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India needs a uniform civil code to prevent conflicts between personal laws and promote secularism

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Abstract---The paper seeks to discuss those aspects of the Uniform Civil Code that have not been discussed to a greater extent in the past. Uniform Civil Code is an unfinished task in the hand of the legislature, but at present time the political parties and activists have come out in support of it, and the Uniform Civil Code remains a distant dream. The paper seeks to discuss the reasons which have caused delays in the adoption and implementation of the Uniform Civil Code and analysis the internal conditions to determine whether they are conducive to having a Uniform Civil Code or not? Moreover, the discussion regarding India is a secular country in the true sense, which means it does not follow any religion in the country. In this paper author talks about the concept of the Uniform Civil Code and which refers to the common set of secular civil laws which will govern all citizens of India without no consideration of their Religion.

Keywords---Uniform Civil Code, Personal Law, Secularism, and Judicial Intervention.

Introduction

India is a secular state and Nation which means that it does not follow anyone's religion in the country. It means that the state will not be dependent on any religious institution to make decisions for the state, it will not interfere with the religious matters and the religion will not intervene in the matters of State. India is the world's largest democracy and the second-most populous country of the world, and it is emerging as a major power since the 1990s. 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. India has numerous religions and languages; the people of various religions have been governed by their laws since time immemorial. It leads to a different treatment meted out to different classes of the people in their laws. There are different personal laws for different religions to

different classes of people in their laws. People suggest for Hindus, Hindu Marriage Act, Hindu Succession Act, Hindu adoption and maintenance Act, and Hindu guardianship Act, what are the different purposes such as marriage adoption succession guardianship, etc. Muslims and Christians are governed by their laws and the reason we have separate personal laws is that every religious group has different beliefs, customs, and practices, and practices and beliefs of one religion may mean another one and so for the peaceful running of the society, we have different personal laws. It can be seen open that the personal laws of face questions of succession, marriage, divorce, inheritance, adoption, maintenance, guardianship, etc. In several cases, the judiciary faces the problem regarding the implementation of personal law on their matters. The part of the distribution of Justice reminds uniform in its application and faces a lot of difficulties and so to solve this decisive step was taken towards the national consolidation in form of the idea of a uniform civil code which was for the first time mooted seriously in the constituent Assembly in the year of 1947. The constitution of India article 44, Directive Principles of State Policy enjoins, that the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. It is 70 years or more, yet we have not been able to attain that level of sophistication accept and adopt the constitutional mandate for uniformity of personal laws. It is high time that the government of India should start taking some serious steps towards implementing, at least partially or concerning some aspects of personal law, the Uniform Civil Code (UCC) as envisaged under Article 44 of the Constitution. The National Democratic Alliance (NDA) government in its 2019 election manifesto had promised that the government would take some significant steps in that direction.¹ However, many political parties have blamed the NDA government for using UCC as a tool to polarize the multi-religious Indian society.² Polarize or not, if India must advance socially and economically, like all other western secular countries, then Uniform Civil Code is the key. At the same time, it cannot be denied that despite having many advantages there are harsh realities that cannot be ignored. There is no doubt that many communities see Uniform Civil Code as a threat that tends to destroy their culture.³ Also, its forceful implementation may not go down well with certain sections of society. The leaders of the United Progressive Alliance (UPA) have warned the government that Uniform Civil Code may lead to communal unrest, and such warning cannot be side-lined keeping in mind the anti-government movement that took place after the Citizenship Amendment Act, 2019. Moreover, not only the Muslim Community, whom the supporters of the Uniform Civil Code see as the biggest obstacle but also the people belonging to different sects of the Hindu religion oppose the Uniform Civil Code.⁴ So that not only the religious factor but cultural and linguistic factors also play a role in delaying the implementation of the Uniform Civil Code

Despite any type of opposition, the Indian government and the Indian Judiciary have repeatedly, if not directly, but indirectly taken steps to harmonize the conflicting personal laws and in that sense have constantly aimed at creating an

¹ Sachdev, Akasha, "UCC, Citizenship, Article 35A/370: BJP's Manifesto Light on Legal Reform," *The Quint*, April 8, 2019

² "Uniform Civil Code (UCC): who said what," *Times Now Bureau*, October 16, 2016

³ Mathew, C. K., "Uniform Civil Code: the importance of an Inclusive and Voluntary Approach," *The Hindu Centre*, October 26, 2019

⁴ Goyal, Shikha, "What is Uniform Civil Code?" *Jagran Josh*, August 5, 2020

atmosphere conducive to having a Uniform Civil Code. But whether the conditions are conducive or not is debatable, though the leaders of many parties in India have repeatedly said that the time is not right to introduce UCC, but their statements are politically motivated rather than influenced by the reality.

History of uniform civil code

Hindu Era

During the Hindu Era civil laws originated from the religion. In ancient India, there was only one religion, i.e., Hinduism, so all the social and civil laws were based on the Hindu religion. In the ancient period law was not bifurcated from the religion. The monarchs at that time never interfered with the religious life of the people and never interfered with those laws or those aspects of people's life which were associated with religion. In the Hindu Era, the religion and all the other laws originating thereof were determined by the learned sages and priests. They preached about the religion and the laws which would govern the daily lives of the people. In the ancient period, civil laws related to marriage, succession, etc., were strongly associated with religion. Therefore, in that period people saw marriage, succession, etc., like other aspects of religion.⁵

Since in the ancient period there was only one dominating religion and only one set of civil laws based on that religion, therefore there was no conflict in the society regarding conflicting sets of personal laws.

Mughal Era

During the Mughal Era, the foreign invaders who invaded our country followed Islam. When they came to India it became difficult for them to follow the teachings of the Caliph who resided in Arabia. In India, the Muslim rulers refused to follow the Hindu religion or even acclimatize to the Hindu way of living. They retained their religion and laws which originated from Islam. During the era of some of the Mughal rulers, the Islam faith was forced upon the people who belonged to some other religion. As a result, by the time the Mughal rule ended, there were a considerable number of people in India who had switched to Islam and had adopted the Muslim lifestyle including the laws which governed their civil life. Just like Hinduism, even Islam preached its own set of civil laws to govern matters like marriage, succession, adoption, property, etc. During the Mughal era the two-conflicting set of civil laws, i.e., Hindu civil laws and Muslim civil laws, operated side by side. Though the religion of Islam was forced upon some of the people, the Mughal rulers never abolished the Hindu religion or the Hindu system altogether.⁶

British Era

When the British came to India for the first time, they were mostly interested in trade rather than in the political life of the country. When the British Raj commenced, the English people decided to refrain from interfering in the religious

⁵ Parminder Kaur, "Personal Laws of India vis-a-vis Uniform Civil Code: A Retrospective and Prospective Discussion," www.lawmantra.co.in

⁶ Supra Note 5

life of the people. They did not interfere in religious life because they thought that such interference could ignite rebellious feelings against the Raj. However, to secure their rule they produced certain enactments which were secular, and which covered those subjects which were up till then governed by religious doctrines. These enactments were made applicable to all the people irrespective of their religion and people were required to be governed (concerning those subjects) by the enactments rather than by their respective religions. For example, the drafting of the Indian Penal Code was one step toward having a uniform and a secular law on crimes and their punishments.⁷

However, apart from these steps the British never took any other step to produce a uniform set of codes for civil matters which would apply to all the people. The British adopted the policy of neutrality and often switched sides between the two religious groups to maintain their supremacy.

Post-Independence Period

By the time India became independent, it had already been divided into religious lines. The British had been successful in creating a rift between the Hindus and the Muslims which had led to the demand for the creation of Pakistan. During those days there was social unrest and communal tensions in the country. The partition had forced the Hindus from the other side to escape the massacre and flee to India and the Muslims to do likewise. However, despite the partition, many Muslims chose to remain in India. At that time there was too much communal tension and therefore the constituent assembly chose to make the Uniform Civil Code a part of the Directive Principles rather than the Fundamental Rights. The constituent assembly believed that it was necessary to let people develop socially before implementing the Uniform Civil Code. If the Uniform Civil Code would have been made a part of the Fundamental Rights, then the minorities would have seen the UCC regime as the tyranny of the majority and a threat to their culture and the same would have led to civil unrest or even a civil war.⁸

The movement for a Uniform Civil Code kicked in around the beginning of the 20th century in demand for women's rights, equality, and secularism. It is perhaps pertinent to bring the historical analysis of 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 religious 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 a necessity to systematically and rationalize the legal system. Thus, they took the initial footstep toward the codification of laws. They realized the general law of the country was in an imperative need of change. The purpose of the codification appears to have been to achieve certainty and uniformity.

⁷ Supra Note 5

⁸ Supra Note 5

Codification of laws

It 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 the assurance given by Nehru and Gandhi 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 create 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 rights claims for itself. Later, during the first 10 years of Independence, the Indian Government passed Hindu Code Bill even though it faced strong opposition from conservative Hindus. It was the first major movement of the 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 the legislature wing of the state in making efforts to unify the nation under a common civil code includes the enactment of

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

Uniform Civil Code received major attention in the height of the Shah Bano case⁹ in 1985. It heads too many debates over the controversial issue of the Uniform Civil Code.

Implementation of uniform civil code

The founding fathers of the constitution by incorporating article 44 in the constitution which provide for the establishment of the Uniform Civil Code, mooted to have one law for all the citizens of this country. Article 44 of the constitution states that “The state shall endeavor to secure for the citizens a Uniform Civil Code.” The provision is cautiously worded and calls upon the state to ‘endeavor’ to secure and not enact a uniform civil code. It is neither time-bound nor carries a compulsive urgency. We cannot also read this provision in isolation from other provisions of the constitution which provide for equality before the law and equal protection of the law.

The success of the democratic process lies in harmonizing the group interests leading ultimately to the common good. However, the idea of UCC as a mere academic exercise or as a means to do away, prompted by ulterior motives, with the demonical character of the legal system can only be productive of more mischief than the benefits it seeks to confer. There is a need to shun away the will of the people to carry out the spirit of article 44. The true spirit of this provision is

⁹ AIR 1985 SC 945

to establish a homogenous society that is pure and is not divided into religion and caste lines, in consonance with the other provisions of the constitution.

Fact is not denied that India is a land of diversity and different religions follow their laws in family matters, which largely differ, from one another. In the word of Krishna Iyer, A common civil code is no ideal, it is a goal we must hasten slowly but not practice the fine art of standing still. Our jurists and judges, our statesmen and leaders of communities must go to the good in every personal law and nationalize it.

Such a blend of principle and tactic will help establish the new dharma-a progressive, just, common, family, code. A common civil code is the manifestation of equalization in family relations among persons who hold different religious views but are situated on temporal affairs. Unfortunately, even today after seventy years of independence that concept is still a dream, which was considered by our constitution makers as a golden thread for unity and integrity of the country. Thus, at this point, it is very important to know the opinion of various religious communities in this respect.

Uniform civil code and conflicts of personal laws

Personal laws in India

India is a nation constituting varied customs and communities. Multi religions and cultures of the world are 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 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 who have different personal laws about marriage, adoption, guardianship, divorce, succession, and so on. Almost all communities in India have their laws in matters of marriage and divorce. These religious communities co-exist as part of one country yet the family laws in India differ 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 of 1872 (applicable to the whole of India except areas of erstwhile Travancore-cochin Manipur and Jammu & Kashmir),
- Cochin Christian Civil Marriage Act of 1920 (applicable for Travancore-cochin areas),
- 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
- Hindu Marriage Act, 1955 (applicable to not merely Hindus, Buddhists, and Jains but also to any person who is not a Muslim, Christian, Parsi, or Jew, and who is not governed by any other law).

Conflict between personal laws and part -III of the Indian Constitution

Two scenarios arise which are to be discussed to determine the conflicts:

- a) Personal laws, codified, customary in practice coming in conflict with the provisions of Part-III of the Indian Constitution.
- b) Conflict of personal laws, which aims at reforming existing laws found to be arbitrary, and unconstitutional with Article 25 of the Indian Constitution.

The Indian judiciary as a protector or guardian of the Indian Constitution has been facing a dilemma in deciding the interrelation of personal laws and Part III of the Indian Constitution. One of the landmark and important judgment in this connection, which throw some light on this dilemma is the *Narasu Appa Mali case*. In this case, the constitutionality of "The Bombay Prohibition of Bigamous Marriage Act 1946, was challenged based on the Articles 14,15 & 25 of the Constitution of India, Major issues involving the case were:

- a) Whether the personal laws of Hindus are "law" within the meaning of Article 13(3) (b) and Article 372(3), Explanation 1?
- b) Whether an alteration of the personal law of one religious' community, without a similar alteration in that of others, violates equality under the law?

It was held by the court that:

- 1) "Personal laws are not included in the "law" referred to in Article 13(3) and are not the "law in force" referred to in Article 372(3). Bombay Prevention of Hindu Bigamous Marriage Act, 1946 was found not to be violative of Article 14 as the State was free to bring in social reforms in stages."
- 2) If religious practices are opposed to public order, morality, or a policy of social welfare, duty of which is upon the State, then the good of the people of the State will be preferred over religious practices.

Approaches of personal laws of different religions towards codifying civil law

There is no denying the fact that Muslims are the largest minority group in India. Within the Muslim community, people have different opinions about having a UCC for all citizens. The Muslim public opinion if that could apply to the views of an overwhelming majority, is deadly opposed to the replacement of their law by Common Civil law. In the opinion of Dr. Tahir Mahmood¹⁰, a sociologist-cum-jurist, Muslim personal law is to be eventually merged into the Indian Civil Code altogether by a UCC. He supports reforms in Muslim personal law rather than bringing up a completely new set of common law. The views held by the progressive Muslims may carry intellectual weight, but they do not have numerical strength. Many Intellectual Muslims who are conscious of the drawbacks of their laws keep away from reform due to the hatred toward UCC.

Those Muslims demanding reforms in existing personal laws argue that the principles of Indian Muslim personal laws are detached from the real teachings of Islam. They point out that Quran has amendable nature, which does not close the doors of liberal interpretation. The religious minorities namely Christians, Parsis, and Jews have not raised any noticeable voice against the mandate of Article 44.

¹⁰ Tahir Mahmood, *Muslim Personal Law: Role of the State in the Subcontinent*, pp. 1-2 (1977).

They have not spoken either against or in favor of the mandate. They seem to have adopted the policy of wait and watch. Most people following Hinduism, demand the quick implementation of the UCC. However, some Hindu leaders have openly opposed the implementation of UCC and expressed their preference for the retention of various religions to personal laws.

Role of judiciary in regarding promote uniform civil code on personal laws

When we talk about the Uniform Civil Code in the context of the Indian Judiciary or in other words, the Role of the Indian Judiciary in the Implementation of the Uniform Civil Code then the Indian Judicial System has played a very supportive role in this field since the post-colonial times. It is observed that the Indian Judiciary using interpretation, has been a mode by which the personal laws of various communities have aligned and have made their way towards the implementation of the uniform civil laws. The various Judges of the Supreme Court and High Court have played the role of a catalyst in most of the developments related to personal laws under the umbrella of the Uniform Civil Code. There have been various instances when major developments took place to harmonize and align the conflicting personal laws.

The demand for Uniform Civil Code is, unfortunately, a rather simplistic reading of reality. India's size and diversity that the solutions required are complex and cannot be simply imported as-is from 19th century Europe. India will have to think about whether uniformity of civil laws or reformation in personal laws had to be done towards the progress of its modernity. Far from having one law for all Citizens, India has been unable to create a uniform code even within each religion. Diversities in personal laws lead to politicization and UCC has become next to impossible.

The necessity of otherwise of a Uniform Civil Code cannot be debated in the absence of a coherent conception of what the Uniform Civil Code will be and what it what do. Although it has urged the government to enact one, the Supreme Court's judgments reveal the hollowness in its understanding of the Uniform Civil Code. Perhaps uniformity itself is no answer to the extreme problems of personal laws.

In the case of, *Mohammad Ahmed Khan vs. Shah Bano Begum*¹¹ which is also known as the *Shah Bano Case*, where it was observed by the Hon'ble Supreme Court of India that Article 44 of the Indian Constitution after this case is more like a dead letter. Further, the decision of this case was very much criticized by the Muslim fundamentalists. In this context, where the fundamentalists pressured the system towards adopting the Muslim Women's (Protection of Rights on Divorce) Act, 1986 which denied the women's right to claim maintenance under Section 125 of the Criminal Procedure Code. This was also a symbol that women right had no importance even in a Secular State.

¹¹ (1985) 2 SCC 556

In the case of *Sarla Mudgal (Smt.), President, Kalyani and others vs. Union of India and Others*¹², it was stated by the Supreme Court of India, that the Government of India should have a fresh look at Article 44 of the Indian Constitution and should plan to secure the much-needed uniform civil code for its citizens.

Again in the case of, *Lily Thomas, etc. v, Union of India and others*¹³, which stated that the “Level of Attractiveness” of the Uniform Civil Code cannot be questioned at any point but on the same hand, it can only be achieved or build up only when the level of social climate is maintained at a very strong note, the statesmen who are with the leaders do not care much about their advantage but instead care for the society and work towards the betterment of the society. There have been several cases as well which have supported the adoption and implementation of the Uniform Civil Code i.e., *Danial Latifi and Another vs. Union of India*.¹⁴ The below-mentioned cases are related to divorce where the courts had declared them unconstitutional. *Prabhakar vs. Shanti Bai, Ramesh Jangid vs. Sunita and Swapanna Ghosh vs. Sadananda Ghosh* etc.

Bypassing pseudo-secularism

In India, if the government cannot implement UCC directly, then it does have an alternate route. After Independence, each religion was permitted to maintain its laws, but the Nehru administration had several legislations passed, related to civil matters, which applied to all religions. For example, the Special Marriage Act, of 1954 and the legislation enacted in the year 1925, i.e., the Indian Succession Act, of 1925. These enactments applied to all Indian citizens irrespective of their religion. People were free to opt for such laws to apply to them and thereby they used to be governed by such legislations only. This enabled the people to abandon their laws where they operated against their interest and be governed by those civil laws which applied to all and which they were free to choose. This way people aligned themselves with similar civil laws, thus taking a step towards uniformity.¹⁵

Today, if the government is unable to implement the Uniform Civil Code because of the opposition they are receiving from the various communities then in that case it would be appropriate to enact laws related to civil matters which would apply to all and which people would be free to choose, but the government should not make such laws’ application mandatory. It should be left to the people to either adopt such a law or refrain from adopting it and continue with their law. It is probable that to escape the inequality, discrimination, and harshness that some personal laws inflict, many people will start abandoning their laws to be governed by such secular and universal laws.

In India, the government can slowly take steps towards implementing such secular and universal laws for each civil matter. However, its mandatory application to all religions is not advisable as it will be tantamount to enforcing

¹² AIR 1995 SC 1531

¹³ AIR 2000 SC 1650,

¹⁴ AIR 2001 SC 3958

¹⁵ Kumari A. K., “In the absence of Uniform Civil Code, Special Marriage is the best alternative for women,” SSRN, January 12, 2007

the Uniform Civil Code, which the minorities and the various communities may see as “tyranny of the majority.” Instead, the government should let people develop socially till they realize they need to have a uniform civil code, and then the mandatory application of such secular and universal laws will not create a problem. It is evident that in many personal laws, especially in the Muslim personal law, Muslim women are subjected to various types of discrimination. To escape such discrimination, as already said, they may be more than willing to switch to such secular and universal laws related to civil matters. However, the government must ensure that the people, especially the women, can opt for such laws without any resistance and the government should also make provisions to deal with situations, especially concerning marriage and divorce, where one spouse chooses the special, secular, and universal law and the other spouse chooses to retain its law. It may seem to be difficult in the beginning but slowly people will start adjusting to this new universal legal regime.¹⁶

However, to ensure its proper applicability and effectiveness the government must ensure that people who opt for such secular and universal laws continue to be governed by such laws and that they do not revert to their laws. If people are allowed to opt and switch between laws as per their whims and fancies, then such laws will have no effect, and their object to achieving uniformity will be defeated. This setup may not lead to uniformity immediately but surely one day it will lead to such uniformity. However, the advantage is that such a setup will enable the uniform civil laws and personal civil laws to operate side by side, with people given a choice to opt for the former.

Position in other secular countries

We must look at the position of the Uniform Civil Codes in Middle Eastern, Latin American, African, and European countries, to understand its importance and to also see whether the codes of these countries would be of any relevance to us or not?

If we talk about the Muslim countries, then in such countries the “Sharia Law” applies to all the people. Middle eastern countries do not allow religious minorities to practice their laws. By this, the people in these countries adhere to uniform civil laws as provided under the “Sharia.” However, the law relates to only one religion and disregards all the other religions. In India, where we call ourselves truly secular, such a law would not be possible, keeping in mind the diversity and the democratic setup in the country as contrary to the totalitarian setup in most middle eastern countries.¹⁷

In most European countries, uniform codes for both civil and criminal matters have been prevalent for a long period, though one may find exceptions concerning family laws.¹⁸ However, the drawback in most of the codes of the European countries, especially those concerning civil matters, is that they are gender-biased, promoting patriarchy. In India, we must not forget that the purpose of a uniform civil code is not only to get rid of harsh religious practices and to align

¹⁶ Supra Note 13

¹⁷ Pallov Upadhyay, “Uniform Civil Code around the World,” Lex Insider, December 4, 2015.

¹⁸ Werner Menski, “Don’t look to the west, India has evolved its own way,” The Times of India, September 14, 2017.

the conflicting personal laws but also to ensure equality between men and women in civil matters. It is evident that most of the personal laws in India are gender-biased too and such biasness the Uniform Civil Code seeks to eliminate. However, the European countries have started to get rid of the gender-biased nature of their codes, and bit by bit they are making progress in that direction.

Most of the North and West African countries are underdeveloped and devoid of any proper law enforcement machinery. Moreover, most of these countries are Muslim dominated and thus the Muslim legal system prevails in these countries, with few exceptions. These countries have a long way to go before they can have their own set of uniform civil laws.

The nations around the world may have unusual characteristics and different demographic sets up and maybe function under various conditions, therefore, the need for a Uniform Civil Code should be looked at from the Indian perspective. Whether the time has come to implement a Uniform Civil Code or not should be determined not by looking at the other countries but by analysing our internal conditions.

Soon after the Independence, the legislative wing of the State made efforts to unify the Nation under a Uniform Civil Code:

- a) Special Marriage Act 1954
- b) The Hindu Code 1956
- c) The Dowry Prohibition Act 1961

To a very large extent, these laws have not been noticed by most citizens. The purpose of the Utilization of Special Marriage Act was to overcome customary disapproval towards the marriage contrary to an actual dissatisfaction with personal laws. Even the Hindu law which is the sort to create a uniform law governing all Hindus is not uniform in some of the fundamental aspects of family law. Even the much-touted example of a Uniform Civil Code, the Portuguese Civil Procedure Code 1939 applicable to all communities in GOA does not apply to all the communities. The Dowry Prohibition Act remains a dead letter ever since its enactment. Thus, unifying legislation has miserably failed to achieve the desired objective in the past.

Role of opposition to enactment of uniform civil code

It should be well understood that not only the religious minorities but ethnic and cultural minorities in India also do not see the Uniform Civil Code favourably. As said earlier, they see the UCC as a “tyranny of the majority.” The reason why these minorities do not favor UCC is that they fear that it tends to destroy their unique identity in Indian society.¹⁹ Moreover, the identity politics practiced in India has made it even worse, increasing people’s inclination and loyalty more toward their cultural principles rather than towards secular principles. In the Hindu religion itself, there are many sects and sub-groups, each having a unique cultural identity, and religious practices which include laws governing their civil

¹⁹ Krishnadas Rajagopal, “What is the debate on the Uniform Civil Code all about,” The Hindu, September 09, 2018

matters. If a secular code is to be adopted, then the question arises that whether it will be able to satisfy all the sub-groups in the Hindu religion?²⁰

There is no doubt that even some sections of the Hindu religion are also opposing the Uniform Civil Code, the Hindu religion being very diverse it is improbable that any code will be able to align, satisfactorily, all the sections and sub-groups of the Hindu religion.

On the other hand, the Muslim community sees it as cultural imperialism of the Hindus, who are determined to apply their civil laws to different parts of the country. However, this is not true. The laws which the NDA government seeks to present can either be independent of all the religions or may include elements of all the religions. In India, the mistrust between the religious groups and their capitalization by the political parties have caused further impediments to the adoption of the Uniform Civil Code.

The amount of opposition that the government will face can be analysed after scrutinizing the opposition which the government faced to have the Citizenship Amendment Act, 2019 passed. There is no doubt that the Uniform Civil Code will be opposed by the Muslim political parties and Muslim leaders and many sections of the Muslim community. Moreover, the RSS' over-involvement in the drafting of the Uniform Civil Code and its delay owing to the differences between the Bhartiya Janta Party and the RSS has aggravated the false belief of the Muslim Community that the Uniform Civil code will symbolize the laws which govern the civil matters of the people belonging to the Hindu religion.²¹

Therefore, looking at the number of people ready to oppose the Uniform Civil Code and the intensity with which it will be opposed, it is not incorrect to say that the time to implement the Uniform Civil Code has not yet come.

Suggestions

The current trends indicate how little has been achieved in securing a Uniform Civil Code and how very stupendous a task is still ahead. The following suggestions are made in this regard:

- A Uniform law though it is highly desirable, enactment thereof in one go perhaps may be counterproductive to the unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive law should be brought about. The process of law can remedy the mischief of defect, which is most acute, at stages.
- A comparative study of the various personal laws should be made to ascertain the similarities as well as dissimilarities between their provisions. A law of personal status based on those principles, which are almost identical to all the personal laws can then be enacted and enforced immediately.
- A family law Board should be up in the Union law Ministry in the pattern of the company law board working under the Ministry of Industrial Affairs.

²⁰ Supra Note 15

²¹ Smriti Kak Ramchandran, "BJP, RSS hope for consensus on Uniform Civil Code", The Hindu, 22nd August 2020

- The reasons for the ineffectiveness of the existing family legislation such as the Dowry Prohibition Act, The Hindu Code, and The Dissolution of Muslim Marriage Act should be investigated.
- The solution to the problem under review seems to be the introduction of a transitory dual system of family law.

The personal laws of the religious communities may not be scrapped in one go; thus, it must be perched of all unsatisfactory elements. On the other hand, we may enact a Uniform Civil Code based on the cream of modern family jurisprudence and put it in the referendum. If the majority of members of particular community work for its adoption, then it shall be made compulsorily applicable to them; otherwise, it may be allowed to continue to be governed by its separate personal laws as reformed and modernized whenever necessary and if such a dual system has a virtue in it, the separate personal laws shall die out over time. Hence, successful completion of this task leading to a smooth materialization of the idea of Article 44 needs a wise exercise of its authority and liberal use of its resources by its State.

Conclusion

It is very difficult to implement the Uniform Civil Code because there is a very wide dispersal of spirituality, caste systems, etc. in the Country. There have already been many controversies like the abolishment of Article 370, Citizenship Amendment Act, 2019 so Uniform Civil Code's implementation may lead to something even worse because it takes time for everyone to accept the changes brought about for the betterment of the society and the country.

Hence, in the end, after all the research it can be said that a Uniform Civil code is a set of rules or certain Code of law which simply comprises those laws which are manipulative for all the citizens irrespective of their Religion or without violating their Fundamental Right or any other right. Uniform Civil Code is simply based on a thought of One Nation One Code, which means that the whole nation is governed or is based or adjudicated on basis of one Uniform Code of law. There have been many instances where even the Judicial System has ensured that the Uniform Civil code is applicable and even made sure that it is applicable with the utmost harmony. It is supported by Article 44 of the Indian Constitution but still, the judicial system has also played a major role in the security of the Uniform Civil Code. There have been major developments under the same concept but still, to get it codified and universally accepted by all the Citizens of the Country, it needs a lot of major developments without hurting the sentiments of the People belonging to various religions, such as India is a Secular Country. Thus, Uniform Civil Code is present in many instances but is still needed in other possible instances also.

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