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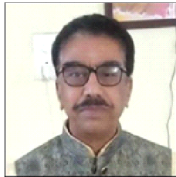
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UNIFORM CIVIL CODE A TRUE REASONING AND A COMMON BELIEF – AN ANALYSIS



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Abstract: *The Uniform Civil Code (UCC) is a proposal in India to formulate and implement personal laws of citizens which apply to all citizens equally regardless of their religion, gender, and sexual orientation. Currently, the personal laws of various communities are governed by their religious scriptures. Implementation of a uniform civil code across the nation is one of the contentious promises pursued by the Government of India. Personal laws are distinguished from public law and cover marriage, divorce, inheritance, adoption, and maintenance. In these circumstances, there is a need to make a study on what is the UCC, what is a necessity, its reasons, and its beliefs. The present article tries to answer the above questions.*

Keywords: *Uniform Civil Code, UCC in British Rule, Validation, Difficulties, Secularism*

Introduction

The debate on Uniform Civil Code (UCC) was initiated in the days of your by the constituent Assembly under the chairmanship of Dr. B.R. Ambedkar, but since then those 75 years have been rolled out nothing remarkable has been achieved yet And it is still under process of discussions debates in various public domain, due to certain indiscipline Muslim cliques as well as some self-interested individuals who are not only causing a great distance in implementation of UCC but or underfills illusion that their personal laws such as marriage divorce, maintenance adoption, succession and inheritance or at jeopardy hence deliberately wanted these personal laws to be kept away from the ambit of UCC, As these completely ride with Islam. Before proceeding further try to understand and digest the word UCC.

UCC essentially, precisely and in layman's, language means one country one rule, legally the term Civil Code means to extensively the laws governing rights relating to property and otherwise in personal matters like marriage divorce, maintenance, adoption, and inheritance. A UCC essentially means unifying all these "personal laws" to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to, though an exact figure has not been painted yet the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde. UCC is a try to give the whole picture a more regulated and systematic outlook.

In India, we have a criminal code that is equally applicable to all, irrespective of religion, caste, gender, and domicile. However, a similar code does not exist especially concerning divorce and succession and we are still governed by personal laws. These personal laws are varied in their sources, philosophy, and application. Thus, a major constraint arises while bringing people governed by different religions under one roof. Article 44 of the Constitution of India declares that "The State shall endeavour to secure for the citizens a UCC throughout the territory of India."

A uniform civil code administers the same set of secular civil laws to govern all people irrespective of their religion, caste, and tribe. This supersedes the right of citizens to be governed under different personal laws based on their religion or caste or tribe. Such codes are in place in most modern nations.

Though Dr. B. R. Ambedkar was an extensive supporter of the UCC; he could not get it through more than a status of Directive Principle due to opposition from the members. This directive principle is aimed to achieve, gradually, rather than at once, more far-reaching equality for all citizens. The state has been entrusted with this voluminous task. However, no significant steps have been taken by any government till now.

The Status of the Uniform Civil Code during the British Regime

The debate on UCC was on way back to the British colonial period in India the importance and need of UCC in Indian law were reported by Lex Loci that the Codification of Indian laws relating to crimes evidence and contract but has recommended the personal laws of Hindus and Muslims be kept outside the Ambit of such codification due to various religious divisions in India and were separated from qualifications to be governed by religious, scriptures and Customs of different community belonging to Hindu, Muslims, Parsis and Christians. Accordingly, the British government let the Indian citizens have the advantage of global customs and traditions in their domestic matters, as their personal laws mostly involved inheritance, succession, marriage, and other religious ceremonies. The Other Indian laws in respect of crimes and land relations contract work continue to be governed by the British as this loss or applied uniformly to all citizens of India, irrespective of religion.

The Muslim personal law or Sharia law was very often more discriminatory against Muslim women mainly in Northern and western India as they were very often restrained from property inheritance besides dowry settlements, as provided by Sharia law. Further, due to consistent pressure from the elite Muslims the Sharia law of 1937 was passed which specified all Indian Muslims would be governed by Islamic laws on marriage, divorce maintenance adoption and inheritance.

If one goes Deep into Indian laws would be understood that Hindu women to were not exceptional as this loss discriminated against women depriving them of benefiting from an inheritance, widow remarriage and divorce, further making them the weakest of the weak in the society besides other prevalent customs like tonsuring of widow head after the death of husband not to move freely at her choice, etc. In this contact, the efforts put forth by Shree Eshwar Chandra Vidya Sagar a social reformer in outlawing such inflated customs by his successful reforms passed through the legislative process, which pioneered the way in bringing the Indian Succession Act 1865, which was also one of the premier laws to ensure women's economics security which enabled to shift the personal loss to the domain of Civil Court. Besides, The Hindu Widow Remarriage Act of 1856, the Married Women's Property Act of 1923, and the Hindu Inheritance Act of 1928 were some of the law reforms beneficial to Hindu women were passed.

The women's organizations, especially the All-India Women's Conference (AIWC) Have demanded a UCC to replace the then existing personal laws. In this aspect, the B.N. Rau committee was set up to examine the need for common Hindu Laws. Finally, the committee opined that it was the right time to go for a UCC to assure equal rights for women keeping with the modern trends that were existing in society. The Committee reviewed the 1937 Act and recommended a Civil Code of Marriage and Succession; it was set up in 1944 and forwarded its report to Parliament in 1947. The Special Marriage (Amendment Act 1923) permitted Hindus, Buddhists, Sikhs, and Jains to marry either under their personal law or under the Act without renouncing their religion as well as retaining their succession rights.

Though the constitution of India Incorporated the directive principle through Article 44 yet not succeeded in bringing UCC due to the political unwillingness of various parties dominated by Muslims and other likeminded individuals, who pretended to support religious scriptures faith and good old traditional customs which lead to unrest among Muslim women who were subjected to continuous injustice, in their marital relations.

In this regard a Validation Citation

Mohammed Ahmad Khan versus Shahbano Begum commonly referred to as the Shahbano case, was a controversial maintenance lawsuit in India. Shahbaho a 62-year old Muslim Mother of five from Indore Madhya Pradesh was divorced by her husband

in 1978. She filed a suit in the Supreme Court of India in which she won the right to alimony from her husband. However, she was subsequently denied alimony when the Indian parliament reversed the judgment under pressure from Islamic Orthodoxy. This evoked criticism among alighted Muslims some of whom sighted the Quran to show the judgment conflicted with Islamic law. It instantly triggered controversy about the extent of having different civil courses for different religions, especially Indian Muslims. This case caused the Congress government, which is an absolute majority to pass Muslim Women (Protection of Rights on Divorce) in 1986 which diluted the judgment of the supreme court and truly denied even utterly destitute Muslim divorcees the right to alimony from their former husbands. However, in the later judgements including the Daniel Latify case and Shamima Farooqui versus Shahid Khan case, the Supreme Court of India interpreted the Act in a manner reassuring the validity of the case and consequently upheld the Shahbano judgment and the Muslim Women (Protection of Right or Divorce) at 1986 was nullified. Many Muslims including the All-India Shia personal law board, supported the supreme court of India's order to make the right to maintenance of a divorce Muslim wife absolute.

India is a diverse Nation, with different religions within its different customs but yet has a uniform set of rules/Laws for everything which included the CRPC, the Transfer of Property Act, the Negotiable Instrument Act and the Civil Procedure Code, applicable Uniformly to the whole of the country.

Difficulties in the Execution of UCC

The difficulties in the implementation of UCC regarding the Muslim laws together with sharia or mainly due to the opposition from various religious groups who claim that UCC would violate their right to practice their religion and follow their personal laws. The Muslim personal law is based on which is derived from the Quran and the Sunni (The teachings and practices of the Prophet Mohammed). The Sharia law covers various aspects of Muslim life such as worship, family business, crime, and politics.

1. **Polygamy:** UCC proposes to ban polygamy for all citizens, while Muslim law allows a man to have up to four wives if he can treat them equally.
2. **Triple talaq:** UCC proposes to abolish the practice of triple talaq, which is a form of instant divorce where a Muslim man can divorce his wife by uttering the word "Talaq" three times. The Modi government has already criminalized this practice in 2019.
3. **Inheritance:** UCC proposes to grant equal inheritance rights to sons and daughters, while Muslim law gives a son twice the share of a daughter.
4. **Adoption:** UCC proposes to allow adoption for all citizens, while Muslim law does not recognize adoption as it is considered against the biological lineage of a child.

These are some of the examples of the differences between UCC and Muslim laws that make it difficult to implement UCC in India. However, some experts also argue that UCC can be beneficial for Muslims as it can ensure gender justice, social reform, and national integration. They also point out that UCC does not necessarily mean imposing Hindu laws on Muslims but rather creating a secular and progressive code that respects the diversity and pluralism of India.

Since it involves a change in laws, an obvious prerequisite is sufficient support for the move within Parliament. The reason this has been difficult to achieve has been that most parties have held the view that the reform of laws about the personal domain is better done by pressure for such change from within communities rather than as an imposition from above. Further, for historical reasons, the demand for a uniform civil code has acquired communal overtones which have overshadowed the innate merits of the proposal.

Dispute Post-1985

The debate for a UCC, with its drivers' implications and concerning secularism in the country is one of the most controversial issues in the 21st century in Indian politics. The major problems for implementing it are the country's diversity and religious laws which not only differ twice but also by community caste and religion. The arguments for it or its mention in article 44 of the Constitution need strengthening the unity and integrity of the country, rejection of different laws for different community importance for gender equality and the reforming the archaic personal laws of Muslims which allow Unilateral divorce and polygamy. The Hindu Nationalists view this issue in the concept of their law which they say, is secular and equal to both sexes. In the country demanding a UCC is seen negatively by religious authorities and secular sections of society because of Identity politics.

In September 2003 in an interactive session in Chandigarh the then President APJ Abdul Kalam supported the need for UCC, keeping in view the population of the country.

In October 2015 Supreme Court of India asserted the need for a UCC and said that this cannot be accepted otherwise every religion will say it has a right to decide various issues as a matter of its Personal Law.

The Supreme Court is quite helpless in all this issue; it has many times stated that the Supreme Court cannot direct Parliament to pass the UCC. This is not the first time the apex court has expressed itself in favour of a UCC they have been other occasions like during the Shahbano case and later in the Sarla Mudgal case where too the apex court has come out strongly in favour of the enactment of a UCC however none of these comments or binding on the executive are the legislature and do not amount to orders. At best they exert some moral pressure on the Indian state to move towards formulating a UCC.

The supreme court in the judgment said that “if you want to have a UCC, you want to follow the UCC, follow it. But you must take a decision soon,” a bench headed by Justice Vikramjit Sen told solicitor general Ranjith Kumar.

The law is well settled on this issue. We have taken the view that these are decisions to be taken by Parliament. How can we issue a mandamus in a matter like this? We can understand your commitment to achieving the constitutional goal but this cannot be done through a mandamus from the court, “the bench told senior advocate Gopal Subramanyam.”

Uniform Civil Code vs Secularism

The spine of controversy revolving around UCC has been secularism and the freedom of religion enumerated in the constitution of India the Preamble of the Constitution states that India is a “secular Democratic Republic.” This means that there is no state religion. a secular state shall not discriminate against anyone on the ground of religion. Only being concerned with the relation between man and man but not man and God does not mean allowing all religions to be practised, it means that religion should not interfere with the Munde that is the ordinary life of an individual.

In S.R. Bommai vs Union of India as per Justice Jeevan Reddy, it was held that religion is a matter of individual faith and cannot be mixed with secular activities. secular activities can be regulated by the state by enacting a law.

Articles 25 and 26 guarantee the Right to Freedom of Religion. Article 25 guarantees every person the Freedom of Conscience and the Right to Profess, Practice and Propagate Religion. But this Right is Subject to Public Order, Morality, and Health and the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate or restrict any economic, financial, political, or other secular activity, which may be associated with religious practice and to provide for social welfare and reforms. The protection of Articles 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies, and modes of worship, which are integral parts of religion.

UCC is not opposed to secularism and will not violate Articles 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are secular and, therefore, law can regulate them. No religion permits deliberate distortion. The UCC will not and shall not result in interference of one’s religious beliefs relating, mainly to maintenance, succession, and inheritance. This means that under the UCC a Hindu will not be compelled to perform a nikah or a Muslim be forced to carry out Saptapadi. But in matters of inheritance, right to property, maintenance and succession, there will be a common law.

The biggest obstacle in implementing the UCC apart from obtaining a consensus is the drafting. Should UCC be blind to all the personal laws or shoot it be a new law

and hearing to the constitutional mandate? There is a lot of literature churned out on UCC But there is no model Law drafted. Many things that under the guise of UCC, the Hindu law will be imposed on all. the possibility of UCC being only a repackaged Hindu law which was ruled out by the then Prime Minister Atal Bihari Vajpayee ji. when he said that there will be a new code based on gender equality and comprising the best elements in all the personal laws. The UCC shall carve a balance Between the protection of fundamental rights and the religious dogmas of individuals. It shall be a code, which is just under proper according to a man of ordinary prudence without any buyers with regards to religious or political considerations.

Working of UCC from an Indian perspective

All laws are formulated to be obeyed but they are also abused. This does not mean that the law should not be implemented. Similarly, there is a great possibility of the UCC being abused, but this shall not eschew the parliament from enacting the UCC; the social welfare and benefits resulting from the implementation of the UCC are far greater.

When it is required to consolidate a community, you must take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in Europe, which have a Civil Code, everyone who goes there forms a part of the world and every minority must submit to that Civil Code. It is not felt to be tyrannical to the minorities. The then Law Minister, Dr. Ambedkar, had said that for India's unity, the country needs a codified law. Similarly, the UCC can be implemented, which will cover all the religions, whether major or minor, practised in India and any person who comes to India must abide by the Code.

Not many know that a UCC exists in the small state of Goa accepted by all communities. The Goa Civil Code collectively called Family Laws, was framed, and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian State scrapped all the colonial laws and extended the central laws to the territory but made the exception of retaining the Family Laws because all the communities in Goa wanted it. The most significant provision in this law is the pre-nuptial Public Deed regarding the disposal of immovable and movable property in the event of divorce or death. During matrimony, both parents have a common right over the estate, but on dissolution, the property must be divided equally; sons and daughters have equal rights on the property. As the procedure involves compulsory registration of marriage, this effectively checks child and bigamous marriages.

Commenting that the dream of a UCC in the country finds its realization in Goa, former Chief Justice of India Y.V. Chandrachud had once expressed hope that it would one day "awaken the rest of begotten India.

The Government of India is committed to giving the nation with Uniform Civil Code to honour all citizens to adore this law along with other laws as they are the loss of treasure in India, the Bharat the largest democracy in the world.

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