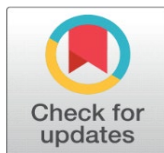


NEED OF UNIFORM CIVIL CODE AND ITS PROSPECTIVE CHALLENGES

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ABSTRACT

The debate surrounding the need for a Uniform Civil Code (UCC) in India is as old as the republic itself. This abstract explores the rationale for a UCC and the significant challenges it presents. A UCC is perceived as a means to foster legal uniformity, uphold principles of gender equality, and strengthen secularism in the diverse socio-religious landscape of India. The study also delves into the anticipated roadblocks that may hinder the formulation and implementation of such a code. Challenges that may hinder the implementation of a UCC include political resistance, cultural and religious sensitivities, and concerns about minority rights. The existence of a multi-religious and multicultural society complicates the adoption of a one-size-fits-all approach. Political parties often hesitate to champion the cause of a UCC, given its potential to alienate religious and community groups, which can affect electoral outcomes. Further complications arise due to the constitutional framework of India. While Article 44 of the Indian Constitution calls for the enactment of a UCC, Article 25 guarantees the freedom of religion. This juxtaposition creates legal complexities when attempting to reconcile the demands of a UCC with the constitutional rights of religious freedom. This article highlights the pressing need for a Uniform Civil Code in India to ensure gender justice and equality. However, it is vital to acknowledge the complex challenges posed by political, cultural, and religious factors that have thus far hindered its implementation. Striking a balance between these considerations and devising a UCC that respects individual freedoms and rights, while adhering to the principles of justice and equality, remains a formidable task.

Keywords: Uniform civil code, Article 44, Section 125 Cr.Pc, HAMA

1. INTRODUCTION

There are two types of law in any country. e.g., (a) Criminal law and (b) Civil law. Generally criminal laws are same for all the citizens of the country. For example- If I have done a murder or you have done a murder, the punishment will be the same. This is called uniformity. There are already a lot of uniform laws existing India, whose biggest example is Constitution of India. Beside this Indian Contract Act 1872, Indian Penal Code 1860, Civil Procedure Code 1909, there are many laws. There are no criminal cases in civil laws, but some disputed matters are resolved like property related matters, marriage related matters, divorce related matters etc. This uniformity's single exception is personal laws which varies from religion to religion. If we look at current situation in our country, there is no uniform law to decide the issue related to particular individual, family and society like marriage, divorce, succession, inheritance etc. All issues are governed by individual personal laws

depending on the religion of that person. Along with different religions, different tribe's groups also follow their own personal laws. Hindu personal laws are same for Hindus, Sikhs, Buddhists, Jains but then there are different laws for Muslims, Christians, Parsis, which causes a lot of problem.

Some of these laws are codified but some are based on custom, practices and judicial decision. However, this system was started with the aim of giving freedom to everyone to follow their religion and custom in a diverse country like India.

So, at this point let's understand what is Uniform Civil Code? So, article 44 of the Constitution of India, meaning Uniform Civil Code is such a law for Hindu, Muslim, Sikh, Christian, Parsi, all of them talks about bringing a uniform personal law.

Even with this much problems in 1955 Hindu personal law which is known as Hindu Personal Bill was passed. Through this Bill, major changes were made in the law related to Hindu personal law like Succession, Inheritance, women rights etc. Although these changes were made in the Hindu personal law create a better society, it was also criticized from the prospective of anti-Hindu politics of the Nehru government. Which instead of bringing equal law for all in the form of UCC, was only tampering with the personal law of Hindus.

2. WHY IS UCC IN DISCUSSION NOW?

Although the market of discussion has been heated from time to time since 1947 regarding the UCC mention in art. 44 of the Constitution of India but in recent the 22nd Law Commission of India from public & religious organizations has asked for views on UCC. Since then, the UCC has once again emerged in Indian politics and spread like wildfire.

3. HISTORY OF PERSONAL LAW IN INDIA

Let's understand the history of personal law in India. Here we understand it all the Hindu and Muslim angle and the British angle.

3.1. SHASTRA

The Hindu had Shashtra whose interpretation was done by Brahmins and executed by the king.

3.2. SHARIA LAW

Similarly, the Muslim had Sharia law which was interpreted by the Kazi's and the Nawabs executed it.

3.3. EAST INDIA COMPANY

Then till 1862 High Courts were established in different parts of India. And many personal laws were also being made like Hindu Widow Remarriage Act 1856, Hindu Women's Right to Property Act 1937, Hindu Inheritance Act 1929 etc. Similarly, laws were also codified for Muallim's like Muslim Personal Law (Shariat) Application Act 1937, Dissolution of Muslim Marriage Act 1939 etc.

Meaning understands that till 1946 until the Indian Constitution drafting committee was set up this was the progress till them.

3.4. DRAFTING COMMITTEE OF THE INDIAN CONSTITUTION

Now, let's understand that in the Indian Constitution how did article 44 come? When the drafting committee was set up a plan was made to bring in the Uniform Civil Code and a lot of debate was done on it. The draft had Uniform Civil Code in article 35 as a fundamental right's. Some member said that Uniform Civil Code should be a part of fundamental right, and some opposed it.

3.4.1. MEMBER IN FAVOUR OF THE UCC

Dr B.R. Ambedkar and many another member was in favour of implementing Uniform Civil Code within the Constitution as a fundamental right. His argument was that the implementation of Uniform Civil Code is very important to develop uniformity and secularism in the diverse country like India.

3.4.2. MEMBER AGAINST THE UCC

On the contrary, some members of the Constituent Assembly suggested that India got independence with partition due to which there is a strong negative sentiment against the Uniform Civil Code and in such an environment it was advised not to interfere with religious sentiments. In which Kazi Syed Karimuddin, Syed Fazal-ul-Hasan were in favour of preserving the personal law of minority. During the discussion, M. Muhammad Ismail Sahib asked to add a proviso in this article 35, which says 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. Along with these, Sardar Patel and P. Sitaramayya were also in favour of not interfering in personal law.

3.4.3. TO SOLVE THIS DEBATE

In such a situation, to solve this debate, a sub-committee on fundamental right, which was headed by Sardar Patel, held a vote to include a Uniform Civil Code as a fundamental right and to make it a part of the Indian Constitution.

In this voting it was decided with a majority of 5:4 that Uniform Civil Code will be kept under DPSP and when constitution was enacted then Uniform Civil Code was covered under article 44.

4. IN WHAT AREAS DO WE NEED UNIFORMITY?

After this, a very intelligent question will be asked that what are those areas where do we want uniformity? Because only when we know this, we can make uniform laws. With the help of some examples, I want to discuss that how different are the personal laws in India now.

4.1. SECTION 494 INDIAN PENAL CODE, 1860

Here, the first one is section 494 of IPC 1860, which says that, while having a living spouse, if someone does a second marriage, then it is a crime. There is only one exception is a Muslim then he can do up to four marriages. That's an exception to our penal laws. Currently, only one marriage is allowed in Hindu, Sikh, Buddhist, Jain, Parsi, Christian.

Now, uniformity cannot come here like that you can do as many marriages as you want. The progressive world is monogamous. So, uniformity will also come in that line.

4.2. EQUAL SHARE IN PROPERTY

Hindu women inherit equal share in a property where Muslim women compared a male relatives can inherit less than half the share. Where in Parsi religion, if a girl marriage a man of another religion, she is evicted from the Parsi community.

4.3. MAINTENANCE

After this, Muslim women cannot claim maintenance for a long time like other Indian women under section 125 of Cr. PC,1973

4.4. AGE FOR MARRIAGE

The most important differences which I think is this, the Indian law prescribes a uniform age for marriage for all religions which is 18 & 21 years and this is also being talked about to increase for development. If marriage is done under this then it is called child marriage and it is prohibited. But one religion is allowed.

4.5. ADOPTION

In current situation, Muslim women are not adopted a child. Whereas Hindu women can adopt a child.

4.6. DIVORCE

Currently, there are different rules for divorce in every religion. For example, Hindus have to live separately for 6 months before divorce . Christian has to live separately for 2 years. The rules of Muslims are completely different. So, all these will be stopped and there will be uniform rules for divorce in all religions.

5. IMPACT OF UCC ON DIFFERENT RELIGIONS AND COMMUNITIES

If UCC is implemented, then it will affect every religion and community. Some possible effects are as follows: -

5.1. IMPACT OF UCC ON HINDU

Hindus are taking advantage of tax benefits by forming Hindu Undivided Family . If UCC is implemented, then either this benefit may end or all religions will get this benefit.

5.2. IMPACET OF UCC ON MUSLIM

The Muslim Personal Shariat Application Act,1937 states that marriage and divorce will take place according to Shariya or Islamic law. In such a situation, if UCC comes, the minimum age for marriage will be changed. Under Shariya law and the practice of having more than one wife will end. Muslim women will also get a right

to maintenance, equal right in property, equal right in matter of divorce, right to adoption etc like other Indian women.

5.3. IMPACT OF UCC ON SIKH

Marriages in Sikh community take place under the Anand Marriage Act, 1909. The special thing is that there is no provision for divorce here. If the husband and wife want to separate then it happens as per Hindu Marriage Act, 1956.

5.4. IMPACT OF UCC ON CHRISTIAN

If we talk about Christianity, the coming of UCC will affect the issues of inheritance, adoption, succession etc. According to the Christian Divorce Act, if couple wants to separate, they will have to live separately for 2 years for divorce. If UCC comes, these provisions may be abolished.

5.5. IMPACT OF UCC ON PARSI

If a Parsi women marries another religion, she will lose all the rights related to Parsi traditions. Adopted daughters are not recognized in the Parsi community, whereas an adopted son can only perform the last rites of his father. If UCC comes, one rule will apply in all respects.

5.6. IMPACT OF UCC ON TRIBAL COMMUNITY

The introduction of UCC will affect traditions like marriage, divorce, adoption, inheritance of property etc. in the tribal community. Tribal people have many rights under the Panchayat Extension to Schedule Areas (PESA) Act, 1996 at the level of local governance. In case of implementation of UCC, the privileges of tribals obtained under the PESA Act will be ineffective.

We know that water, forest and land are not just natural resources for the tribal community but are the main basis of life. Keeping this in mind, the Chhota Nagpur Tenancy (CNT) Act, 1908 and the Santhal Pargana Tenancy Act 1876 were made by the British. It is a type of land law which was made to protect the land of the tribal community. In case of implementation of UCC, both the laws may also be affected.

6. JUDICIAL APPROACH REGARDING UCC

At this point the most landmark case is *Md. Ahmad Khan V. Shah Bano Begum*

Fact of this case

In this case, Shah Bano after 40 years of marriage and after 5 children was given divorce. Ahmad Khan had promised Shah Bano that he would give her Rs 200 every month as allowance but after few months he reneged on it. After not getting the maintenance allowance, 62 years old Shah Bano decided to approach the court. The matter reached a court in Indore and Shah Bano demanded Rs 500 a month for alimony u/s 125 of Cr.PC. Ahmed Khan, a lawyer by profession, cited Muslim personal law in court and said that he was not bound to pay alimony.

Supreme Court of India

The 5 judges' bench of SC clearly stated that even Muslim women are entitled to protection u/s 125 of Cr.PC. Along with this, it also stated by commenting on article 44 of the Constitution of India that if a UCC comes then it will provide better solution in the time of conflicting ideologies.

Such a progressive judgment, the government at the time overturned it, changed it by passing the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act states the Muslim women cannot claim protection u/s 125 of Cr.PC.

Even after Shah Bano case in successive cases such as famous Sarla Mudgal V. UOI & Paulo Coutinho V. Maria Luiza, the Supreme Court has given its decision on UCC.

7. 21ST LAW COMMISSION OF INDIA REPORT ON UCC

Examined UCC in 2018 and also asked for views from stake holders. Then in the report, the Law Commission of India called UCC neither necessary nor desirable at this stage. Law commission further said that diversity is preserved and at the same time to ensure that personal law don't contradict with fundamental rights. It is also suggested that instead of bringing UCC, we can remove the problems in existing personal laws and make them gender just.

8. ARGUMENTS IN FAVOUR OF UCC

- 1) **Steps towards gender equality-** It will provide gender equality. UCC provide equal status to all the citizens.
- 2) **Simplicity and clarity of laws-** UCC replace the existing cumbersome system of individual laws with a single set of rules. Legal system will be simplified. Law will become accessible.
- 3) **Uniformity and consistency-** UCC reduce the risk of inconsistency, discrimination in the application of the law. End to discrimination based on religion or personal laws. According to Government of India, the purpose of UCC, not to interfere in cultural and religious practices but to bring uniformity in the laws governing the issue related to citizen.
- 4) **Social reform-** It is argued that rather than an action directed against a particular community, this should be seen as a comprehensive social reform.
- 5) **Social harmony-** UCC helps in reducing tension and conflict between different religious or community groups.
- 6) **One nation one law-** It is arguing that UCC will ensure one nation one law spirit across the country.

9. ARGUMENTS AGAINST THE UCC

- 1) **Religious and cultural diversity-** India is a country with a rich heritage of religions, cultures and traditions. UCC a threat to this diversity.
- 2) **Against the right to freedom of religion-** The biggest oppose is the mass perception about this law, that UCC is against people religious freedom.
- 3) **Sensitive task-** UCC is a sensitive task. Then it's very important how this law is being introduced and in what manner it will be implemented is also important.
- 4) **Role of State -** Because of diversity practical difficulties can come in the execution and without the help of the State it can be difficult to fully implement of these laws.

- 5) (v) Lack of consensus- Lack of consensus among different religious and cultural community.

10. SUGGESTION

I think national interest come on very top. Basic human rights of citizens are very important. Dignity of individual is very important. If we even think of UCC then also desired result can be achieved. I feel that state should filter all personal laws according to today's day and age and all those practices which are derogatory, discriminatory which against the social justice should be declared unconstitutional.

11. CONCLUSION

At the point of conclusion, we can say that, from reformative point of view, UCC is desirable and necessary, but its implementation needs to be cautious. So that the social and cultural fabric of the country does not get spoiled, and we can also eliminate the evils spread among us.

The Indian Constitution talked about UCC for citizens and even after more the 76 years of the independence, if no steps have been taken in this area, then it is an insult to the principles of the Indian Constitution.

CONFLICT OF INTERESTS

None.

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