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UNIFORM CIVIL CODE DEBATE IN INDIAN LAW: NEW DEVELOPMENT & CHANGING AGENDA

INTRODUCTION

Tracing back to the words of Aristotle “The constitution is the way of life we chose for ourselves” also “it is the collection of principles according to which the powers of government, the right of people & relation between two are adjusted” – C.F.STRONG

The constitution in a nutshell contains similar principles which can be broadly classified as Fundamental rights, Fundamental Duties, and Directive Principles of State Policy. The DPSP's are the guidelines to the state which are not enforceable. As stated by Dr. B.R.Ambedkar: The basic principles and ideals of economic democracy are the Directive Principles of State Policy These DPSP's are not merely pious declarations but they give guidance to the government in governance of country.¹ This part IV of the constitution envisages in itself an important provision which is a burning topic in today's era i.e. Uniform Civil Code under Article 44.

MEANING OF UNIFORM CIVIL CODE

The word 'Uniform' is derived from Latin word 'uniformis' which means 'only one form' also the word 'Uni' means 'One'. Thus the word Uniform civil code literally means 'a civil code of one form' i.e. all citizens in India are governed by One law. There exists a variety in classification of laws in India. Some major categories of these laws are Criminal Law, Civil Law, Tort Law, Constitutional Law; Contract Law etc. The civil law in its part contains many personal laws also known as family law like Hindu law and Muslim law. Uniform civil code is

¹ I, Dr. S.R.MYENI, CONSTITUTIONAL LAW-I, 709 (Ed. 2, 2017)

meant to bring a common set of principles by replacing the personal laws based on scriptures and customs.²

HISTORY OF UNIFORM CIVIL CODE

When Britishers came to India they initially followed the policy of non-interference towards the culture and laws of India. But soon after they began to realize the existing loop holes in existing laws and to combat these faults, new laws were made. Personal laws were first made during British Raj. Not only personal laws like Hindu and Muslim laws but also many civil and criminal laws were also codified. The best example of which in the Indian Penal Code which was codified by Lord Macaulay after the report of 2nd Law Commission in 1835, which examined problems of the Lex Loci.

During the British raj many atrocities within the Indian society prevailed. Women did not enjoy freedom, practices such as child marriage, sati pratha, also prevailed the agitation towards which led to enactment of Hindu Window Re-marriage Act 1856, Hindu Inheritance (Removal of Disability) act, 1928. The Nehru Report in 1928 also advocated for Uniform Law in Free India. The most important step towards Uniform Civil Code was the motion of Hindu Code Bill by Dr. Baba Saheb Ambedkar.³ The idea of Uniform Civil Code was put by National Planning Commission appointed by congress in 1940. Various debates began to emerge and the question to include Uniform Civil Code in Constitution as a Fundamental Right was brought up by Minoo Masani, Hansa Mehta, and Amrit Kaur & B.R.Ambedkar in 1947⁴. After numerous debates in the constituent assembly Uniform Civil Code was finally envisaged in Constitution under Article 44, which is the Directive Principle of State Policy.

DEBATE ON UNIFORM CIVIL CODE

Being a country of diverse nature India has a population that follows different cultures and traditions. Nor the Muslims or Hindus or Christians are governed by one law. The question regarding Uniform Civil Code has been a question of debate since time immemorial. There has

² RajRas , RAJ RAS, Uniform Civil Code : Definition, Debate, way-forward (Oct.14, 2016) <https://www.rajrass.in/index.php/uniform-civil-code-definition-debate-way-forward/> (Last visited on 08/04/2020)

³ Vasanti Rasam, Research Gate, *Uniform Civil Code- An Historical Account*, Oct.2015 https://www.researchgate.net/publication/299368834_Uniform_Civil_Code-_an_Historical_Account (Last visited on 08/04/2020)

⁴ Shubham Mongia, Legal Services India, *Uniform Civil Code- One Nation One Code*, <http://www.legalserviceindia.com/legal/article-685-uniform-civil-code-one-nation-one-code.html> (Last visited on 08/04/2020)

always been a contradiction as to its application. The views of all the rulers and governments since Colonial Era have differed. In October, 1840; the necessity of uniformity in codification was stressed upon by a Lex Loci report. But it also advised to keep Hindu and Muslim personal laws to be kept immune from such codification. Later, a Queen's proclamation in 1859 declared absolute non interference in religious matters. Most of the civil laws in India like- Indian Contract act, Code of Civil Procedure, Sale of Goods Act, Transfer of Property Act, Indian Evidence Act etc were codified in the Colonial era. After the end of Colonial era the period between 1947-1985 witnessed great stress upon Uniform Civil Code. This Post Colonial Period saw leaders like Pandit Jawaharlal Nehru and Dr. B.R.Ambedkar to advocate the application of uniform civil code. The major debate was whether to include Uniform Civil Code as a Fundamental right or as a Directive Principle of State Policy in the constitution. Leaders like Alladi Krishnaswami were in favor on Uniform Civil Code. However the Muslim members sought to immunize the Muslim personal laws from state regulations. Leaders like Hussain Imam questioned that "can there be uniformity in personal laws ever in a diverse country like India" Thus after many debates the sub-committee headed by Sardar Vallabh Bhai Patel held that provision was outside the scope of Fundamental Right. The issue was settled by 5:4 majorities and Uniform Civil Code was made a Directive Principle of State policy under Article 44 of Indian Constitution.⁵

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ARTICLE 44 OF CONSTITUTION

The constitution under Part IV contains Directive Principles of State Policy from Article 37 to 51. Article 44 of the constitution provides for Uniform Civil Code and states that: "The state shall endeavor to secure for citizens a uniform civil code throughout the territory of India."⁶ The civil code, if enacted will deal with the personal laws of all religious communities relating to marriage, divorce, adoption, custody of children inheritance, succession to property etc. which are all secular in character of Indian state and to enhance fraternity of unity among citizens by providing them with a set of personal laws which incorporates the basic values of humanism.⁷

⁵ *The Debate on Uniform Civil Code*, (Feb. 11, 2020), <https://www.jatinverma.org/the-debate-on-uniform-civil-code>. (Last visited on 08/04/2020)

⁶ DR. J.N.PANDEY, *CONSTITUTIONAL LAW OF INDIA*, 468,(55th ed., 2018)

⁷ Shabeer Ahmed, *UNIFORM CIVIL CODE* (Art.44 and Constitution) A DEAD LETTER,67, 545-552, (JULY – SEPT,2006)

DR. B.R. AMBEDKAR AND HIS VIEWS ON UNIFORM CIVIL CODE.

Dr. B.R.Ambedkar also known as the Father of Constitution was a staunch supporter of UCC. He was of the view that even in a country diverse like India the application of UCC is not impossible as mostly all the civil laws were already uniform except Succession & Marriage. He stated that: “The feelings of citizens in this matter are very genuine, but there has been a vague reading of article 35 which merely proposes that the State shall endeavor to secure a civil code for the citizens of the country. The article however does not mandate the application of code on citizens after it is formed. It is in the hands and views of the future parliament to make the code binding on those who voluntarily wish to be bound by it.”⁸ His positive approach regarding the Uniform Civil Code was evident through his fight for the Hindu Code Bill which led to his resignation. He believed that uniformity in personal laws would be a harbinger of communal harmony.

CODIFICATION OF PERSONAL LAWS

Codification of personal laws means a uniform set of personal laws for all citizens of the country. These personal laws have mostly not been codified in India. Apart from the personal laws all other Civil Laws like contract, CPC, IPC are codified laws. However the Hindu personal laws have been modernized and secularized by statutory enactments. A very different version from that of Hindu code bill was passed in 1956. It consisted of 4 major acts namely: Hindu Marriage Act, Hindu Succession Act, Minority and Guardianship Act, Adoption and Maintenance Act.

GOA CIVIL CODE.

Goa became a part of India in 1961. It is the smallest state in India and also the only state to have a common code for all citizens. This code is known as Goa Civil Code. The Portugal Civil Code of 1867 was authorized by parliament through Goa Daman and Diu administration act 1962. It is an example for the entire country about how equal rights can be provided to men and

⁸ Constituent Assembly Debates (Proceedings), Volume VII, Tuesday (Nov.23, 1948)

women. The Goa Civil Code is built up in consonance with Article 44 of Constitution of India. In the year 2012 Goa Succession Act marked the development of Goa Civil Code. The Code is a progressive law which allows equal division of income and property between husband, wife and children. Birth, marriage, death have to be compulsorily registered under the code. Muslim registered under code are not allowed to practice polygamy or divorce through triple talaq. In case of divorce each spouse is entitled to half of property.⁹

Lacunae in the Goa Civil Code- Despite being an ideal for the entire country the Goa Civil Code suffers certain loop holes like it is very difficult to understand and convert the Portuguese language of law into English. Also the provisions in code under certain special circumstances promote bigamy for Hindu males. The code has not been able to completely curb the discrimination of women on lines of religion and personal law.¹⁰

LAW COMMISSIONS REPORT ON UNIFORM CIVIL CODE

The issue of framing Uniform Civil Code was placed before 22nd Law Commission. Prior during the 21st Law Commission it was declared that the issue would be considered by 22nd Law Commission, also a consultation paper on 'Reform of Family Law' was also released. Later the Law Commission on August, 31 took into consideration the matter of Uniform Civil Code and stated that "While diversity of Indian culture can and should be celebrated, there must be no group of citizens who loses their privilege. All the discriminatory laws were dealt by the commission rather than providing a uniform civil code, which is neither necessary nor desirable at this stage."¹¹ In response to reference made by Narendra Modi Government on June 17, 2016 "to examine matters related to Uniform Civil Code" the commission came up with the consultation paper. Justice B.S.Chauhan, the honorable judge from Supreme Court led the commission. He remarked that the mere urge for uniformity cannot compromise cultural diversity to such an extent that it threatens the nation. The commission however did not agree to the uniform civil code but affirmed the codification of various personal laws. The commission

⁹ *Uniform Civil Code – Challenges, Suggestions and Debates on UCC*, BYJU's The Learning App, <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/> (Last visited on 08/04/2020)

¹⁰ Anubhav Pandey, *All You Need to Know About Goa Civil Code*, Ipleaders': intelligent legal solutions (April 25, 2017) <https://blog.ipleaders.in/goa-civil-code/> (Last visited on 08/04/2020)

¹¹ Raghav Ohri, *Uniform Civil Code Neither Necessary Nor Desirable: Law Panel*, The Economic Times, (Aug 31, 2018, 11.24 PM IST), <https://economictimes.indiatimes.com/news/politics-and-nation/uniform-civil-code-neither-necessary-nor-desirable-law-panel/articleshow/65627227.cms> (Last visited on 08/04/2020)

stated that By codification of different personal laws one can arrive at central universal principle that prioritize equality rather than imposition of uniform code which could discover many forms using law altogether, given that matter of marriage and divorce can be settled extra judicially” The commission also highlighted that there is no consensus over uniform civil code and in absence of such consensus it is presently important to prevent the diversity of personal laws but it is also in contrary very important to keep a check that these personal laws do not violate the fundamental rights provided by the constitution. The commission in its consultation paper suggested that to maintain this uniformity and conformity with constitution the personal law must be codified to greatest extent possible, secondly important amendment must be made to resolve loop holes in laws and also to eradicate inequality that have crept in law.

CASES IN WHICH QUESTIONS REGARDING UNIFORM CIVIL CODE AROSE

Justice M.C.Chagla in a Motilal Nehru Lecture on Plea for a Uniform Civil Code observed that: article 44 is a mandatory provision binding on the government.....the constitution was enacted for the whole country, it is binding on the whole country and every section and community must accept its provision and directives.¹²

In *Pannalal Bansilal Patil v. State of Andhra Pradesh*¹³ it has been observed that uniform laws for all persons may be desirable, but its enactment in one go may be counterproductive to the unity of nation.

The Supreme Court also directed the Prime Minister to give a fresh look to Article 44 of Constitution. The court directed the Union Government through the Secretary to Ministry of Law and Justice, to indicate the steps taken towards the Uniform Civil Code by the government by filing an affidavit latest by August 199. ¹⁴ In the instant case the question was that whether a Hindu husband married under Hindu law, after conversion to Islam, without dissolving the first marriage, could solemnize a second marriage. Based on the facts of the case, the Court held: A Hindu marriage continues to exist even after one spouse has converted to Islam. Thus the second marriage even after conversion to Islam is void and husband is liable of bigamy. As regards to the question of Uniform Civil Code Justice Kuldeep Singh and Justice R.M.Sahai in

¹² Universal's Guide to Judicial Service Examination, 408, (Ed. 12, 2018)

¹³ AIR 1996 SC 1023

¹⁴ *Sarla Mudgal v. Union of India* (1995) 3 SCC 635

their concurrent judgment stated that the concept of article 44 clearly denies the existence of connection between religion and personal law in a civilized society.¹⁵

In the case of *John Vallamton v. Union of India*¹⁶ it was held by the court that article 44 is based on the premise that there is no necessary connection between religion and personal law in a civilized society. Amidst Article 25 and 44 the former guarantees religious freedom and the latter divests the religion from social relations and personal laws

One of the most landmark judgments is that of *Mohd. Ahmad Khan v. Shah Bano*¹⁷ where a 73 year old woman's husband practiced the mode of triple talaq to give divorce to her also he denied any kind of maintenance to her as under the Muslim law maintenance was to be paid only during the period of iddat i.e. 90 days. The Supreme Court in this matter marked the applicability of Section 125 of CrPC which applies to all citizens equally irrespective of rigid lines of caste or religion. The SC in this case observed that a common Civil Code will help to remove desperate loyalties to law which have conflicting ideologies by bringing national integration.

NEW DEVELOPMENT AND THE CHANGING AGENDA

The concept of Uniform Civil Code cannot be denied in the era where the rights of citizens are of utmost significance and where irrespective of caste, creed, religion and gender absolute respect is given to Human rights. The burning topic of Uniform Civil Code though is the most sensitive to touch yet its implementation has taken its place in the manifesto of Bhartiya Janta Party for the 2019 elections for the first time in the history. This Uniform Code Bill is a outlook to the concept of ONE NATION ideology of NDA. It has repeatedly been the view of RSS as well as Judiciary that despite the Codification of Hindu laws in 1956 there is still no uniform law that can govern all citizens equally. The most initial step towards the Uniform Civil Code can be seen as a ban on practice of Triple talaq. As it has always been stated that matters such as marriage, birth, death, divorce and property must come under a uniform and common law for all. The decisions like Triple Talaq and Article 370 have been monumental towards the national integration and have laid down hopes towards the Uniform Civil Code. The idea of Uniform

¹⁵ Dr. J.N.Pandey, Constitutional Law of India ,469 (Ed.55,2018)

¹⁶ AIR 2003 SC 2902

¹⁷ AIR 1985 SC 945: (1985) 2 SCC 556: 1985 Cr LJ 875

Civil Code has been since birth based on the lines of 'EK VIDHAAN, EK NISHAAN' the ideology and philosophy of the Rashtriya Swayam Sevak Sangh. This means One Nation, One symbol. Progressing on the same ideologies many drafts of the UCC have been made. It is the need of time to provide education, awareness and sensitization towards this topic. The best of all must be considered and a committee involving eminent jurist must take up this matter in consideration to make it free from any caste bias.

ADVANTAGES AND DISADVANTAGES OF UNIFORM CIVIL CODE

India is a secular republic and thus needs a common law for all the citizens rather than different rules based on religious practices. Some of the advantages of the uniform civil code are-

- 1) **Gender Equality-** The application of code will abolish gender discrimination. The rights of woman are generally restricted as mostly priority is conferred to males in matters such as succession, inheritance; triple talaq etc. The uniform code will bring both men and woman at par.
- 2) **Boost National Integrity-** The dream 'One nation, one law' seems to be true as a result of uniform code. The eradication of separate religious laws will promote national integrity. There will be no scope of politicization of issues like discrimination or concession or privileges to communities.
- 3) **Cornerstone of Secularism-** The uniform civil code is the only way to enjoy true secularism which is provided by the preamble.
- 4) **Young People's Aspirations-** 55% of the population in today's Indian society is below the age of 25 years. This generation is mainly equality, modernity, and humanity based. Thus to build the nation their attitude and aspiration must be respected.¹⁸
- 5) To bypass contentious issue of reform of existing personal laws- The personal laws have mainly originated from customs and the ancient patriarchal notions. The uniform Civil Code can remove these patriarchal orthodox by modifying the laws. Thus, codification will help the women who have been discriminated to enjoy a codified personal law.

¹⁸ Santosh Kumar, *UNIFORM CIVIL CODE- Plurality v. Uniformity*, IAS Express, (Sept.19,2018)
<https://www.iasexpress.net/uniform-civil-code/> (Last visited on 08/04/2020)

DISADVANTAGES

- 1) Practical Difficulties- Due to diversity of population and their diverse culture it is cumbersome to establish common and uniform set of rules. Moreover it is herculean task to convince communities to replace their age old traditions.
- 2) Violation of Religious Freedoms- the application of uniform code is often alleged to encroach right to freedom of religion guaranteed by constitution. It is seen as a threat to communal harmony especially the minority religions who believe that Uniform Civil Code will be a dictate of religious beliefs of religion who enjoy majority.
- 3) Not a Suitable Time – The major opposition towards the Uniform Civil Code is from the Muslim community. As there already exist issues like love jihad, beef ban, saffronisation of schools, applying Uniform Code in such a situation will make things worse and would make Muslims more insecure and vulnerable.¹⁹
- 4) Sensitive and Difficult Task – Since the matter involves both majority and minority communities it is important for the government to be very sensitive and unbiased towards the issue because it may even result in communal violence²⁰.

CHALLENGES IN APPLICATION OF UNIFORM CIVIL CODE

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Uniform Civil Code is the manifestation of contemporary progressive nations which shows that nation has been elevated from religion, race, caste, sex, and birth discrimination. The major challenges is the application of UCC are -

- 1) Many communities allege that the concept of UCC is against the Fundamental Rights granted by the Constitution under Article 25 and 26.
- 2) They also believe that Article 44 is violative of Article 29 which is Right to Culture and personal laws are part of culture.
- 3) There are greater chances of massacre and riots if the code is implemented leading to disintegration.
- 4) Another challenge is the lack of political will due to the sensitivity of issue

¹⁹Santosh Kumar, *UNIFORM CIVIL CODE- Plurality v. Uniformity*, IAS Express, (Sept.19,2018) <https://www.iasexpress.net/uniform-civil-code/> (Last visited on 08/04/2020)

²⁰ Manjiri Mulye, *UNIFORM CIVIL CODE: Pros and Cons in Nutshell*, Clear IAS, <https://www.clearias.com/uniform-civil-code-ucc/> (Last visited on 08/04/2020)

5) The patriarchal mindset is a big question on Indian society and makes it very difficult for religious communities to agree for Uniform Civil Code.

CONCLUSION

India is a secular, democratic, republic country. There exists no state religion everyone is free to practice their own religion. According to Justice Jeevan Reddy, Religion is the matter of individual faith and can be regulated by the state by enacting laws.²¹ The judiciary in India, continuously through its decision has paved way for enactment of UCC. The Civil Code being a sensitive topic must be dealt with special care and must be of such a nature that it does not hurt the sentiments of those ruled under it nor it dictates the principle of any particular religion or religion in majority. It must be uniform, equal and free from bias towards each and every citizen of the country.



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²¹ S R Bommai v. Union of India, AIR 1994 SC 1918