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Is it the right time for the Implementation of the Uniform Civil Code in India?

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Implementation of a Uniform Civil Code as per Article 44 of the Indian Constitution is a very disputed issue. While addressing the question of a unified civil code, the study examines the right to equality from a group perspective. There are claims calling Uniform Civil Code a dead letter as it has not been enforced yet despite various judgements highlighting its importance and directing the government to look into its implementation. This code if implemented will contain common law for everyone. Both for and against the side of its implementation are discussed in this research paper. One of the main issues, that of the practice of polygamy practised by Muslims. The irony to this is that several Islamic countries such as Iran, Morocco, Syria, and Tunisia have codified laws and either completely prohibit or sternly curtail the practice of polygamy. While India is a secular state it is still waiting for a red-carpet welcome to the enforcement of the Uniform Civil Code.

Keywords: *uniform civil code, UCC, implementation, India, DPSP.*

INTRODUCTION

In a recent case hearing in November 2021, regarding several petitions filed by interfaith couples who petitioned the court in order to get their marriages registered and to grant them protection from the private respondents, the High Court of Allahabad highlighted the

mandate of the Article 44¹ of the Indian constitution and asked the centre to look into its implementation. Article 44 states that “the state shall make every effort to ensure that citizens throughout India have access to a uniform civil code”. So, the instance above shows us that Uniform Civil Code (UCC), its mandate, and its implementation is a burning issue at present. In addition to this, one of the very recent events that occurred was during the last day of assembly polls in Uttarakhand where it was promised by the CM Pushkar Singh Dhami that if the BJP gets re-elected then, the Uniform Civil Code will be enacted in the state. Now, the question to be asked is should the UCC be politically motivated? And if the UCC is really essential then why implement it only in Uttarakhand, that too, only if, BJP gets re-elected? Why not implement it in the entire Indian keeping aside the political aspect to it? People are in the hope that all the inequalities will vanish and a society with perfect gender justice in one stroke will be a result of UCC. However, we should comprehend the fact that a revolutionary change cannot be brought about by only “formal equality”, rather “substantive equality” is of more importance and much needed in society.

REVIEW OF LITERATURE

- Uniform Civil Code (Article 44 of the Constitution) A Dead Letter by Shabbeer Ahmed is a very informative piece written that presents to us what exactly article 44 is what does it speak about, and how does it not violate article 25² and this article delves into the understanding of the arguments from both the sides and what is its situation at present.
- Utility of Uniform Civil Code by Akhilendra Pratap Singh elaborates to us the meaning of uniform civil code, whether or not it involves a violative nature towards any fundamental right, or if it is needed at present. It talks about Inter-group equality with regard to religious identity and gender justice.

RESEARCH QUESTIONS

Answers to the following questions will be catered to in this research paper:

¹ Constitution of India, 1950, art. 44

² Constitution of India, 1950, art. 25

1. What is Uniform Civil Code? Does it really violate any of the fundamental rights?
2. Why has the UCC not been mandatorily implemented yet in India?
3. What are its advantages and what are the issues that its enforcement will bring?
4. Finally, what can be done at the present moment about it?

UNIFORM CIVIL CODE: AN OVERVIEW

At present all the communities and castes are becoming more identity conscious and the polity in India today is based on these identities. The government and its elections have aggravated this identity consciousness further as majorly all the elections in India are contested based on the identities of the caste and communities. New issues arose as a result of modernization, and we failed to understand the intractable social structure. This is especially true in the case of Muslims. In comparison to other communities, they have a substantially higher rate of poverty and illiteracy. They have a small middle class that advocates for modernization and development. This is why the priestly class, which comes from the lowest social strata, maintains such a stronghold on the community. Also, the problem of gender discrimination that persists in all communities has to be solved. And in order to do so, it gave rise to the thought of a common civil code. There persists complexity in the Indian reality. Only when the law is rooted socially in India, does it becomes acceptable?

WHAT'S A CIVIL CODE?

Civil code involves laws that govern marriage, divorce, inheritance, custody, succession, etc. among other civil activities in society. The enactment of a common or uniform civil code will lead to the implementation of laws related to the above-mentioned activities that will be common for all the communities which will provide the communities with a set of personal laws that will result in the enhancement of unity and fraternity. After India got independence from the British there were debates going on in the constituent assembly regarding the provision of a uniform civil code. Dr. B.R. Ambedkar and many others initiated a common code of civil conduct for all only that the personal laws should remain out of the ambit besides this being voluntary. Nevertheless, the keeping of the religious personal laws was emphasized

by the Muslim leaders and hence the uniform civil code found a place only in Article 44 of the constitution.

Article 44 in part IV of the constitution says that “The state will make every effort to adopt a uniform civil code for citizens across the nation”. This article is a part of the Directive Principle of State Policy (DPSP) which are not justifiable and cannot be enforced by the court for violation. In 2018, there was legislation proposed by the BJP called the Uniform Civil Code Bill, 2018. This bill provides for a common civil code for all the citizens of India irrespective of their religion, caste, race, etc. The objectives of the Uniform Civil Code Bill were:

- Implementation of Article 14 guarantees the right to equality and Article 15³ enshrines the prohibition of discrimination based on religion, race, caste, colour, etc.
- The phasing of personal laws that were based on religious beliefs favours a more uniform legal structure.
- The inadequacy and disparities in the Indian legal system may make it difficult to eliminate all forms of discrimination against women.

WHY HAS THE UNIFORM CIVIL CODE (HEREAFTER UCC) NOT BEEN IMPLEMENTED YET? WHAT IS THE TUSSLE BETWEEN?

So, the main tussle is between Article 44 which provides for a UCC, and Article 25 of the Indian constitution which guarantees the right to freedom to profess, practice, and propagate any religion. There is more to the tussle, individuals argue that Article 44 is a part of DPSP, while Article 25 is a fundamental right, which is, unlike DPSPs justifiable in the court of law and can be enforced in case of violation. When we look at the Indian scenario, India is a very vast and diverse country. There are many religions like Hinduism, Islam, Christianity, Buddhism, Jainism, and Sikhism, among several others. There is also diversity from the point of view of language, culture, etc. Religion is considered the foundation of the traditions and customs and it will be very difficult for any religion to let go of its long-practised customs. The controversy over UCC has sparked a lot of public discussion about ending gender

³ Constitution of India, 1950, art. 15

discrimination and establishing a "one nation, one policy." The judiciary of India has likewise stressed the importance of implementing a UCC on numerous occasions. In comparison to Hindu laws, which were codified in the 1950s, Muslim laws have yet to be codified.

PROMINENT LEGISLATION AND DEVELOPMENTS IN THE DOMAIN OF UCC

The Indian constitution came into force in 1950 and since then there have not been any major or prominent steps taken which gave us the results. However, there were many judgments with reference to the UCC which have presented to the society a much clear picture of the importance of UCC. While drafting the constitution, specifically during that of Article 44 there were many objections raised as to whether this would be infringing the fundamental right to religion that is enshrined in Article 25, also it would be disparaging towards the interests of minorities. Now, comes the twist, the claim that UCC would violate article 25 is not convincing as there is nothing in the article 44 that offends the article 25, as under article 25 sub-clause (b) of clause (2)⁴ there exists an exception that points out that if there is any future or existing law that advocates for positive reform and social welfare then the operation of this article shall not be affected. And as far as the second object of the interested minorities is concerned the advised countries the Muslim personal laws of each minority has been recognized nowhere and one of the prominent issue when it comes to marriages in Muslim is that of polygamy which is permitted as per Islam (a provision that is negatively used sometimes) but the irony is that several Islamic countries like Iran, Syria, Morocco, etc. interestingly have a codified personal law and the practice of polygamy is either prohibited or sternly curtailed so as to prevent misuse and abuse of this power. Further discussed are the landmark judgements that highlighted the importance and called for the implementation of UCC. The first was the case of *Sarla Mudgal v Union of India*⁵ (1995), in this case, the issue was that of bigamy and the conflicting nature of the personal laws with reference to marriage, these issues were discussed in the verdict along with the invocation of Article 44 of the constitution. It was directed to the Ministry of Law and Justice by the Supreme Court to highlight the Government of India's measures and efforts toward achieving a "uniform civil code" for Indian citizens.

⁴ Constitution of India, 1950, art. 25(b) (2)

⁵ *Sarla Mudgal v Union of India* (1995), AIR 1531

Another landmark judgement that preceded the one above was that of *Mohd. Ahmed Khan v Shah Bano Begum and Ors*⁶(1985) (famously known as the Shah Bano judgement or the triple talaq case). It was ruled by the supreme court that Muslim women have the right to claim maintenance as per the Code of Criminal Procedure (1973), Section 125⁷ and further ordered the government to enact a UCC so as to be helpful in removing the distinct loyalties to the laws that have conflicting ideologies in order to achieve national integration.

In the case of *Pannalal Bansilal Patil v State of Andhra Pradesh*⁸ (1996) the Supreme Court held that the enactment of a uniform civil court is very desirable but doing so in one go may prove to be counterproductive. Hence, change should happen gradually. The laws are to be made and amended and it is a slow process. A gradual progressive change will lead to the unity and integrity of the nation. Further, the Supreme Court in the case of *John Vallamattom Anr v Union of India*⁹ (2003) ruled that in a civilized society the connection between religious and personal laws is not necessary. Marriage, divorce, succession, and other secular affairs can't be placed within the assurance established in Articles 25 and 26¹⁰ of the Constitution, there is no question about that. Any law that brings secular subjects such as succession and the like within the scope of Articles 25 and 26 is dubious. All of the cases discussed so far show us the developments that have occurred in the way of implementation of the UCC. But, till now the UCC has not been implemented in India except in the state of Goa. When it comes to marriage, succession, divorce, and other issues, Goa is the only state in the country where everyone, including Muslims, Hindus, and Christians, is administered by the same law. That's because, despite joining India in 1961, the former Portuguese province elected to keep the Portuguese Civil Code of 1867 in place for all communities. If India really wants a uniform civil code, a sincere effort should be made towards achieving the same.

⁶ *Mohd. Ahmed Khan v Shah Bano Begum and Ors.* (1985), AIR 945

⁷ Code of Criminal Procedure, 1973, s 125

⁸ *Pannalal Bansilal Patil v State of Andhra Pradesh* (1996), AIR 1023

⁹ *John Vallamattom Anr v Union of India* (2003) Writ Petition (Civil) No. 242/2003

¹⁰ Constitution of India, 1950, art. 25, and art. 26

ARGUMENTS FOR AND AGAINST THE IMPLEMENTATION OF UCC

There are many debates on whether UCC should be enforced or not. Here mentioned are both sides to the enforcement of the UCC.

Following are the arguments in favour of its enforcement:

- All the civil matters concerning marriage, divorce, succession, etc. will come under the same ambit which will lead to the integration of the values of different communities and create a just space for all.
- One of the common arguments made by the opposition is that of the right to freedom guaranteed by article 25 its rebuttal is the argument that article 25 itself under its clause 2 indicates that the operation of any existing law shall not be affected by this article.
- With non-implementation of the UCC, articles 14 to 18¹¹ are being violated that guarantee right to freedom of equality and protection against discrimination based on sex and religion. Many personal laws pertaining to marriage, divorce, etc. are unjust to the women.
- There results in ambiguity due to the presence of different laws. For example, as per the constitution, there is a legal age to get married but the Muslim laws based on sharia have a scope of promotion of child marriages.
- In this country, all laws, including penal laws, apply to everyone, regardless of religion, ethnicity, caste, creed, sex, or other factors. The peculiarity is that it does not apply to Muslim personal law. In the Muslim religion, Muslim personal law controls subjects such as marriage, divorce, and conversions. There is a pressing need to correct this inequitable and jumbled scenario in order to bring light to the lives of Muslim women in India. The final objective should be one country and one law.
- There are misapprehensions regarding bigamy in Islam. The irony is that many Islamic countries have made polygamy either prohibited or sternly curtailed but the secular country of India is lagging for the red-carpet welcome of the UCC.

¹¹ Constitution of India, 1950, art. 14-18

Following are the arguments against the enforcement of UCC:

- For the argument that all the personal laws have certain inequalities. So, in order to remove the inequalities why not people sit and sort out the inequalities in their personal laws. The need is not for a “uniform” civil code, rather just a civil code will do good.
- The argument is true that women face injustice. For this should change it should come within the women. Law is not the solution. Will Muslim women be ready to accept UCC?
- There is educational and economic backwardness among the Muslim community. So, the government should first work on these rather than the implementation of UCC.
- Sharia law is God made not human-made. No one has the right to change it, not even Muslims – an argument presented by Muslims.
- People believe that UCC is politically motivated. It should be decided whether we want UCC for giving BJP a communal edge or for justice reasons that are genuine?

Both sides have strong and weak arguments. In a country like India bringing a UCC is a difficult task that should be solved soon and in respect of the interest of all the concerned parties.

CONCLUSION AND SUGGESTIONS

Kiren Rijju the law minister of India has referred the matter of UCC to the 22nd law commission. A recommendation to investigate problems pertaining to UCC and make suggestions had been submitted to India's 21st Law Commission, the minister said, because of the importance of the subject matter and the sensitivity involved, and because it required in-depth research of the regulations of various personal rules regulating different communities. Uniform Civil Code and its implementation have been debated a lot. Religious identity and gender justice are the two main problems or rather obstacles in the way of implementation of a uniform civil code? Which fundamental rule shall preside? The right to equality and prohibition of discrimination under articles 14 and 15 respectively or the right to freedom

under Article 25? Awareness about the benefits of the UCC and its effectiveness should be spread among people by the government. Because of the qualities, it incorporates, the Supreme Court of India has referred to Goa's UCC as a "Shining Example." Mandatory registration of marriage, polygamy and bigamy being prohibited, marriage age for men and women being uniform, mandatory consent from both men and women for marriage and lawful separation, and other considerations are all part of the UCC in Goa. These characteristics can be used as a foundation for administering UCC at a national scale and forming a high-level council could be an excellent way to address the problem of UCC Bill enforcement. The committee must run public awareness campaigns and investigate the issue's core source. The need of the hour is to sort out differences among ourselves. Leaders representing their respective sides should come together and decide upon the implementation of the Uniform Civil Code in India. There should be discussions about what problems could potentially arise during its implementation and suitable solutions should be discussed. As discussed earlier there have already been a few attempts for its implementation. Its acceptance will not be in one go, it is a slow process, and now is the right time to start. In the research paper, all the developments and the pros and cons related to that a uniform civil code are discussed. However, despite several judgements directing the government to pave way for the implementation of UCC, its implementation still remains a dream farfetched. We are still on a journey of achieving and making the laws in India common. This is a journey difficult and long to deal with because it is concerned with the religion, which people of India give so much importance to. It is a matter delicate enough that must be handled with complete logic so as to make the people of India understand the importance of a uniform civil code.