

“Uniform Civil Code: A Detailed Analysis”

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ABSTRACT

Uniform Civil Code (UCC) also known as “One Nation- One Law” is defined in Indian Constitution under Article 44 of the Directive Principles of the State Policy which states that it is the duty of the State to secure Uniform Civil Code for the citizens throughout the country. It mainly aims to replace Personal Laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen. Personal Laws are distinguished from Public Law and it basically covers marriage, divorce, inheritance, adoption and maintenance. There are mainly three contextual issues which are related to Uniform Civil Code in Modern India. They are Legitimacy, Majority viz. Minority and Gender Equality. The main objective of this paper is to understand the detailed concept of Uniform Civil Code i.e. its beginning, contemporary developments, advantages, disadvantages and Role of Judiciary. Thus, at last in the paper, critical analysis and conclusion has been provided. In the process of making this paper, several journals, books and articles were referred and taken into consideration. Internet has also been a support in this process. Hence, this paper is a result of Doctrinal Research Methodology.

Keywords- Personal laws, State Policy, Marriage, Divorce, Inheritance, Gender Equality

INTRODUCTION

Uniform Civil Code (UCC), defined in Indian Constitution under Article 44 of the Directive Principles of the State Policy states that it is the duty of the state to secure Uniform Civil Code for the residents throughout the region of India. In other words, it stands for “One Nation- One Law”, irrespective of any religion. Uniform Civil Code mainly aims to replace personal laws dependent on the scriptures and customs of each significant religious community in India with typical arrangements of rules governing every citizen. Personal laws are distinguished from public law and it basically covers marriage, divorce, inheritance, adoption and maintenance.

WHY IN NEWS?

Uniform Civil Code has always been a topic of controversy in news. The Uniform Civil Code Bill has been introduced two times as Private Member Bill in past few months in Rajya Sabha but the opposition urged Chairman to block it. Thus, it is now expected that the government might introduce the Bill in the next Parliamentary Session.

BEGINNINGS**1. 1835: 2nd Law Commission Report**

The 2nd Law Commission Report of 1835 stressed the need for uniformity in codification of Indian Laws relating to crimes, evidences and contracts but recommended that codification should not extend to matters like the personal laws of the Hindus and Muslims which derived their authority from their respective religions.

2. 1858: Queen Victoria's Proclamation

In 1858, Queen Victoria in her proclamation promised the people of India for absolute non-interference in religious matters.

CONTEXTUAL ISSUES IN MODERN INDIA

There are mainly three contextual issues related to Uniform Civil Code in Modern India. They are-

1. Legitimacy
2. Majority viz. Minority
3. Gender Equality

1. Legitimacy

It can be argued that it was probably wise in 1858 for a foreign colonial power to stay away from areas related to religion and personal custom in the overall interest of maintaining peace. But in independent India, where sovereignty rests with the people, there is no external constraint that can prevent the Indian Government duly and successively elected to power on the principle of universal suffrage for seven decades to legislate on a common uniform personal code.

2. Majority viz. Minority

It is not only non-Hindus who may have severe objections to the promulgation of a law that will govern their most inherent beliefs and faith as well as customs and practices. There has been opposition to the principle in question amongst sections of the Hindus as well because of wide variations in customs amongst its many castes and communities.

3. Gender Equality

It is also well known that the Hindu law for a long time discriminated against women by depriving them of inheritance, remarriage and divorce. Their condition, particularly those of Hindu widows and daughters, was poor due to this and other predominant traditions.

EVENTS BEFORE AND AFTER INDEPENDENCE

Movements made by progressive sections of British-ruled India and Women's organizations led to a spate of laws passed with respect to the Hindus which were beneficial to women, such as the

Hindu Widow Remarriage Act of 1856, Married Women's Property Act of 1874, Hindu Inheritance (Removal of Disabilities) Act of 1928 and Hindu Women's Right to Property Act of 1937. The growing tide of legislation on personal issues, generated debate and controversy and required a reasoned and measured response from the government of the day.

B.N. RAU COMMITTEE OF 1941

B.N Rau Committee of 1941, officially known as the Hindu Law Committee was tasked mainly to examine the question of the necessity of common Hindu Laws. The Hindu Law Committee recommended a codified Hindu Law which would give equal rights to women in keeping with the modern trends of the society. However, it must be mentioned that its focus was primarily on reforming the Hindu Law in accordance with the scriptures on this topic but were endless; thus the Hindu Code Bill lapsed and was resubmitted only in 1952.

PASSAGE OF HINDU CODE

The provisions of the Hindu Code were passed in separate parts, namely, Hindu Marriage Bill which was passed in May 1955, Hindu Succession Act passed in June 1956, Hindu Minority and Guardianship Bill passed in August 1956 and Adoptions and Maintenance Bill passed in December 1956. To this G.R. Rajagopal said that-

“It was felt that an attempt should be made to codify the Hindu Law and if this succeeded, and way of the measures produced thereby had in themselves intrinsic merits commending them for universal application, the time would not be far off when other communities might like to follow suit and ask for reconsideration of their own law in the light of the changed situations”.

UNIFORM CIVIL CODE IN POLITICAL NARRATIVE

There were certain arguments made by the Fundamentalists against the Hindu Code. Firstly, it was argued that there is a need to protect the hallowed traditions of the Hindu Shashtras. Secondly, there was resentment from the fact that the Muslim Personal Laws remained untouched. Thirdly, measures had not been calculated so as to ascertain public opinion and were being pushed through hastily and; lastly, grant of equal property rights to women threatened the well-entrenched economic rights of the male in the society. Besides this, a section tried to suggest that the Hindu Code was, after all, a communal measure and a Uniform Civil Code should have been made instead to give effect to the secular ideals of the country.

UNIFORM CIVIL CODE IN INDIAN CONSTITUTION

Jawaharlal Nehru accepted that the Bill was incomplete. A Uniform Civil Code, for him, was essential for the country, but he hesitated in forcing it down upon any community, especially if that community was not ready. In a gesture to indicate the willingness of Parliament to consider

Uniform Civil Code at some point in time, it was decided to add the implementation of a Uniform Civil Code in Article 44 as a Directive Principle. This decision to include the Uniform Civil Code as a non-justiciable directive was opposed by progressive women members like Rajkumari Amrit Kaur and Hansa Mehta. To this, Aparna Mehta also strongly commented that-

“Failure of the Indian State to provide a Uniform Civil Code, consistent with its democratic secular and socialist declarations, further illustrates the modern state’s accommodation of the traditional interests of a patriarchal society”.

EFFORTS TOWARDS UNIFORM CIVIL CODE

Many efforts were made towards the implementation of Uniform Civil Code.

1. Special Marriage Act, 1954

The Special Marriage Act of 1954 provides for civil marriage for any citizen irrespective of religion, thus, permitting any Indian to have their marriage outside the boundaries of any religious personal law.

2. Shah Bano Case¹ of 1985

In this case, Shah Bano was refused her claim for maintenance. The Supreme Court ruled in her favour under Section 125 of Code of Criminal Procedure (CrPC), which applied to all citizens the order for maintenance of wives, children and parents. The Supreme Court further recommended that the long pending Uniform Civil Code finally enacted.

SUPREME COURT’S KEY OBSERVATIONS IN SHAH BANO CASE

The Supreme Court, in Shah Bano case, observed that it is the matter of regret that Article 44 has remained a dead letter. Uniform Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is probably going to bell the cat by making unwarranted concessions on this issue. It is the state which is charged with the duty of securing a Uniform Civil Code and unquestionably, it has the legislative competence to do so. There are difficulties involved in bringing persons of different faiths and persuasions on a common platform. But a beginning has to be made if the Constitution is to have any meaning. Piecemeal attempts of courts to bridge the gap between personal laws cannot take the plea of a common civil code. Thus, justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

AFTERMATH OF SHAH BANO CASE

After the 1984 Anti-Sikh riots, most of the minorities in India, with Muslims being the largest, feared attacks on their identity and felt the need to safeguard their culture. According to them,

¹ AIR 1985 SC 945

the judiciary recommending the Uniform Civil Code was evidence that Hindu values would be imposed over every Indian. The worst effect of this case was seen in the succumbing of the Rajiv Gandhi Government, when it passed a law nullifying the judgment through the Muslim Women (Protection of Rights in Divorce) Act, 1986, which made Section 125 of CrPC, non-operable for Muslim Women. At that time, it was strongly condemned by the Hindu Right, the Hindu Left, Muslim Liberals and Women's Organizations.

CONTEMPORARY DEVELOPMENTS

1. “Neither necessary nor desirable”: 21st Law Commission

Most nations are currently moving towards acknowledgement of distinction, and the simple presence of contrast doesn't suggest discrimination however is characteristic of hearty majority rule government.

2. “Rise of the Right”: BJP

Hindu nationalists view this issue in the light of concepts enshrined in the Hindu Code, which they say, is secular and equal to both sexes. The Bhartiya Janta Party (BJP) was the first party in the country to promise the implementation of Uniform Civil Code if it were to be elected into power.

3. “Gender Equality”: Women's Movement

UCC's importance for gender equality cannot be denied and in a country like India, where women's rights are daily contested and often denied, this is of special significance.

ADVANTAGES OF UNIFORM CIVIL CODE

1. Provide Equal Status to all Citizens

A secular democratic republic in order to provide equal status to its citizens must have a common civil and personal law irrespective of their religion, class, caste, gender, etc.

2. Promote Gender Parity

It is generally observed that in almost all religions men are granted top preferential status in the matters of succession and inheritance which results in discrimination towards women. Thus, the Uniform Civil Code will promote gender equality and will bring both men and woman at par.

3. Accommodate the aspirations of the young population

The social attitude and aspiration of the young population is shaped by universal and global principles of equality, humanity and modernity. Thus, the enactment of Uniform Civil Code will help in utilizing their full potential towards nation building.

4. Support National Integration

All citizens are treated equally before the court of law whether it is criminal laws or other civil laws (except Personal Laws). Thus, the implementation of Uniform Civil Code will grant equal set of personal laws to all, resulting in the end of politicization of issues of the

discrimination or concessions or on the other hand exceptional benefits appreciated by a specific community on the basis of their specific religious personal laws.

5. Bypass the contentious issue of reform of existing Personal Laws

The existing personal laws of all religions are based upon the upper-class patriarchal notions of the society. Thus, the codification and implementation of the Uniform Civil Code will destroy the sanctity of the patriarchal orthodox people or will oppose it profusely.

DISADVANTAGES OF UNIFORM CIVIL CODE

1. Practical difficulties due to diversity in India

It is difficult to come up with a uniform set of rules for personal issues like marriage due to tremendous diverse culture in India across the religions, sects, castes, states, etc.

2. Perception of Uniform Civil Code as encroachment on religious freedom

Many communities, especially the minority communities believe that the Uniform Civil Code is an encroachment on their right to religious freedom. According to them, the Uniform Civil Code will neglect their traditions and impose rules which will be mainly influenced by the majority religious communities.

3. Interference of State in Personal Matter

Articles 25 to 28 of Indian Constitution provide the Right to Freedom of religion. But the scope of the freedom of religion will get reduced with the codification of Uniform Civil Code.

4. Sensitive and Tough Task

The implementation of Uniform Civil Code is a sensitive and tough task as it will bring many changes like issuing judicial pronouncements that ensures gender equality, adopting expansive interpretations on marriage, maintenance, adoption and succession with a view that one community should ensure benefits from others. The task is very demanding and the government would be expected to be sensitive and unbiased while dealing with the minority and majority communities otherwise it would turn out to be more disastrous in the form of riots and communal violence.

5. Time not yet suitable for this reform

In consideration to the major opposition from Muslim community in India, there are issues related to controversies over beef, saffronization of schools and colleges, love jihad, etc. Thus, a sufficient time should be given to instill confidence in the community; otherwise, they will become more insecure and vulnerable to get attracted towards extremist ideologies.

ROLE OF JUDICIARY

In the case of ABC v The State (NCT of Delhi²), the court managed with the issue of guardianship of a Christian unwed mother without the consent of the child's father. While ruling the case in the woman's favour, the court commented-

"It would be inverse for us to underscore that our Directive Principles imagine the presence of a Uniform Civil Code, but this remains an unaddressed constitutional expectation"

Similarly, in the recent case of Jose Paulo Coutinho v Maria Luiza³, the Supreme Court held that-

"While the authors of the Constitution in Article 44 in Part IV managing with the Directive Principles of State Policy had trusted and expected that the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard".

CRITICAL ANALYSIS

With repeated exhortations by the judiciary, a strong women's movement and a majoritarian government there is a better chance of it getting through now. All India Muslim Personal Law Board (AIMPLB) is clear that it shall oppose any attempts to adopt a Uniform Civil Code, yet, the recent Triple Talaq Act found approval in most places, including Muslim Women, through clerics still protest. Thus, in an age when citizen's rights are of paramount significance, and the admitted position is to move towards a society which respects human rights irrespective of caste, religion, region and gender, an imperative to legislate on a Uniform Civil Code cannot be denied.

CONCLUSION

The implementation of Uniform Civil Code is a challenging process but is not impossible. Dr. B.R. Ambedkar's Council propounded a middle path which stated that it is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary.

² 2015 SCC OnLine SC 609

³ Civil Appeal No. 7378 of 2010