

The Relevance And Need Of The Uniform Civil Code In India : A Socio- Legal Perspective

By

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Abstract

Dr. Ambedkar, the principal architect of the Indian Constitution refused to accept the amendments which had been moved to this article. He was strongly in favour of a UCC and argued, "We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. This country has also practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far."13

Part IV of the Constitution of India provides for the Directive Principles of State Policy. Though these principles are non-enforceable but are indispensable in the governance of the country. One such directive principle is given under Article 44 of the Constitution which creates an obligation on the state to enact a Uniform Civil Code. Over the years various directions have been issued by the Supreme Court for its implementation. But, due to excessive politicization it is still a distant dream. In the absence of a uniform law regarding personal matters like marriage, divorce, adoptions, etc., various personal laws are applicable to different religious communities. These laws find their source and authority in their religious texts and customs which provides for gender discriminatory practices. The paper aims to achieve a balance between Right to Freedom of Religion and Right to Equality by segregating the 'essential religious practices' and 'secular activities'. The need of the hour is to enact a Uniform Civil Code but that should be done slowly and gradually after making the people especially the minorities, aware about its scope and extent.

Keywords: Essential religious practices, Personal laws, Right to Freedom of Religion, Right to Equality, Secular activities, Uniform Civil Code etc.

Introduction

“Injustice anywhere is a threat to justice everywhere”- Martin Luther King”

India is a secular state and Nation which means that it does not follow any one religion for the country. It means that the state will not be dependent on any kind of religious institutions for taking decisions for the state, it will not interfere with the religious matters and the religion will not interfere with the efficacy of the state. India is the world's largest democracy and second most populous countries of the world and it is emerging as a major power since the 1990's. It has a strong military and has a cultural influence over everything and its economy is fast growing and Powerful. India is a highly diverse country with so many linguistic, cultural and religious identities.

This is also reflected in its federal political system, whereby power is shared between the central government and the states. Religions not only have been serving as the foundation of the culture of India, but have had enormous effect on Indian politics and Society. In India, religion is the way of life. It is an integral part of the entire Indian tradition. A vast majority of Indians,(over 93%) associate themselves with the religion. According to the 2001 census 8.5% of the population of India practice Hinduism, Islam, Christianity, Sikhism, Buddhism and Jainism are other major religious followed by the people of India. There also numerous minor tribal traditions, though is have been affected by major religions Sachin Hinduism Buddhism and Christianity. It is in this diverse context that the concepts of the Uniform Civil Code need to be analyzed.

The historical evolution of the Uniform Civil Code in India: A brief overview :

The debates regarding the establishment of a uniform system of personal laws in India dates back to the times of the British Raj in India. Prior to the colonial period, the state kept its hands off the personal laws of its subjects. This was done to ensure peace and tranquility amongst the diverse sections of the Indian society and the consequent ease of ruling over them.

Initially, the Warren Hastings Plan of 1772 provided that the Hindus and Muslims were to take recourse of their respective personal laws in disputes related to inheritance, marriage, etc. The British, after consolidating their administrative position in India, changed the entire criminal law system and bought about the Indian Penal Code , 1860, which was aimed to be made uniformly applicable in India. Various matters of civil law were also bought under the British system of ruling.² Although this resulted in the modification and interpretation of personal laws by the foreign British judges who had negligible ideas about the Indian scenario, the complete unification of civil laws related to family wasn't done.³

The movement for a UCC kicked in around the beginning of the 20th century in demand for women rights, equality and secularism. It is perhaps pertinent to being the historical analysis from the colonial period. In a multicultural society like India, there is a contrasting system of personal laws. Personal laws were first framed during the British Raj, mainly for Hindus and Muslim citizens. Legislature immunity was granted by Britishers to certain specified topics of Hindu and Muslim laws as they considered interference in religion matters was not at all constructive to their friendly trade. In the early 19th century, the legal system was a heterogeneous mass of various legislations. Due to the confusing state of applicability of law, it was necessity to systematic and rationalizes the legal system. Thus, they took the initial footprint towards codification of laws. They realized the general law of the country was under an imperative need of change. The purpose of the codification appears to have been to achieve certainty and uniformity.

Codification of laws was made possible with the active assistance of scholars from both communities. The next major historical location for the UCC debate was when the imagination for a free India was forged in the debates in the constituent assembly. The decision to place it in the Directive Principles of State Policy, Article 35 in the draft and Article 44 in the final Constitution was based on assurance given by Nehru and Gandhi to that enactment of UCC would be postponed, although it would remain as an aspiration of the State. However, this compromise was severely objected saying that the religion based personal laws creates divisions within the country by compartmentalizing various aspects of life. UCC controversy in subsequent decades has taken place in the space created by the problem between individual rights and group rights, on how to reconcile the contrasting positions of inviolability that each set of right claim for itself. Later on, during the first 10 years of Independence, Indian Government passed Hindu Code Bill even though it faced strong oppositions from conservative Hindus. It was the first major movement of democratic State. Until Independence in 1947, a few law reforms were passed to improve the condition of women; The Dissolution of Muslim Marriage Act, 1939 is an example. In subsequent years, records of legislature wing of the state in making efforts to unify the nation under a common civil code includes enactment of

- The Special Marriage Act, 1954
- The Hindu Code 1955-56
- The Dowry Prohibition Act, 1961

UCC received major attention in the height of the Shah Bano case in 1985. It heads too many debates over the controversial issue of UCC.

Judicial Development

In 1985, for the first time in Indian history, the Supreme Court in Mohammad Ahmed Khan v. Shah Bano Begum⁴, directed the Parliament to enact a UCC. The court said that it is a matter of regret that Article 44 of our Constitution has remained a dead letter. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. This was reiterated in Jorden Diengdeh v. S.S. Chopra wherein the Court was of the view that a legislative intervention was warranted in order to provide for a uniform code of marriage and divorce.⁵ The court in Sarla Mudgal v. Union of India⁶ insisted on the need for a UCC and held that fundamental rights relating to religion of members of any community would not be affected thereby.⁷

After Sarla Mudgal's case there appears a slight shift in the judicial trend. The court in Pannalal Bansilal v. State of Andhra Pradesh emphasized that a uniform law, though highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation.⁸ In a democratic country like India which is governed by the rule of law, laws should be made uniform slowly and gradually and not abruptly. The Government should entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation.⁹ The court also clarified that the opinion of the court in Sarla Mudgal's case is not binding and is merely a suggestion. But, in the year 2003, Chief Justice V.N. Kharein, of John Vallamattom v. Union of India¹⁰ again insisted that a uniform civil code will help the cause of national integration by removing the contradictions based on ideologies.

In past few years the courts through judicial activism have made efforts to get rid of gender discriminatory practices which are in disguise of religious practices. More recently on 23rd September 2015, the Gujarat High Court in Yunusbhai Usmanbhai Shaikh v. State of Gujarat¹¹ ordered to stop Muslim Polygamy which it termed as "heinously patriarchal".¹² After one month in October, the Supreme Court in Prakash v. Phulavati¹³ ordered an examination of

practices like polygamy and triple talaq in Muslim Personal law and declared them “injurious to public morals”.¹⁴ The Supreme Court’s latest reminder for implementation of UCC came on 12th October 2015. The court observed that there is “total confusion” due to personal laws governing different religious practices and asked the Centre whether it was willing to implement Uniform Civil Code in the country.¹⁵

The challenges in the way of adoption of the Uniform Civil Code in India:

- India has a unique blend and merger of codified personal laws of Hindus, Christians, Parsis and to some extent of laws of Muslims. However, there exists no uniform family law in a single enactment of Legislature which is accepted by all those religious groups and communities who co-exist in India. Not all groups and communities would assent to having such a unified system of personal laws. The very basis and origin of different religious groups are based on differences in ideologies.¹⁶
- All communities’ personal laws discriminate against women in India. While the Shah Bano crisis concerned Muslim personal law, Hindu women have experienced a number of problems under Hindu personal law and also in other personal law systems. For example, Muslim Law acknowledges of paternity and thus clears legitimacy of the child, while others do not recognize the same. Other discrepancies exist in the areas of divorce, marriage, property division, and re-marriage. Because of the inequality that personal law both enacts and supports, many feminists in India have concentrated on the need to reform this system of law. However, very less has been gained legislatively. The current suggestions for a Uniform Civil Code and the contents therein seem to be an attack on a particular community rather than a tool for gender justice.¹⁷
- In the absence of clarity regarding what all concepts and provisions should be made uniform, there is likelihood that if enacted to convert others to the mainstream creed. An unclear Uniform Civil Code and misconceptions about a secular state does pose a danger of a civil war across the nation. There is an apprehension of tyranny by the majority community over the minorities.¹⁸

UCC and Conflicts of Personal Laws:

Personal laws in India are a nation constituting of varied customs and communities. Many famous religions and cultures of the world found in India. Religion has been an important part of the country’s culture throughout India’s history. Religious diversity and tolerance are both established in the country by the law and custom. A country that has secularism in its constitution yet there is a contradiction in this whole concept of secularism, particularly when it is interpreted in comparison to the personal laws of its citizens. It has become a confusing melting pot of Hindus, Muslims, Christians and Parsees have different personal laws pertaining to marriage, adoption, guardianship, divorce, succession and so on. Almost all communities in India have their own personal laws in matters of marriage and divorce. These religious communities coexist as part of one country yet the family laws in India differs from one religion to another. The reason is that the customs, social usage and religious interpretation of these communities as practiced in their personal lives depend hugely on the religion they were born in and that which they practice laws relating to society. Some of the codified personal laws relating to marriage, divorce, property and inheritance are:

- The Indian Christian Marriage Act ,1872 (applicable to whole of India except areas of erstwhile Travancore - cochin Manipur and Jammu & Kashmir),
- The Cochin Christian Civil Marriage Act , 1920 (applicable for Travancore - cochin areas),

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- For Sikh marriages, the Anand Marriage Act , 1909,
- Muslim personal law (Shariat) Application Act, 1937 (making Shariat laws applicable to Indian Muslims),
- The Parsi Marriage and Divorce Act, 1937
- The Hindu Marriage Act , 1955 (applicable to not merely Hindus, Buddhists and Jains but also to any person who is not a Muslims, Christian, Parsi or Jew, and who is not governed by any other law).

Conclusion And Suggestions

The current times have been extremely stressful with respect to the tolerance level between the religious communities in India. The recently passed Citizenship Amendment Act, 2019 (hereinafter CAA) and the National Register of Citizens (hereinafter NRC) by the central government has led to heated communal clashes in many parts of India since it is contended that the aforementioned provisions have used religion as a overt criterion for citizenship laws and a subsequent discrimination against Indian Muslims.¹⁹ Lot of other communal tensions have occurred due the Ayodhya Ram Mandir case developments and the insurgency attempts in Kashmir

In such times, if Uniform Civil Code is adopted in its present unclear form, it will only add on to the communal tensions and the insecure feelings of the Indian Muslims. However, it is not to be confused with the necessity of Uniform Civil Code for India. The plurality of personal laws in India does create confusions and challenges the notions of equality and solidarity. But a lot of careful regulation for the same is required. Extensive cultural diversity is the truth of India, but absolute heterogeneity in laws is also not desirable. Under no circumstances, the provisions within a Uniform Civil Code should be arbitrary.

One has to identify what is the moving jurisprudence behind a Uniform Civil Code that is it national integration with one nation-one people motto or is it the eradication of the gender based injustices engrained in the all personal laws. Both of them are very distinct from each other.² Welfare of marginalized sections of society including women has to be given much importance while drafting a Uniform Civil Code. In light of all the aforementioned suggestions and after focusing on the current communal developments in India, the legislature should take reasonable steps to frame a Uniform Civil Code for India and remove the ‘dead letter’ status from Article 44 of the Constitution.

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