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Should India have a uniform civil code

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ABSTRACT

The Framers of the Constitution made various laws for the better working of the country but a country like India cannot be governed by a single center hence various powers were given to the constitution for the working of the state mentioned under The Directive Principle of the State in Part IV of the Indian Constitution. One such Directive Principle is mentioned under Article 44 which says that the citizen of the country should be governed under a single set of laws irrespective of their regions or religion. The paper is a brief study of the most debated and controversial topic about the implementation of a Uniform Civil Code in India. In the recent years, various judgment of the Supreme Court has shown a marked proclivity towards the establishment of the Uniform Civil Code and even deals with the unresolved debate on the freedom to religion.

Keywords— Uniform civil code

1. INTRODUCTION

On 15 August 1947, India got independence, the Constitution of India was framed by the constituent assembly whose major part came into force on 26 January 1950. The four pillars which define the constitution of India are Justice, Liberty, Equality, and Fraternity. [1] The Constitution of India that provides its citizens various rights and provides the mechanism to enforce the same. Also, Directive principles which have been mentioned in Part IV of the Indian Constitution which provide directions about how the powers of the executive and legislative should be exercised by the state. And one such principle has been defined under Article 44 which says:

“The State shall endeavor to secure for the citizens uniform civil code throughout the territory of India” [2]

Uniform Civil Code is similar to the Uniform Criminal Code which applies to all the citizens irrespective of their caste, sex, religion etc. Similarly, this manuscript says that each citizen should be governed under the same civil law. Civil Code related to various laws relating to Indian Contract Act, Transfer of Property Act which are uniformly applicable throughout the territories of India. But some laws which relate to marriages, divorce, succession, etc. are not governed under a single law they are governed under their “Personal Laws”. Due to this many issues were raised in past years and even today it’s a great contention for a debate.

2. METHODOLOGY

The paper is an analysis of the constitutionality of a UCC in India by referring to the purpose of the founding fathers of the Constitution upon the issue. It then shows the judicial development through the years. The paper finally attempts to provide a suggestion which might help to resolve the problem.

3. HISTORY

In 1600 when the Britishers invaded India they predominantly faced an impediment in dealing with a large number of people who were highly diverse and separated by their norms, religions, and costumes. They understood the fact that this country cannot be ruled if united. Hence, they adopted the principle of divide and rule. And decided to liberalize the law for each religion by making personal laws. But the framers of the constitution understood the unique feature of “unity in diversity” therefore they decided to introduce the Uniform Civil Code i.e. Article 44 of Indian Constitution. The concept of Uniform civil code was opposed by various people as it might hinder the peace and harmony of the country.

After 10 years of Independence, the Indian government sanctioned a Hindu Code bill even this bill was opposed by various conservative Hindus. However, the same could not be done with the Muslims as they were still recovering from the suffering of partition. It is even considered a mistake by the people who support the Uniform Civil Code. [3]

4. CONSTITUENT ASSEMBLY AND THE UNIFORM CIVIL CODE

The Uniform Civil Code i.e. Article 44 which has been a contentious it was even the most debatable topics in the constituent assembly. [4] It was first introduced in 1947 in the Constituent assembly the sub Committee desired to include the Uniform Civil Code in the Directive Principle. The objections that were raised in the assembly were:

- It will violate the right to religion which has been insured under Article 25 of Indian Constitution.
- It will infringe on the rights of the minorities [5]

On November 23, 1948, when this article was opposed by a various journalist like Pocker Saheb, but it even got a strong support from The Chairman of Draft Committee and even by the father of nation Dr.B.R.Ambedkar.The first objection was not appropriate as it does not tend to infringe the right of people mentioned under Article 25 of Indian Constitution. The reply to the second objection was given by K. M. Munshi he says that some Muslim countries even the personal rights of minorities are not protected for e.g. Turkey and Egypt and certain Muslim communities were made to follow Sharia forcefully according to Shariat Act, 1937. He says that religion should be separated from Personal laws. Personal laws discriminated on the basis of sex is not authorized by the Constitution. [6]

The concept of Uniform civil code was highly supported by K. M. Munshi, he felt that it was essential if we want a secular country. According to B. R. Ambedkar Muslim law has been immutable from the ancient times and does not fit according to the changing circumstances in various laws, therefore, it was found that Uniform Civil Code was very essential irrespective of any region. He even said that the application of Uniform Civil Code will be totally voluntary as done in Shariat Act, 1937.

This Code mainly aimed to curb the discriminatory practices done against the women in name of religion. In the end, it was decided that the goal of Uniform civil code would not hamper the parliament from implementing a goal that is suitable for the future of Indian society. The directive principles set a duty of the state to enact the Uniform civil code was adopted. [7]

5. JUDICIAL STRIDE THROUGH THE YEARS

Judiciary plays a really important role in being an independent institution by giving justice in various cases. Similarly, some cases related to Uniform Civil code has been discussed under:

In *Mohammad Ahmed Khan vs. Shah Bano Begum* (1985) 2 SCC 556 even know as Shah Bano case. The facts of the case were that Shah Bano the petitioner filed a writ saying that her fundamental right has been infringed and claimed maintenance under Section 125 of Code of Criminal Procedure after she was given a triple talk by her husband. This was the first case that directed the parliament to enact the Uniform Civil Code. It was said that Article 44 i.e. Uniform Civil Code had remained a dead letter in our constitution.

The second case where the court again told to enact the uniform civil code was *Sarla Mudgal vs. Union of India* the question that arose, in this case, was whether a Hindu husband after getting married by embracing Islam can do second marriage. The court held that the Hindu marriage done according to Hindu law can dipole only by Hindu Marriage Act 1955. and thus the second marriage would be an offense under section 495(5) of the Indian Penal Code.

In *Ahmadabad Women's Action Group (AWAG) vs. Union of India* [8] is the writ against gender discriminatory laws of Hindu, Muslim, and Christian. The court held that the removal of gender discrimination involves state policies and the court does not ordinarily have a concern regarding this matter. *Lily Thomas vs. U.O.I* [9] pursued the same. The Supreme Court in *Seema vs. Ashwini Kumar* [10] stated that all the marriages irrespective of their religion are compulsory to be registered because many husbands deny their marriage due to providing maintainability to wife or children. This was the first step of judiciary towards the Uniform Civil Code in the country. [11]

In few years the judiciary has tried to remove the gender discrimination which is in form of disguise religious practice. The most recent case dated 23rd September 2015 *Yunusbai Usmanbhai Shaikh vs. the State of Gujarat* [12] the court ordered to stop "heinously patriarchal" i.e. the Muslim polygamy. As said by Justice JB Pardiwala "On the basis of modern thinking, India must stop the practice of polygamy and enact a Uniform Civil Code". The court observed that there is a total confusion due to personal laws and asked the center to implement the Uniform Civil Code in the country.

6. OBSERVATION

There are many questions that have been raised in the implementation of Uniform Civil Code one such question is that **how a practice like triple talak which is not even mentioned in the Quran can be the reason of violating the right to follow any religion?** In Muslim law talaq-al-bidat is considered to be an impure form of talak, Quran does not mention any such form of talak and hadis does not consider talaq-al-bidat valid. In fact, the practice of triple takal in various countries like Egypt, Jordan, Sudan, Indonesia, Tunisia, Syria, and Iraq is abolished and the practice of keeping more than one wife is totally prohibited in various countries like Turkey, Pakistan, and Bangladesh etc. [13]

The second question that arises is that how to resolve differences between the personal laws of various communities and enact a uniform code? It is true that the uniform civil code will be difficult to be enacted due to the differences between the personal laws and various communities but this is not impossible because similar to the UCC if enacted like in Goa will only deal with the secular part of religion and not the essential practices of a religion. And if Uniform Civil Code is enacted than the problems faced in cases of maintainability divorced will be resolved easily. And in the years 1955-56 when the Sastri Hindus changed various norms Sati, child labor, forced labor, widow remarriage, female infanticide according to modern India If the issues of willingness would have kept in mind then the laws would have never got enacted. Even in the countries like USA, Australia, and other countries, there are

many minorities including Muslims who have followed the civil law. Then why the Indian Minorities have an insecurity in the enactment of uniform civil code? It is because UCC has become a political matter and they even have a fear of losing the votes of minorities.

The main problem that arises in the enactment of UCC is that the minorities have a fear of losing their religious identity amount the minorities. How can the minorities lose their religious identity when the Constitution provides Right to Freedom of Religion, Education and Cultural in Part III Even the Article 27 of ICCPR reads *"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."* [14]

These are reasons due to which Article 44 i.e. The Uniform Civil Code is still a dead letter even after 68 years of enactment of Constitution.

7. THE GOAN MODEL

Goa is the only state where Uniform Civil Code is enforced on all the citizens belonging to Goa. The Portuguese introduced Portuguese civil code in the 19th century which is still applicable in Goa. The Civil Code of Goa provides the equal division of property and income between wife husband and even children. [15] It is compulsory for one to register death, birth, and marriage and even Muslims have to register their marriage and severe provisions are followed on marriages a Muslim cannot have more than one wife and one can't even get divorced by Triple Talak. The children even have an equal share in the property of parents.

8. CONCLUSION

India is a vast country be in religion, language or geographical diversity, the framers of the constitution never intended India to have total uniformity of law, therefore, they decided to keep the Uniform Civil Code under the Directive Principles and not Fundamental rights. And the power to legislate is even given to both the parliament and the state hence the personal laws may differ in 29 states and union. The power of amending the laws are given to the states and various states have amended the criminal and civil laws according to the need of the state. The main problem of implementing UCC arises due to people having no knowledge and minors having the fear of losing their rights. UCC sometimes even gives the perceived imposition of that the Uniform Civil Code will be according to Hindus which adds an opposition. The next problem arises due to interruption of political parties to gain power by using the debatable topics in the country and even have a misconception of loss of culture and identity of minorities.

The implementation of UCC might lead to communal dispute, it would be much better if some reforms are brought slowly and gradually by certain amendments in personal laws making them suitable for modern times, The main focus should be on removing the social differences raising due to religion and providing them with proper information about what the basic idea behind Implementing the UCC which will not hinder the religious rights of the people rather will be focused on providing them with various benefits which they face due to different personal laws in the country. Uniform civil code should be implemented but slowly starting with certain reforms.

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