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Can UCC be applied in a Diverse Country like India?

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Uniform civil code the term which has created a lot of controversies over the decade but is still not reached a cemented conclusion that a code like 'UCC' can be applied to a diverse country like India in which there is so much differentiation, diversification, and sacredness regarding one's religion, personal laws. The term UCC was first prevalent in the European legal systems. The phrase 'Civil Code' is used as an insight into an extensive work of legislation regulating the whole province concerning matrimonial matters. The word civil law was commonly used in sense of family laws although it was also used for various elements of civil nature like compensation, contract, etc.

Keywords: *civil code, diversification, sacredness, matrimonial, contract*

INTRODUCTION

The Uniform civil code is mentioned in article 44 of the Indian constitution of 1950 as a directive principle of state policy (DPSP). Indian law in today's time is implementing and amending laws according to its own needs of society. India has developed quite an image in the world as compared to the India of 1947 and has thus been working as a sophisticated, harmonized system to date although the boundaries of Indian general law and privacy laws have become more complex in today's time. Most of the outdated personal laws have been

amended and abolished in this new era. The purpose of bringing UCC into action is to promote equality among people which is mentioned in article 14¹ of the Indian constitution and to govern the state following the notion of 'one country one rule and one law'. The culture of India has emphasized the spirit of unity in diversity although it has barely helped in bringing political unity to India. India has by now, by and large, reached its aim of constructing a uniform personal law for the society through arranging a much greater confirmation of personal laws ²and therefore attaining equality for all citizens. The framers of the constitution tried their level best to put UCC under part IV of the Indian constitution as a fundamental right but due to various opposition against this motion, it was drafted under part III of the Indian constitution as Directive Principle of State Policy.

RELEVANCE OF UCC

In various instances, the question of the relevance of UCC has been raised but a concluding answer to this question is still in debate. This question was first raised when Hindu laws were reformed purely in the 1950s than after a demand was kept forward by the opposition to bring all personal laws within the reformation process. It became a major point of discussion when attempts were made to pass the Indian adoption bill on secular grounds. The decisions of the judiciary and supreme court on cases like Shah Bano, Sarla Mudgal, John Vallamattom, Lily Thomas, and the Women's action group brought the topic of UCC into the discussion. The distrust between the communities has made this a contended issue because of which it is becoming difficult day by day to enact UCC in the Indian society. As people in society are not willing to sacrifice their vested interests which is one of the main roles of acquiring UCC.

INTRODUCING UCC INTO SOCIETY

To introduce UCC into society people need to change their thinking and adapt to the new normal. To reform the legal system and bring change into the society codification of laws is considered one of the important parts of it. In India from past till present Britishers as well as governments after independence practiced a policy of non-interference in the vested interests

¹ Constitution of India, 1950, art. 14

² Ajai Kumar, Uniform Civil Code: Ahallenges and Constraints (Satyam Law International 2012)

of the people in the religion and their personal laws instead efforts should be made to educate people and codify unjust personal laws existing in the society.

INDIA'S UNIFORM CIVIL CODE AND FUNDAMENTAL RIGHTS

One of the major problems for the enactment of UCC is the relationship between the constitution and personal laws. The main challenge here is to overcome the conflict between the state's capacity to legislate a UCC and the people's fundamental rights to exercise their right to religion, and liberty, including the right to be governed by their religious personal laws. The key question seems to be whether part III of the Indian constitution covers personal laws and religious personal laws that are mentioned in religious scriptures and grant less equal rights to women, discriminate based on gender, and violate the constitution. Constitutional provisions and judicial approaches place religious personal laws outside the purview of fundamental rights. It can be deduced that when a state chooses to protect religious personal laws, it must sometimes compromise the rights of women. To avoid the negative effects of religious law, the state must initiate the process of enacting a UCC. If the constitutional guarantee of equality is to be realized, it is preferable to break the link between religion and personal laws. The continuation of religious personal laws for a while after the initiation of India's constitution prompts the concern of whether such laws are still governed by the constitution. This question is raised because the constitution does not directly mention religious personal laws.

PURPOSE OF UNIFORM CIVIL CODE

The creators of the constitution realized that all of the pillars of the freedom movement could not be achieved in a single day, certain ideals were given greater weight and were enshrined as fundamental rights, while the rest of the pillars had political, economic, and social implications and were enshrined as state policy directive principles.

- *UCC AS A MEANS TO ACHIEVE UNITY AND INTEGRITY OF THE SOCIETY*

The founding members were obligated to the nation's unity and integrity and they introduced several novel themes. In this regard, the forty-second constitutional amendment act of 1976 switched the new term "unity and integrity of the nation" for the term "unity of the nation," and so the term "integrity" was introduced to the constitution's preamble. Religion-based Personal laws impeded the country's unity by proponents of the UCC. "We are in a place where we must unite and strengthen the nation by any reasonable means without intervening with religious customs," Shri K.M Munshi said in this regard. If, on the other hand, religious practices have been construed in the past to cover every aspect of life, we must state categorically that these are not religious issues, but rather subjects for secular legislation. Civil codes of other countries, such as France and Germany, have contributed to the progress of national unity. Because of the different reforms existing in society, the uniting force of UCC is more relevant in India. The history of India highlights the fact that our country was prone to foreign aggression and was compelled to be dominated by the British as a consequence of our failure to unite. Henceforth, UCC has become more vital than ever before in ³the contemporary context, owing to the rise of communalism and fundamentalism in Indian society. Chief Justice Y.V Chandrachud stated in the famous Shah Bano case that "A civil code will facilitate national integration by reducing divergent allegiance to laws that promote opposing philosophies. Making unjustifiable accommodations on this issue is unlikely to ring the alarm bells in any community. The state is responsible for ensuring a UCC for all people of the country, and it has indisputably the legal authority to do so."

"An unequivocal goal under Article 44⁴ of the Indian constitution is for the state to strive to protect for the residents a UCC throughout the territory of India." which seeks to initiate a uniform personal law - a definitive action towards national consolidation," Justice Kuldeep Singh stated in the Sarla Mudgal case.

- ***UNIFORM CIVIL CODE AS A MEANS TO ACHIEVE EQUALITY AND GENDER JUSTICE***

³ Vedant Upadhyay, 'Uniform Civil Code: Goan and Indian Perspective' (2022) 2 (3) Jus Corpus
<<https://www.juscorpus.com/journal/issue-3-mar-22/>> accessed 14 April 2022

⁴ Constitution of India, 1950, art. 44

The legal system in modern cultures strives to accomplish the goals of excellence and gender justice. These two ideas have become so significant that they are now the benchmarks by which a society's growth is measured. The secular leaders also argue that if current personal laws are allowed to stand, not only will there be sexual inequality between men and women of one religious community and those of another religious community, but there will also be sexual inequality between men and women of different religious communities.⁵

Judicial Approach:

In the Shah Bano case, the Supreme Court stated that the government's refusal to legislate UCC was causing difficulty for women and that courts must "inevitably adopt the role of the reformer" because "it is beyond the perseverance of perceptive minds to allow unfairness to be experienced when it is obvious."

A full bench of the Hon'ble Supreme Court heard the matter, which included Justices V. Chandrachud, D.A. Desai, O. Chinnapa Reddy, E.S. Venkataramiah, and R.N. Mishra. On behalf of the entire bench, the chief judge delivered the decision. The following was the decision:

- Muslim women have the right to refuse to reside with their husband if he marries again under section 125⁶ of the Criminal Procedure Code.
- The appellant's contention that, under Islamic personal law, his obligation to provide for the sustenance of his divorced wife is confined to the term of iddat, despite her inability to support herself, cannot be recognized.
- Muslim men are required by the Quran to make accommodations for or give support to their divorced wives. The opposite argument does the Quran's teachings no justice.
- The court refused to acknowledge the appellant's argument that he did not need to maintain Mehr as a divorced wife under article 127(3)⁷. (b). Mehr is an amount that the

⁵ Faridha, 'Uniform Civil Code: A Need for it' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-6038-uniform-civil-code-a-need-for-it.html>>
accessed 14 April 2022

⁶ Criminal Procedure Code, 1973, s 125

wife is expected to claim from the husband in an account of marriage, not an amount due in consideration of divorce, according to the court.

In the Sarla Mudgal case, a division bench of the Supreme Court agreed that the lack of a UCC has prevented women from being treated on an equal footing with males, which is a blatant violation of the Constitution's Art.15⁸ provisions. In this instance, a Hindu man's second marriage after converting to Islam is ruled null and void. The court ruled that such a union violated natural justice principles. The court ruled in favor of equity, fairness, and a good conscience and emphasized the importance of having a UCC in India.

The Supreme Court examined the UCC's statutory provisions and cases. A division bench consisting of Kuldeep Singh and R.M Sahai JJ handed down the decision. Both judges issued opposing but complementary opinions. The court ruled that a Hindu husband's second marriage is illegal if he converts to Islam without first having his first marriage cancelled. The second marriage will indeed be considered void per section 494 of the Indian Penal Code, and the unfaithful husband will then be charged with an offence under this section. The subject of polygamy and its abuse by non-Muslim males was recognized by the Supreme Court.

IS THERE A NEED TO RUSH THE IMPLEMENTATION OF UCC?

One of the main arguments against UCC implementation in India has been the time element. This criticism is not new, and it is also not exclusive to India. The issue of time is as old as the concept of codification of laws. One of Savigny's objections was that the time element was a factor. Savigny said that previous codes were created by people that didn't seem to have a comprehensive understanding of the issue and who acted quickly. Supporters of UCC argued that it should be adopted as quickly as feasible. With the setback, some activist supporters attempted to make a UCC a legally enforceable fundamental right. Due to the challenges that developed at the time, advocates of UCC agreed to provide a time frame, so it was left to the government to decide when the best moment to adopt a UCC in India was. Following the ratification of the constitution in 1949, no meaningful attempts were undertaken to accomplish

⁷ Constitution of India, 1950, art. 127(3)

⁸ Constitution of India, 1950, art. 15

UCC. UCC had been a bit of a pipe dream since. The succeeding governments have maintained that the right time for a UCC is about to arise. Even now, the majority of political parties believe that the time has not yet arrived to implement a UCC.

CURRENT SCENARIO

Pushkar Singh Dhama is a true believer in what he says. The Uttarakhand chief minister proposed the creation of an expert committee to oversee the state's application of the Uniform Civil Code (UCC) a day after being sworn in also BJP stated in their 2019 manifesto that they will create a UCC and that they are committed to bringing the Uniform Civil Code into effect. Coming to point of Goa civil code or the Portuguese civil code of 1867, is very different from the uniform civil code although some inspiration can be taken into consideration to make efforts for a change. In the Goan civil code, only Hindus and other communities are allowed to observe monogamy, so there are several exceptions. Illegitimate children's rights are similarly unequal when compared to legitimate children's. The treatment of Catholic and non-Catholic marriages is likewise different. This demonstrates that it would not be evenly applied to all of the country's citizens. This Code contains numerous flaws.

CONCLUSION

It may be possible to lessen the gap between the laws of different societies including the laws of factions within the community by codifying personal laws⁹. When modifying the personal laws of diverse communities during coding, it must be necessary for those who follow the personal laws to observe them. Greater rights for the most vulnerable and downtrodden members of society, including tribal people, children, and women. There are some requirements for enacting UCC:

- Personal laws of diverse regions are codified.
- UCC may be made more flexible for a transitional phase, but it must eventually become mandatory for all.

⁹ Vaibhav Sachde, 'Significance of Uniform Civil Code in present day' (*Ipleaders*, 5 September 2021) <<https://blog.ipleaders.in/significance-uniform-civil-code-present-day/>> accessed 12 April 2022

- If the UCC is in contradiction with a community's laws, the UCC must take precedence.

Article 13 should be changed in such a way that the concept 'private law' is integrated inside the 13th article in hopes of bringing personal laws under the reach of the fundamental rights chapter (3). The Indian constitution's freedom of religious ideology and culture provision violates the spirit of the UCC. It is proposed that a proviso be added to articles 25(1) and 29(1) to the effect that nothing in this clause shall impact the procedure of any law under article 44 of the constitution, to bring it into compliance with the UCC. To meet the UCC aim, the state has not complemented the Indian judiciary's approach. Political concerns, it is said, cannot be used as an explanation for the judiciary's arduous path toward the UCC. A full draught bill of UCC is required to achieve UCC. This draught is required to be created in cooperation with the Minority Committee regarding the current idea of human rights. There is fear and uncertainty in the minority community that the laws of the majority community will be implemented in the name of the UCC, a persistent campaign clarifying the nature and benefits of the UCC is essential. It is the perfect time to have UCC in order to fulfill the fundamental goal and too just, freedom, equity, fraternity, and India's oneness and dignity.¹⁰

¹⁰ Saket Mangla, 'Uniform Civil Code boon to our society: Merits' (*Legal Service India*)
<<https://www.legalserviceindia.com/legal/article-1720-uniform-civil-code-boon-to-our-society-merits.html>>
accessed 14 April 2022