

A CRITICAL ANALYSIS ON UNIFORM CIVIL CODE - NEED OR MYTH

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ABSTRACT

This paper talks about the concept and implementation of Uniform Civil Code(UCC) also the need and myth of the UCC have been discussed. The main idea behind enforcing Article 44 of the Indian Constitution is that UCC shall strengthen the core of the country by bringing in unity and integrity, as the country shall also reject all personal laws of different communities and there will be implementation Gender equality and equality between religious groups. The article then looks at how the issue of gender inequality arose in the past and how it still exists within Hindu personal law as well as Muslim personal law. Article 44 of the National Policy Principles Directive of the Indian Constitution states that "The State shall endeavour to ensure uniform civil law for its citizens throughout the sovereign territory of India." The main purpose of this study is to understand the detailed concepts of the Uniform Civil Code. i.e., Its beginnings, current developments, advantages and disadvantages, and the role of the judiciary. This Paper talks about the cases and its judgement by the court towards UCC. The basic information for the research is collected from the secondary data via paper, several journals, books and articles were referred and taken into consideration. The Internet has also been a support in this process. This paper is a result of Doctrinal Research Methodology. In this end this paper winds up with the suggestions and conclusions.

Keywords:- Uniform Civil Code, integrity, Personnel Law, Contemporary, discrimination.

INTRODUCTION

The Uniform Civil Code is defined under Article 44 of the State Policy Principles of the Indian Constitution, also known as the One Country One Law. The purpose of Article 44¹ is to strengthen the goal of a "secular democratic republic" enshrined in the Preamble to the Constitution. Dr.B.R Ambedkar stated in the draft constitution that the UCC is desirable but should remain voluntary for the time being, and therefore Article 35 of the draft constitution was incorporated into the draft constitution of India as part of the State Policy Principles added to Part IV in Article 44. This was included in the constitution as an aspect to be met if the state accepted it and social acceptance of the UCC was achieved. Dr. B.R Ambedkar said in his speech to the Constituent Assembly, "When a state comes to power, no one should be afraid to immediately use it in ways that Muslims, Christians, or other communities may find offensive. No," he said. I think it would be a mad government to do that.

As envisioned by Ambedkar² The UCC aims to protect vulnerable groups, including women and religious minorities, while at the same time fostering nationalist passions through solidarity. Once enacted, the code would help simplify laws that are currently fragmented based on religious beliefs, such as the Hindu Code and Sharia law. This code of law will simplify the complex laws surrounding marriage, inheritance, and adoption and make them consistent for all. Then the same civil law would apply to all citizens regardless of their faith. The UCC primarily replaces the personal laws based on the scriptures and customs of all major religious communities in India with common rules applicable to all citizens. Personal law differs from public law in that it primarily covers marriage, divorce, inheritance, adoption, and alimony. India is a country where various religions are represented such as Hinduism, Islam, Buddhism, Jainism, Christianity and Sikhism, just to name a few. India follows secularism. The term "secular"³ means that the state does not belong to any particular religion, nor does its citizens have the freedom to follow their religion. This is enshrined in Articles 25 and 26 of the Constitution as a fundamental right. There are three main contextual problems with the Unified Civil Code in modern India. They are legitimacy, majority, that is viz., Minority and Gender Equality. Controversy and debate over the Unified Civil Code in India. Common laws that apply to all communities regardless of caste, creed, religion, gender, etc. have diversified in recent years. Until now (July 2023), there is no UCC in force in India, except in Goa. In the state, a common family law, known as the Goa Civil Code or the Goa Family Law, applies to all families regardless of religion. The 21st Judiciary Commission, chaired by former Supreme Court Justice Barbir Singh Chohan, ruled that it was neither necessary nor desirable to enact a uniform civil code at this stage.

Increase in legislation dealing with personal issues in the far end of British rule forced the government to form the B N Rau Committee⁴ to codify Hindu law in 1941. The task of the Hindu Law Committee was to examine the question of the necessity of common Hindu laws. The committee, in accordance with scriptures, recommended a codified Hindu law, which would give equal rights to women. The 1937 Act was reviewed and the committee recommended a civil code of marriage and succession

¹ The purpose of article 44 is to strengthen the goal of a "secular democratic republic" enshrined in the Preamble of the Constitution.

² Ambedkar, the UCC aims to protect vulnerable groups, including women and religious minorities, while at the same time fostering nationalist passions through solidarity.

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⁴ To form the B N Rau Committee to codify Hindu law in 1941. The task of the Hindu Law Committee was to examine the question of the necessity of common Hindu laws.

for Hindus. The UCC's origins go back to colonial India, where the British government published a report in 1835. The report emphasised the need for a uniform codification of Indian law on crime, evidence and contracts, and recommended in particular to preserve personal law for Hindus and Muslims outside such codification. The increase in laws dealing with personal matters at the end of British rule forced the government to set up the B N Rau Commission to codify Hindu law in 1941. The Hindu Law Commission's mandate was to consider the question of common Hindu law needs. Following scripture, the commission recommended codified Hindu law that would give equal rights to women. A 1937 regulation became reviewed and the fee advocated a civil code on marriage and inheritance for Hindus.

RESEARCH METHODOLOGY

The researcher has done doctrinal type of research¹. This research followed secondary data collection. The researcher has also utilised commentaries, books, notes, journals, news articles, E- sources and other writing to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this Paper, so as to discern a trend in the judicial pronounced.

NEED FOR UCC IN INDIA

- Firstly, UCC² provides equal status to all citizens. It demands a common law for all its citizens rather than a differentiated set of laws based on religion, customs and laws.
- Secondly, It promotes Gender Parity and justice. The rights of women are codified and restricted through religious laws and, gender inequality has been considered as a norm in both Hinduism and Islamism.
- Thirdly, It accommodated the aspirations of the youth Population and it will integrate the nation as a whole and will impart the collective consciousness among the public, as everyone will be under the same law.
- Fourthly, It will help in reducing vote bank politics as everybody will be brought under the one law for personal matters and criminal matters.
- Lastly, The existing personal laws of all religions are based upon the upper- class patriarchal nations of the society. Thus, the codification and implementation of UCC will destroy the sanctity of the patriarchal orthodox people or will oppose it profusely.

MYTH OF UCC IN INDIA

There are few reasons why some section against UCC and in other word it can be said to be disadvantages also,

- To adhere to one's own personal laws is one of the fundamental rights³. People from different religions fear that if UCC has been implemented, it would rob their very fundamental right, right to freedom and religion.
- The personal law is a way of life hence any interference to it would change their way of life which they are following from generation to generation.
- Many communities, especially the minority communities believe that the UCC is an encroachment on their right to religious freedom. According to them, the UCC will neglect their traditions and impose rules that are mostly influenced by the major religious groups.
- Anxiousness, fear and insecurity in the minds of minorities as if it would end in depriving their religious identity.
- Practical difficulties due to diversity in India. Due to India's extremely diversified culture throughout its various religious sects, it is challenging to establish a unified set of regulations for personal matters like marriage, castes, States, etc.

REVIEW OF LITERATURE

Art. 25 covers only similar practices which are an essential and integral part of any religion. The custom of relinquishment was indeed in pre-Islamic Arabia. Composition 38(2) easily says that the State should strive to exclude any inequality. Hence, a Uniform Law will only strive to exclude the unstable status of a child espoused by a Hindu and a child espoused by anon-Hindu. [Choudhary, 2018]⁴ The authors explore a functionalist perspective and the inheritance laws of Hinduism, Islam, Christianity, the Goa Civil Code, and other significant laws. In light of this, a number of issues and suggestions are offered for its proper implementation, including how a model UCC need to be represented for effective governance. [Anish Meduri et.al ,2021]⁵ This article precises the details of the new "civil code" have not yet been established, it should probably combine the best contemporary and forward-thinking elements from all current personal laws while excluding the outmoded and antiquated ones. This implies that all citizens of India, regardless of their religion or ethnic heritage, will be subject to a single set of secular laws governing these issues. [Vanshika Kasturi ,2020]⁶ The authors of this article clarify that the Muslim women who have been adversely affected by personal laws and have petitioned the Supreme Court to preserve their constitutionally provided rights to equality and liberty are mostly to blame for the current appearance of the Uniform Civil Code problem in India's political discourse. The Union law ministry has invited the law commission to investigate how the unified civil code is being

¹ Research methodology is done in doctrinal type of research.

² Equal status, gender parity and justice, national integrity, reducing vote bank politics, personal laws.

³ Fear of different religions, change of lifestyle, minority communities, anxiousness, fear and insecurity

⁴ Author Choudary, 2018 explains on Article 25

⁵ Anish Meduri et. al, 2021 explores a functionalist perspective

⁶ Vanshika Kasturi, 2020 precises the details of the new "civil code"

implemented throughout the nation. [Pratap Naik et.al, 2019]¹The author determines that the Composition 44 of the Uniform Civil Code has been studied by the experimenter. Other than politics, this study paper examines the primary obstacles that India has when it comes to espousing a universal civil law or common particular rules for all persuasions. [Aanshi Gurjar, 2018]²According to this exploration of the journal, it's important to examine the whole debate surrounding the UCC and its apologies for its significance and its different reservations about its nature in order to determine how much attention is given to women's issues. Analysing UCC discourse on gender parity is critical for judicial and political decision-makers in the United States and elsewhere.[Shambhavi, 2017]³In this book, the author draws a comparison between the uniform civil code and the hindu and muslim personal laws. The author studies the comparison objectively and determines if the amendments to the personnel laws are adequate and if it is the need of the hour. [Chavan and kidwai,2006]⁴This book deals in depth regarding the constraints in enforcing an invariant civil law in India and why it's still a foreign conception. He speaks in detail regarding the challenges in the perpetration of the same.[Kumar,2012]⁵Denomination has been integral to India's republic, but presently, its uses and limits are being batted perceptive analysis on the query of denomination in future has been given.[Agnes,2006]⁶In this book, the author is of the opinion that the invariant civil law has been kept unattended for a long time which has made India suffer. Hence, this composition discusses the need for the same.A series of guidelines and considerations have also been proposed.[Shereet and Chodosh,2015]⁷

ROLE OF JUDICIARY

(i) Mohd.Ahmed Khan vs Shah Banu Begum (1985)⁸

It is a case related to providing alimony under Section 125 of CR.P.C. Shah Banu refused her claim for maintenance . The Supreme Court observed that it is the matter of regret that Article 44 has remained a dead letter. By reducing diverse allegiances to laws with opposing ideas, UCC will aid in the pursuit of national integration. No community is probably going to bell the cat by securing unwarranted concessions of the issue. Chief Justice Y.V. Chandrachud then said, "A Common Civil code will help the cause of national integration by removing disparate loyalty to law which have conflicting ideologies."Following the Judgment, the nationwide discussion and agitation brought the Rajiv Gandhi government under pressure of the Muslim community and hence brought in act to exempt Muslim women from purview of Section 125 of CR.P.C. Thus the new Law, The Muslim Women (Right to Protection on Divorce)Act, 1986 was brought into the cultural right of a Muslim woman for maintenance.

(ii) Sarla Mudgal vs UOI⁹

This case is related to the legitimation of Hindu Man's second marriage by converting himself to Islam. The court held that it is its offence under Section 494 of IPC .Jy are not in mood to retrieve it . He also raised the question that if 80 percent of Indians are bustice Kuldip Singh said that Article 44 is laying in cold storage for very long and rulers of the daright into a codified personal law , then what is the hindrance for GOI to bring remaining under one common civil law.

(iii) John Vallamattom versus UOI (2003)¹⁰

In this case, John , A christian priest challenged the validity of Section 118(7) of the Indian Succession Act , 1925. He argued that the Act placed an unreasonable restriction on the Christian's right to give a donation of property for charitable and religious purposes at will. The court struck down the Section stating that it is violative of Article14 of the constitution.

The Chief Justice Khare regrets that the government of India is yet to take steps to bring Uniform Civil Code in India. He expressed that a ' a common civil code will help the cause of national integration by removing the contradictions based on ideologies'.

(iv) Ahmedabad Women's Action Group v. Union of India (AIR 1997, 3 SCC 573)¹¹

The Court felt that different persuasions with long literal backgrounds could be seen as different classes under the law and the Constitution allows, to a degree, for their differing legal system. "It's a major fact that both Muslims and the Hindus in this country have their separate religious textbooks which embody their own distinctive elaboration and which are coloured by their own distinctive backgrounds. Composition 44 recognises separate and distinctive particular laws because it lays down as a directive to be achieved that within measurable time India should enjoy the honour of a common livery Civil Code applicable to all its citizens irrespective of race or religion." He quoted Gajendragadkar. in an earlier case(State of Bombay vs Narasu Appa Mali, AIR 1952 Bombay 84) who set out that, "The Constitution of India itself recognises the actuality of these particular laws in terms when it deals with the content falling under particular law in item 5 in the Concurrent List. This item deals with matters in respect of which parties in judicial proceedings were incontinently before the inception of this Constitution subject to their particular law because, in my opinion, the framers of the Constitution wanted to leave the particular laws outside the dimension of Part III of the Constitution. They must have been apprehensive that these particular laws demanded to be reformed in numerous material particulars and in fact they wanted to abolish these different particular laws and to evolve one common law.

¹ Pratap Naik et al, 2019 clarify about the Constitutional rights and equality

² Anshu Gujar, 2018 determines the composition 44 of the UCC

³ Shambhavi, 2017 analysing UCC discourse on gender parity

⁴ Chavan and Kidwai, 2016 draws a comparison between UCC and personal laws

⁵ Kumar, 2012 constraints in enforcing an invariant civil law

⁶ Agnes, 2006 denominating integral to India's republic

⁷ Shereet and Chodosh, 2015 discusses India's suffer

⁸ (i) Mohd.Ahmed Khan Vs Shah Bano Begum

⁹ (ii) Sarla Mudgal Vs UOI

¹⁰ (iii) John Vallamattom Vs UOI (2003)

¹¹ (iv) Ahmedabad Women's Action Group v. Union of India (AIR 1997, 3 SCC 573)

Yet they didn't wish that the vittles of the particular laws should be challenged by reason of the abecedarian rights guaranteed in Part III of the constitution.”

SUGGESTIONS

- The authors suggest that major mindfulness sweats are demanded to reform current particular laws. This should be initiated and accepted by the religious communities themselves. Legal intervention should be accepted only if a practice violates fundamental rights of citizens(especially women).¹
- Firstly, when UCC is enforced, the colourful freedoms on the democratical perspectives and fundamental rights will be violated as it has a large and different population and people will suffer that their freedom of religion and especially religious minority, suppose that the Uniform Civil Code takes down their right to religious freedom.²
- Secondly, Restraining the implementation of UCC gives the least chance to be involved in the private matters of the people and protects the tone interest of each and every citizen.³
- Thirdly, If the UCC's perpetration is confined, it makes the people to be united with diversities rather than the government involved in the private matters of the people.⁴
- Finally, The government should always be fair and careful with both the majority and minority groups. However, it could lead to violence and screams.⁵

Differences in personal laws in India:

⁶The rights of women regarding heritage differ grounded on their religion in India. Under the Hindu Succession Act of 1956,(which governs the rights of Hindus, Buddhists, Jains, and Sikhs) Hindu women have equal rights to inherit property from their parents and have the same subvention as Hindu men.The rights of wedded and unattached daughters are equal, and women are recognised as common legal heirs at law for ancestral property partition.Muslim women, governed by the Muslim Personal Law, are entitled to a share of their husband's property, which is moreover 1/ 8th or 1/ 4th, depending on the presence of children. Still, daughters' share is half of that of sons. Christian women admit a destined share grounded on the presence of children or other cousins. Parsi widows accept an equal share as their children, with half of the child's share going to the departed's parents if they're alive.

CONCLUSION

⁷The Uniform Civil Code has been affecting our nation in three contexts such as Political, Social and Religious. People are afraid of a universal code of conduct because it would override their traditions and replace them with rules set by the majority religious group.UCC provides equal status to all citizens. It demands a common law for all its citizens rather than a differentiated set of laws based on religion, customs and laws. It restricts the rights of women which are codified and restricted through religious laws as gender inequality has been considered as a norm in both Hinduism and Islamism. It accommodates the aspirations of the youth Population and it will integrate the nation as a whole and will impart the collective consciousness among the public , as everyone will be under the same law. It will reduce vote bank politics as everybody will be brought under the one law for personal matters and criminal matters. The particular laws of all persuasions are grounded upon the upper- class patriarchal nations of the society.Thus, the authors concluded like this, the codification and implementation of UCC will destroy the sanctity of democracy or it will oppose the division of freedoms. Thus, “Uniform Civil Code is an infraction of liberty”.

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¹ Reformation of current particular laws

² Colourful freedoms on the democratically perspectives

³ Restraining perpetration of UCC

⁴ Unity in diversities

⁵ Government should be fair and careful

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