

UNIFORM CIVIL CODE – IMPEDIMENTS

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ABSTRACT

Uniform civil code is a proposal to formulate and implement personal law of citizen which applies on all citizens regardless of their religion. At personal law of every religion is scripted by their respected religious scripture. Uniform civil code is the serious issue promised by various political parties but failed to do it. It is important issue as our constitution depicts India has secular country so personal laws are formulated as distinguished religion scripture, and it remained continues in debate by Indian leftist group. The biggest impediment for uniform civil code is country's diversity and religious laws, which not only differs sector wise but also community, caste and region. The other impediments are Article 25 of the Indian constitution which states Fundamental rights to freedom of religion. As Article 44 is the Directive principle of State policy and Article 25 is a fundamental right, so DPSP can't contradict fundamental rights. In a secular county a government can't force any arbitrary law on citizens without their consent for it.

Keywords: Personal Law, Article 25 of the Constitution, Directive Principle of State Policy, Fundamental Rights, Community, Caste and Region, Secularism

INTRODUCTION

In general sense uniform civil code means a personal law applicable to every citizen of a country irrespective of their religion and religious scripture. Currently personal laws of various communities are governed by their respective religious scripture. Uniform civil code is the call for single law in India which would be applied for every religious community in matter of divorce, marriage, inheritance and adoptionⁱ.

BACKGROUND OF UNION CIVIL CODE

The origin of Uniform civil code dated back to colonial era when the British government submitted its report in 1835 stressing the need of uniformity in the codification of Indian law related to evidences, crimes and crimes but strictly recommended that personal laws of Hindu law and Muslim law should be kept outside of codification. Due to the diversity, increase in legislation dealing with the personal law forced Britishers to formulate B.N. Rau committee to codify Hindu Law in 1941. Based on the committee recommendations, a bill was then adopted in 1956 as the Hindu Succession act to amend and codify the law relating to interstate or unwilled succession among Hindu, Buddhists, Jains and Sikhs. However there were separate personal laws for Muslim, Christians and Parsis.

Since British period personal law has been governed as per religious scripture as various denomination of religion such as Hindu, Buddhist, Jain and Sikhs are similar, these religion sector governed as per Hindu personal law, whereas Muslims, Christians and Parsis's are governed as per their respective religion Scripture For Example Hindu personal law validate a single marriage for a man whereas under Muslim law a man can marry thrice as per sharia law.

Uniform civil code comes under Article 44 of the Indian Constitution (Under Directive principle of state policy) which lies down that the state shall endeavour to secure uniform civil code throughout the territory of India. As per B.R. Ambedkar Uniform civil code is desirable but should be enforced only when community consent for it, as our constitutionⁱⁱ guarantees right to freedom to religion as per article 25 of the Indian constitution Enforcing DPSP will be violation of Fundamental rights.

In order to bring uniformity the courts have often said in their judgements that the government should move towards uniform civil code. According to Judiciary India is a secular country, the practices such as polygamy (Muslim law, Triple Talaq (although invalidated) are feudal concept. The judgement in the Shah Bano is well known but court has made several points in several other judgements.

Uniform civil code emerged as a crucial topic in interest in India politics following the **Shah Bano case** in 1985, the debate arose when the question on making certain law applicable to all citizens without abridging their fundamental right to practice religious functions. The Debate then focused on Muslim law which is partially based on Sharia law, providing feudal concepts such as Polygamy, unilateral divorce etc.

GOA CIVIL CODE

Goa is the only state in India to have a uniform civil code in the form of common law, it is a progressive law that allow the equal distribution of Income between the Husband and also between children. As per Goa civil code every Birth, death and Marriage should be registered, whereas Divorce has various other provisions, Muslim who have their marriage registered in Goa cannot practice polygamy or triple talaq During the time of marriage wealth and property acquired by spouse commonly held by couple. In case of divorce each spouse is subjected to half of the property, in case of death the ownership of property isd halved for the surviving members. The parent s has no right to disinherit their children entirely, at least half of the property should be passed to children, and inherited property must be shared equally by the children'sⁱⁱⁱ.

This code of Goa denominates the transparency on personal law, the concept of compulsory registration solve the problem faced by government due to unattended population or unregistered population, whereas the heredity concept is quite satisfactory as compared to Hindu Succession act 1956 which neglect the wife share or pass only negligible share.

RESEARCH METHODOLOGY

TO complete this paper I have used doctrinal form of research and took the help of various articles, journals and research papers to analyse the concept thoroughly.

RESEARCH OBJECTIVES

- TO analyse the feasibility of uniform civil code in diverse country in India where various caste, creed and communities are held.
- To analyse the positive aspects of uniform, civil code in diverse country
- TO analyse the impediments faced by Uniform civil code

RESEARCH QUESTIONS

- What are the impediments faced by uniform civil code in diverse country like India?
- What are the positive aspects of Uniform civil code in diverse country like India?
- What are the judicial interventions on the uniform civil code?

STATEMENT OF PURPOSE

Uniform civil code has been a debate from decades but its feasibility comes into the context in diverse countries, our constitution provides freedom of religion as per Article 25 of Indian Constitution Whereas Uniform civil code stated as Directive principle of state policy, these laws become the hindrance for UCC.

JUDICIAL ANALYSIS

The judiciary say on Uniform civil code started through Shah Bano case in 1985, where court finds Muslims personal law's certain act such as polygamy and unilateral talaq as feudal in nature and need to be reformed.

JUDICIAL CASES

Shah Bano Case (1985):

Fact of the case:

A 73 year old woman called Shah bano was divorced by her husband as per unilateral divorce named as triple talaq as per Muslim personal law(Husband says to wife three times divorce) and was denied maintenance. She approached to the courts and District court and High court ruled in her favour, this led her husband to appeal in the Supreme Court stating that he has fulfilled all the criteria as per Islamic law,

The Supreme Court ruled in her favour in 1985 under the maintenance of wife, parents and children provision (Section 125) of the All Indian criminal code, which applied to all citizens irrespective of his caste or religion. Further the court recommended that a uniform civil code to be set up.

- Under Muslim personal law maintenance to be paid till the period of iddat(roughly 90days).
- Section 125 of the CRPC applied to all citizen provides maintenance to wife.

After the historic decision nation wise discussion and meeting and agitations were held. The then due to the community pressure the government passed The Muslim Women's (Right to Protection of divorce) Act in 1986, which made section 125 inapplicable to Muslim women^{iv}.

Daniel Latifi Case:

As Muslim women act was passed in 1986, agitation started for women as the amount of maintenance was very negligible and for very short period of time. This was challenged on the ground that it violates right to equality under Article 14 and 15 of the Indian constitution as well as Right to life Article 21, the Supreme court held Muslim women act constitutional but clubbed with section 125 of the CRPC, and held that the amount received by wife during iddat period as well as for future should be large enough to maintain a decent life. Thus the court held for divorce Muslim women are entitled to lifetime maintenance until she is remarried.^v

Sarla Mudgal Case:

Here it was questioned whether a Hindu husband married under Hindu law, by embracing Islam can solemnize a second marriage. The court held that the Hindu Marriage solemnized under Hindu law can be dissolved on any grounds specific under Hindu Marriage act 1955. Converting Islam and marrying as per Islamic law would not dissolve the marriage as per Hindu law; the Guy first had to dissolve the Marriage as per Hindu Law then only his marriage as per Muslim law will be validated. Court held that if Husband marriage Hindu women then embrace Islam, and marry as per Muslim law will be convicted under Section 494 of the Indian Penal code (IPC).

These all Judgements were held keeping aside the Personal law, or we can say a per the situation, Personal laws are based on religion scripture which are based on feudalistic society, so it supposes male dominated universe, these Judgement became the source of debate for Uniform civil code^{vi}.

IMPLEMENTATION OF UCC IN INDIA – A BOON OR BANE

India is sovereign socialist secular democratic republic this means state has no its own religion, therefore UCC interpreted by its opponents as common state religion so it's goes again the soul of preamble and freedom of religion as mentioned above. But they wrongly interrupted though state is irreligious but not antireligious. Uniform civil code would not hinder man's belief and also not interfere in mundane activities of day to day life.

The doctrine of Secularism as accepted by various countries such as America and Europe is the one which clearly has non-interference on the matter of religion and also these countries undergone a completely evolution process of renaissance reformation and enlightenment^{vii}.

Quite opposite to that India haven't under gone these evolution process and thus the responsibility lies on the state to interfere in the matter of religion so as to remove the impediments in the governance of state. In India the positive secularism exists where onus lies whether religious is not an impediment to overall progress of nation. Thus the UCC does not oppose to article 25 and 26 of the Indian constitution, Article 44 state that there is no necessary relation between personal law and religion in a civilised society. Marriage, divorce, maintenance, succession are of secular nature that can be regulated by common law.

India still not have a single uniform bill because if a uniform civil code is made a single set of laws applied to all citizen irrespective of one's religion especially with regards to Marriage, divorce, adoption, maintenance, succession, inheritance. Minor religious fears that uniform civil code will be tantamount to interference in their personal religious matters.

According to Minority peoples, if UCC bill is enacted all the provision would be there considering the majority sector because minors has very less say whether it is in term of votes or seats in Lok Sabha and Rajya Sabha .

IMPEDIMENTS TO UNIFORM CIVIL CODE IN INDIA

The major impediment for Uniform civil code is its ambiguous meaning, there have been serious misinformation regarding Uniform civil code leading minorities to believe that it is a way of imposing majority view on them. Its human tendency to think such as it is obvious majority wins over minority so minor communities are in fear of losing their religious identity by uniform civil code.

Political parties are standing on votes, so due to its sensitivity towards religion, The law made through uniform civil code won't be held as per any religion or customs so obviously there will be series of debates and contradictions which may lead against political parties so no political parties has no such goal for UCC. Implementation of UCC is not a Piece of cake every customs and traditions has to be neglected.

Opponent of uniform civil code argue that personal laws are derived from religious scripture so it is prudent to not disturb them, as it may lead to great deal of animosity and tension between religious communities, also India being a Secular country on the other hand guarantee its minorities the right to follow their own religion, culture and customs under Article 29 and 30 of the Indian constitution. ^{viii}

On the other hand some opponent even argue that Freedom of religion is fundamental rights whereas uniform civil code is Directive principle of state policy so DPSP can't be implemented because any law in derogation of Fundamental right is void. But the fact is Uniform civil code doesn't disallow any religion practice, just making changes in personal laws, it is not necessary that due to UCC a person won't allow to propagate his religion.

There are various Impediments faced by uniform civil code In India, due to its diversity every community caste has different view on UCC, as India is a democratic country taking people's view is necessary so this become a biggest hurdle while implementing the uniform civil code.

CONCLUSION

India is diverse country consist of various caste, creeds, and communities, it looks very tough to implement Uniform civil code but it is not impossible, there is a high need of uniform civil code in India as India is a secular country, it will be in a true sense when all the religion like Hindu, Muslim, Christians follow the same rule of law irrespective of their religion. India will be a united country only when the same laws related to inheritance, marriage; family and land are applicable to all citizens irrespective to their caste and communities. The age old customs and religion scripture are feudal in nature, these all scripture denotes male dominance, in primitive times women were not working but at present world is growing continuously still applying those feudal concept makes no sense. The Uniform civil code will help in improving position of women In India it will also help in brining changes to old aged customs and traditions that society have no relevance in modern times, A uniform civil code will ensure not division on the basis of religion but unity by creating a feeling nationality.

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ENDNOTES

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