Vol. III, 551, 23 Nov. 1948.

⁵ Virendra Kumar, "Towards a Uniform Civil Code: Judicial Vicissitudes [from Sarla Mudgal (1995) to Lily Thomas (2000)]" 42 JILI 315 (2000).

secularism suffered a certain extent of lacuna. Therefore, a lesser version of Hindu Code was passed after a long opposition in the parliament between 1955-56 sessions. The BJP was the first party to promise the UCC if elected into power. A uniform civil code and personal laws do not represent an either/or choice and that the one does not mandate the obliteration of the other.

Uniform Civil Code in Goa:

Goa is the only state in India that has uniform civil code regardless of religion, gender, caste. Goa has a common family law. Thus Goa is the only Indian state that has a uniform civil code. In Goa Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession. When the Goa became the part of union territory in 1961 by the virtue of the Goa Daman and Diu administration act 1962 the parliament authorized the Portuguese civil code of 1867 to Goa and shall be amended and repealed by the competent legislature.

In Goa marriages is a contract between two people of different sex with the purpose of living together and constitute the legitimate family which is register before the office of civil registrar. And the particular rules and regulation has to be followed by the parties after that they can live together and start their life but there are certain restrictions according to which these categories of person are prohibited to perform marriage for example: any spouse convicted of committing or abetting the murder of other spouse shall not marry.

JUDICIAL INTERPRETATION WITH RESPECT TO UNIFORM CIVIL CODE:

The Writ petition by Shayara Bano in the Supreme Court questioning the legitimacy of the “triple talaq” has brought into the general population circle the open deliberation on the uniform civil code for all of India. In such arguments, the Uniform Civil Code is set as a solitary answer for the various issues of the numerous personal laws in India. It is a thought that has received the backings of the courts, numerous associations working for women’s rights. The instance of *Mohd. Ahmed Khan v. Shah Bano Begum and Others*⁶ might be the first case where the Supreme Court exhorted the Central Government to enact a “uniform civil code”. In 1985, the Supreme Court decided for Shah Bano, who had moved the apex court looking for maintenance under

⁶ (1985) 2 SCC 556.

Section 125 of the Code of Criminal Procedure after her husband pronounced talaq against her. The then Chief Justice, Y. V. Chandrachud, observed that a uniform civil code can help the cause for national coordination by method for expelling unequal loyalties to law. The Court directed the Parliament to outline a common civil code.

Following a decade, in *Sarla Mudgal, President, Kalyani and others v. Union of India and others*⁷ the Supreme Court has coordinated the then Prime Minister P. V. Narsimha Rao to investigate Article 44 of the Constitution which urges the State to secure a uniform civil code which, as per the court is basic for both protection of the abused and advancement of national solidarity and respectability. The Court coordinated the Union Government through the Secretary to Ministry of law and Justice, to record an affirmation showing the means taken and endeavours made, by the Government, towards securing a uniform civil code for the citizens of India. What is more, the support offered was to keep Hindu men from changing over to Islam with the end goal of getting a second wife. In *Sarla Mudgal* case, the court explicitly holds up the Hindu Code as a model on the premise of which the “uniform civil code” should be drawn up.

In *Danial Latifi and another v. Union of India*⁸, the Court upheld the validity of Sections 3 and 4 of the Muslim Women (Protection of rights on Divorce) Act, 1986, as not being violative of articles 14, 15 and 21 of the Constitution of India. Under section 3 of the Muslim Women (Protection of rights on Divorce) Act, 1986, a Muslim husband is liable to make reasonable and fair provision for future of divorced wife which includes maintenance also, so she is not entitled to claim maintenance under section 125 of Cr.P.C. Under section 4 of the Act, divorced Muslim woman unable to maintain herself after iddat period can proceed against her relatives or wakf Board for maintenance.

The above cases demonstrates the path forward even as political debate on the Uniform Civil Code stays stuck in the old contentions between conservative voices that need to utilize it as a weapon to wipe out minority personal laws now that the Hindu code has needed to fall in line and minorities who consider it to be an endeavour to ride over their entitlement to secure their religious principles and social uniqueness.

⁷ AIR 1995 SC 1531

⁸ (2001) 7 SCC 740

CONCLUSION & SUGGESTIONS:

A Uniform Civil Code sets the precedent for attaining true equality and egalitarianism. It will help in integrating India more than it has ever been since independence. It is not just a matter of gender justice, it is also a question of how a nation accommodates its own diversity. In India, freedom of religion exists with other rights like equality and non-discrimination. Instead of reaching in indiscriminately or leaving cultures entirely to themselves, India's liberal multiculturalism strikes a balance. It has been more ready to reform majority practices, while offering protections to vulnerable individuals within minority groups.

The UCC is necessary because personal laws are inconsistent with our declaration "To constitute India into Socialist Secular Democratic Republic" and it is almost impossible to achieve the golden goals as set out in the Preamble of the Constitution without the UCC. The Government should draft a Common Civil Code with the opinion of Law Commission, National Human Right Commission, and National Commission for Women, Former Attorney Generals, Solicitor Generals and Judges of the Supreme Court and must implement the UCC in spirit of the Article-44 of the Constitution on priority. While our economic growth has been the highest in the world, our social growth has not happened at all. Socially and culturally, we have degraded to a point where we are neither modern nor traditional. Bringing the UCC would reduce and help in simplifying many technicalities and loopholes, present in existing personal laws. The concept of one nation, one law is more than a neat hashtag and goes back to the drafting of the Constitution. Every modern nation has it, and it is time that we have it too and achieve the grand vision which was envisioned at the time of framing our constitution.

It is also clear that Uniform Civil Code is not violative of Article 25 and 26 of the Constitution. It should rather be a new law and not the blend of personal laws. The problem in blending personal laws is that there is every chance for a bias to arise. The Parliament should introduce a new code similar to the Special Marriage Act of 1954 which does not extend any favours or bias towards any religion.

What the people must understand is that religion and laws are two different concepts. This is because the Constitution allows the people to follow their religion which will continue despite the enactment of a uniform code. The uniform code will nowhere curb their right to follow or profess their religion. For example, the religious scriptures prescribe punishments for crimes but the Indian Penal Code, 1860 is the only penal laws that are followed in India. Thus, it is high

time that people start viewing religion and law as two different concepts and focus on the empowerment of all class of people. There is an urgent need to bring in uniform laws in India.