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A Contentious Article: Article 44 and its Development

Aditya Lohani^a

^aGLA University, Mathura, India

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UCC or Uniform civil code is a topic that is considered disputable or we can say that, debatable for a very long time. We can trace back to its origin in India from the British period, from the report of 1835. Like any other law, some people support it and some of them are against it due to various reasons which we will study in detail in this paper later on. And the current ruling government has also mentioned in their manifesto for the 2019's election that they will implement Uniform Civil Code in India. So far they have done most of the work like the removal of arts 370¹ and 35-A,² ram mandir, etc. which was mentioned in their manifesto. Let's see if they will implement it or not. Further in this paper, you will get to know about the objective and purpose behind implementing it like it strengthens the words secular, democratic, and republic which are embedded in the preamble of the Indian constitution. The topics which are covered about uniform civil code are the following: its background, how it got its place in the constitution of India, its non-justifiable nature, the PIL's and government's stand on this, and also the relevance and need for uniform civil code in India through various case laws like Shah Bano³ and Sarla Mudgal case⁴. Also, you will read about how we can implement it and what are the possible challenges the government may face in enforcing it in India.

Keywords: *uniform civil code, manifesto, non-justifiable, secular, democratic, republic.*

¹ Constitution of India 1950, art 370

² Constitution of India 1950, art 35A

³ Mohd. Ahmed Khan v Shah Bano Begum & Ors (1985) SCR (3) 844

⁴ Sarla Mudgal & Ors v Union of India (1995) SCC (3) 635

INTRODUCTION

By going through the etymological meaning, it can be interpreted as equal civil laws or equal laws in civil or personal matters. In other words, the uniform civil code intends to impart one law for the entire state or nation which applies to the persons of every religion in their matters related to divorce, marriage, adoption, inheritance, succession, etc. The principle of a uniform civil code has been laid in Article 44⁵ of the directive principles of state policy in the Indian constitution and the purpose behind putting it in the DPSPs is to strengthen the words secular, democratic, and republic which are embedded in the preamble of the constitution.

BACKGROUND AND EVOLUTION

We can trace the rise of family matters back to the age of primitive communism (the concept described by Karl Marx) where people lived in tribes and after the Neolithic revolution, people started accumulating wealth and private property. Each tribe sets up its own rules and regulations for its members and the law which was set up by the tribe applies to all the members relating to it but doesn't apply to the members of other tribes. For example, in one tribe only monogamous marriages are allowed but in another tribe, polygamous marriages are allowed. So there exists a uniformity of laws among the members of the tribe they belong to but if we look from the larger point of view, we can see that many tribal societies are existing in the state which has their laws. This situation is very similar to the present-day situation where communities like Hindus, Muslims, Christians, etc. live in a country having their laws. Back then, the situations and circumstances were different, people of one tribe don't go into the domain or place of the other tribe to which he/she didn't belong but now when people of different communities live in each state of a country like India then why can't we have a uniform law? The answer to this question will be given later on in this paper.

In ancient India, people were regulated through the Vedas (Rig, Sam, Yajur, and Atharva) and smritis (Manu, Yajnavalkya, Narad). In medieval India, the people were ruled by sharia laws under the Mughal rule, and in other parts where the Mughals failed to rule, people followed the

⁵ Constitution of India 1950, art 44

rules set up by the ruler of that state. But there was no codified system of laws for civil or family matters. The uniformity in the civil codes originally started during the colonial period after the submission of a report in 1840⁶ demanding the need for a uniform civil code in matters related to contracts, crimes, and evidence but they kept the personal laws of the religious communities like Hindu and Muslim outside the process of codification. Lord Macaulay also suggested that the concept of 'Lex loci'⁷ should be incorporated in India.

In the 1900s, there were increases in the rulings that deal with personal matters which compelled the British government to form a committee to codify personal laws. So in 1943, the British government formed the B.N. Rau committee for the codification of Hindu laws. Some recommendations were made by the B.N. Rau committee to the government and based on those recommendations, Hindu Succession Act was formed and adopted in 1956⁸ which aims to codify and amend laws related to matters like marriage, unwilled succession, etc. among Jains, Hindus, Buddhists, and Sikhs. Personal laws were also created for other communities like Christians, Muslims, and Parsis. However, various courts in their judgments often told the government that they should take a step in the direction of a uniform civil code and try to establish it.

CASE LAWS

1. *Mohd. Ahmed Khan v Shah Bano Begum and Ors*⁹

Facts: Shah Bano, a Muslim woman was married to Ahmed Khan in 1932. They had a total of 5 children (3 sons and 2 daughters) but after fourteen years of their marriage, Shah Bano and her children were disowned by his husband, and he also married another woman, younger than him. And after three years of disownment (in 1978), she filed a case against his husband taking the defense of sec125¹⁰ of Cr.P.C. in the local court of Indore because his husband had stopped

⁶ 'Uniform Civil Code - Challenges, Suggestions & Debate On UCC' (Byjus) <<https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/#:~:text=The%20Lex%20Locis%20Report%20of,be%20kept%20outside%20such%20codification>> accessed 30 January 2023

⁷ Law of the land

⁸ Hindu Succession Act 1956

⁹ *Mohd. Ahmed Khan v Shah Bano Begum and Ors* (1985) SCR (3) 844

¹⁰ Code of Criminal Procedure 1973, s 125

giving money to her. After that in November, his husband gave divorced to her by saying "Talaq Talaq Talaq " (considered as divorce according to Muslim personal laws). The magistrate of the local court asked Ahmed Khan to give her Rs. 25 per month as maintenance. Again in 1980, she filed a petition in the Madhya Pradesh High Court to revise the amount of alimony and M.P. The High Court revised it from Rs. 25 per month to Rs. 179.80 per month. Unhappy with this decision, his husband filed a petition in the Supreme Court against this judgment of the High Court. His important argument was, that he had already given divorce to his wife and can't give any alimony or keep any connections with her as it is considered 'Haram' in Islam and he is also not bound to give any alimony now because the Muslim Marriage Act ¹¹only talks about mehr¹² and not the provisions related to regular maintenance after divorce, hence it is against his laws also.

Issues:

- Is section 125 of Cr.P.C. concerned with Muslims or not?
- Is the Mehr given by Ahmed Khan sufficient to get rid of him or whether he is still liable to her or not?
- Need for Uniform Civil Code and its applicability.

Judgment: Supreme Court with its 5 judges bench, said that the sec. 125.¹³ will also apply to Muslims. The court in its judgment further states that sec. 125 will supersede if it comes in conflict with any personal laws of any community. S.C. also said that if the wife doesn't have adequate means to maintain herself, then the husband is obliged to pay alimony or maintenance to his wife and his liability ends when the wife can maintain herself. C.J. Y.V. Chandrachud, in his judgment, states the need of implementing a uniform civil code. He said, 'A common civil code will help the cause of national integration by removing disparate loyalties to laws that have conflicting ideologies. A beginning has to be made if the Constitution is to have any meaning.'

¹¹ Dissolution of Muslim Marriages Act 1939

¹²Amount of money or property which is given to the wife by the husband either at the time of nikah or at the time of divorce or death of the husband

¹³ Code of Criminal Procedure 1973, s 125

2. *Smt. Sarla Mudgal, President, Kalyani & Ors. v Union of India & Ors*¹⁴

Facts: In the Supreme Court, various petitions were filed under article 32. The first petitioner was Sarla Mudgal who was the president of Kalyani NGO. The second petitioner was Meena Mathur, whose husband Jitendra Mathur had married another woman after changing his religion named Sunita Narula (named Fathima after conversion to Islam) and the third petitioner was Sunita Narula who filed a petition against Jitendra Narula because he returned to his first wife. Another petition was filed for the same reasons.

Issues:

- Can a Hindu husband who was married according to Hindu law do a second marriage after changing his religion to any other religion like Islam?
- What is the validity of such a type of marriage without dissolving the first marriage?
- Whether the husband should be punished under section 494 of IPC¹⁵.

Judgment: Supreme Court held that a marriage can't be dissolved performed under an act (eg. Hindu Marriage Act) except on the grounds mentioned under the section of the same act (eg. section 13¹⁶ of the Hindu Marriage Act) and the second marriage is considered to be illegal. Conversion into any religion and marrying another woman wouldn't dissolve the first marriage done by him, but it can be a ground for divorce. The Supreme Court also prescribed the need for Uniform Civil Code because it will stop people from trespassing on the family or personal laws of each other.

NEED FOR UNIFORM CIVIL CODE IN MATTERS OF PERSONAL LAWS IN INDIA

Protection of vulnerable section: One of the objectives of the Uniform Civil Code is to protect the vulnerable or weaker section of society. It also promotes nationalistic emotion through unity.

¹⁴ *Smt. Sarla Mudgal, President, Kalyani & Ors. v Union of India & Ors* (1995) SCC (3) 635

¹⁵ Indian Penal Code 1860, s 494

¹⁶ Hindu Marriage Act 1955, s 13

Simplify the existing laws: Main aim of this is to simplify the laws related to personal matters like inheritance, adoptions, marriage, succession, etc., and make only one law in these matters for all religions and it will be applied to all the citizens irrespective of their religion.

Holding to the ideal of Secularism: The word secular was also embedded in the preamble of our constitution (through the 42nd amendment act, 1976. Common law is necessary to fulfill the motive of the secular republic rather than different-different laws of various religious communities.

Supports National Integration or Unity: Our constitution also promotes equal treatment for all, and it can be fulfilled by implementing a uniform civil code in personal matters as other civil laws and criminal laws already had a system of uniform codes in them. Implementing u.c.c in family laws will promote national integration among citizens.

Promotes Gender Justice: If a uniform civil code is implemented then it will remove the patriarchal notions of the society existing in personal laws of many religions and destroy the paramountcy of patriarchal orthodox. Thus, promotes gender equality.

Convenient Judicial Process: in the present day, there are many laws like sharia law; Hindu law, etc. and these laws create complexity and confusion in the judicial process of personal matters. Due to this, there are sometimes delays in the judgments. Hence, it will help courts to make decisions more efficiently and within a reasonable period.

CHALLENGES OR ARGUMENTS AGAINST UCC

Law commission's 21st Report: In its 21st report, the law commission states that it is neither necessary nor desirable to implement Uniform Civil Code to reconcile or accommodate conflicts in personal matters. It also said that many countries are now recognizing this difference in family laws and state that it promotes robust democracy. Hence, the commission said that the existing discrimination in-laws can be removed through some amendments and there is no need for a uniform civil code.

Against India's Cultural Diversity: because of its diverse nature between religions, castes, states, etc. it can't be practically possible to implement Uniform Civil Code in India in family laws.

Hurdles created by Constitution: The right to freedom of religion and preserve culture is given in the constitution of India under articles 25-28. Many communities (especially minorities) view Uniform Civil Code as a threat to their religious freedom and it will neglect their rules and traditions and make rules which are in favor or influenced by majority sections. It will also get into conflict with Articles 371¹⁷ and 371-A¹⁸ of the Indian constitution which gives special provisions to specific states like Nagaland, and Maharashtra (Vidarbha and Marathawada).

STATUS OF UNIFORM CODES IN INDIA AND STEPS TAKEN TOWARDS IT

Many Indian laws follow a system of uniform codes in civil matters like the Civil Procedure Code, India Contract Act 1872, Partnership Act 1932, Transfer of Property Act 1882, Evidence Act 1872, etc. But there is diversity in those civil laws because of the amendments made by the state. Many states recently refused to administer the Uniform Motor Vehicles Act, of 2019. For now, Goa is the only state who has the Uniform Civil Code.

There was an act called the Special Marriage Act, of 1954 which provides provision for civil marriage whatever the religion of the person is, thus, it allows all the Indians to marry outside their borders of religious laws. In cases like the Sarla Mudgal case, Shah Bano case, etc. The Supreme Court had advised the government many times to take steps in the direction of a uniform civil code. Though other civil laws have uniformity in them in family matters, despite appeals made by SC in various cases, the government didn't take a step to frame the Uniform Civil Code.

¹⁷ The special provision concerning the States of Maharashtra and Gujarat

¹⁸ The special provision concerning the State of Nagaland

CONCLUSION

At last, we can conclude that the goal or objective of a uniform civil code can only be reached through the brick-by-brick method and not by an omnibus approach. The government had to work hard to earn the trust of all the citizens and the citizens should also appreciate the formation of uniform civil laws in their matters, only then it is possible. The principles like equality; gender justice etc. should be reflected in them. Uniform Civil Code can only be brought by the working of government and society collectively.