



A uniform civil code- its effect and consequences

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Abstract

The Indian Uniform Civil Code issue has occasionally come to light. The Uniform Civil Code is described in Article 44 of the Indian Constitution as the Directive Principle of State Policy, and it is mandated that the State make an effort to create a Uniform Civil Code for the citizens. The Law Commission was asked to review the Uniform Civil Code by the Central Government in 2016. In August 2018, the Law Commission delivered its report to the Central Government. In which the creation of a unified civil code for family law was discussed. In this research paper, various concepts have been critically and various dimensions have been discussed and the barriers to understanding and utility of Uniform Civil Code and its implementation have been observed.

Keywords: uniform of civil code, personal laws, integrity

Introduction

The Honorable Supreme Court's rulings and the Indian Constitution were mostly studied in order to produce this research paper. The view points of many academics and the recommendations of the Law Commission have also been noted in relation to the Uniform Civil Code. Despite this, the following books and case laws have been studied to complete this research paper: (1) Constitution of India (2) Shahbano Ahmadh Case (3) Sarla Mudgal Case law (4) Lily Thomas Case law (5) Reports of Law Commission.

Significance of study

Through this study work, an effort has been made to learn more about the Uniform Civil Code and the conditions that make it challenging to apply in India. An effort has been made to comprehend the effects of the Uniform Civil Code on society.

Object of Study

Through this research paper, an attempt has been made to understand the purpose of Uniform Civil Code. How Uniform Civil Code can play an important role for the interest of a country and to maintain its integrity. An attempt has also been made to understand how to implement it and what are the consequences.

Research Methodology

The author has used the doctoral method to complete this research paper. As a primary sources the Constitutional of India, decisions made by the judiciary and the recommendations of the Law Commission have been used in this research paper

Introduction of Constitutional Dimensions

The Directive Principles of State Policy, Part IV of the Indian Constitution, included the Uniform Civil Code as one of its studies. Court enforcement of this part's provisions is not possible. However, these guiding ideas are applied to the creation of laws and the country's political administration. On the basis of these principles, the government does the work of making policy and laws for the country ^[1]. Article

44 says that "The state shall endeavor to secure for the citizens a uniform of civil code throughout the territory of India"

It is required to first comprehend the meaning of the Uniform Civil Code in order to comprehend the fundamental meaning of the provision of Article 44. Civil means all civil matters relating to general public which do not involve criminal cases. Thus the Civil Code deals with civil matters. Code refers to a collection of rules and regulations in a systematic form. According to Article 44, the State is required to make a civil code for all Indian citizens that apply to them equally. If the Uniform Civil Code is to be used in India for personal law, is that appropriate?

It is also commonly known that India is home to individuals of various religions, sects, customs, and regional variations. Each person's experience with family issues like marriage, divorce, succession, etc. varies depending on their faith. All communities are regulated by their own personal rules regarding inheritance, property, marriage, and customs, among other things, on the basis of their respective religions. According to the regulations listed in Schedule Six of the Indian Constitution, tribal territories are exempt from the provisions of the law in the main Indian states of Assam, Meghalaya, Tripura, and Mizoram, that a law for them shall be made by the District and Regional Council and they shall be governed by the same law. The state of Nagaland is to be given special consideration, according to Article 371A. The law made by the Parliament to this state, under which religious family matters will not apply to the social customs and customs traditions of the Naga caste etc. Even though there has already been an effort to codify personal law uniformly, Hinduism has adopted the Uniform Civil Code in a number of areas including marriage, divorce, and succession. Indian Marriage Act of 1955 and Indian Minors and Guardianship Act of 1956 All adherents of Hinduism are subject to the Hindu Succession Act of 1956, etc. All the laws have replaced Hindu traditional ideologies and beliefs. The time has come for people of all religions to adopt a Uniform Civil Code by abolishing personal law, before its ill effects increase further; we have

to be ready to fulfill the intention of the makers of the Indian Constitution.

Approach of the Framers of the Constitutions

The Constituent Assembly of India's debate took place on Article 35 which was related to Article 44, which brought two views in the view of the members of the Assembly on the matter of Uniform Civil Code and divided them into two parts ^[2] Members of the Muslim community stand their side that personal law should be out of the Uniform Civil Code, while the people of the Hindu community agreed in favor of including the law of persons in the Uniform Civil Code. Mr. Mohammad Ismail Sahib proposed one proviso to include in Article 35: "provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law" He justified his stand and said that personal law is a belief of life, due to which people follow it, it is part of the religion and customs of the people. If any provision affects the personal law, it obstructs the way of life of the individual. The following ideas for creating harmony under the Uniform Civil Code were presented to those who are following it with faith.

It is also not necessary that the law of the person should be included in the civil law. This effort can cause harmony and dispute in the society. If people choose to follow their personal law, then there will be no controversy and satisfaction. The people of each community are free to follow their own individual law without differences.

The people of the Muslim community presented their proposal to add a clause to Article 35, which proposed to keep the various activity outside the Uniform Civil Code and said that it should have the same meaning as was proposed before but its ground: "In fact, each community, each religious community has certain religious laws, certain laws inseparably connected with religious belief and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way".

An amendment was proposed to exclude the jacket method from the jurisdiction of the Uniform Civil Code. Mr. Mehboob Ali Sahib Bahadur presented his view with reference to Uniform Civil Code that Uniform Civil Code does not cover personal laws completely but covers laws in nature of personal law like Contract law, Property law, Property transfer act, evidence Law etc. He tried to draw the attention of the Constituent Assembly to the fact that it is difficult to publicly enforce the Uniform Civil Code and he stated: "Personal law depend entirely upon religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot imposed on community which insist that their religious tenets should be observed". He rightly held that personal law should be outside the Uniform Civil Code, on the grounds that: "In secular state, citizens belonging to different communities must have the freedom to practice their own religion, observed their own life and their personal laws should be applied to them". Regarding the implementation of Uniform Civil Code, Sahib Bahadur drew the attention of the assembly to this question and asked "By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard"?

Additionally, Mr. Hussain made an attempt to argue that India shouldn't be using the Uniform Civil Code. Religious diversity, according to Shri K.M. Munshi, poses a threat to

national unity. For national integration, a uniform civil code is necessary. The aims of Article 44 make the complexity of the Uniform Civil Code abundantly obvious. For the entire purpose of this article, Parliament shall, if it so chooses, makes an effort to frame a standard code of land. Sri Munshi ji's opinions were shared by Sri Alladi Krishanaswamy Iyer. Some of the planned action on this was abandoned and left to future legislators. Dr B.R Ambedkar, Chairman of the Constitution Drafting Committee, raised the issue whether there should be a Uniform Civil Code in the country or not? But this proposal was not given importance in the Constituent Assembly, but the Muslim sentiments were understood by Dr. Ambedkar and he assured them in the following words: "Article 35, which merely proposes that the state shall endeavor to secure a civil code for the citizens of the country. It does not say that after the code is framed the state shall enforce it upon all citizens merely because they are citizens".

Evidently, the framers of the constitution were aware that in India it is difficult to enforce a uniform civil code for people of all religions. That is why he left the matter to future law makers. Although the framers of the constitution did not want to see all the individual activities in uniformity, so they made this subject a subject of the Concurrent List of the Seventh Schedule on which both the Parliament and the Legislature could make laws.

Judicial Stand

When required by the Supreme Court, the legislature and the executive fulfill the lack of law making them by making laws under Article 41. To get justice under Article 142, such action is taken by the Hon'ble Supreme Court which is related to the subject matter.

In the case of "Mohammad Ahmed Khan Vs. Shah Bano Begum" ^[3], a five-judge the Constitution Bench stated that it is deeply regrettable that Article 44 is currently inactive. Uniform civil code is a symbol of national unity which has stopped inequality and contrary ideologies from flourishing. If the Hon'ble Court was aware of the difficulties in enforcing the Uniform Civil Code, therefore it said that: "We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform". We understand that it is not easy for the people of different religions, beliefs and faiths to implement it publicly, yet steps will have to be taken for the unity and integrity of the country and universal harmony.

In the case of "Sarala Mudgal President Kalyani Vs. Union of India" ^[4], reference of the Shah Bano case was made, and Article 44 was invoked to call on the Government of India to defend people' interests by creating a uniform civil code. The Hon'ble Supreme Court also directed the Government of India to appoint such an opportunity by filing an affidavit in this regard, which would work for its promotion in relation to the Uniform Civil Code.

Affidavit filed by the Government of India in the Hon'ble Supreme Court that the government will take appropriate steps to make Uniform Civil Code if all communities approach them to implement the decision of the government that the government should take further steps in this matter ^[5]. Taking this problem into consideration and explaining its implications, both Justice RM Shahi and Justice Kuldeep Singh agreed with regard to the possibility and ease of a Uniform Civil Code and said that if the provisions of Article 44 are not applicable, then it is the Indian Constitution.

Democracy is a success and also clarified that there is a logical possibility that the law should be available to all citizens under one umbrella. So that the general sense of national unity can be developed in the country. Taking the idea of religious freedom, he has talked about keeping personal law within the Uniform Civil Code.

The Constitution provides for the freedom of conscience that the internal religious belief has at that time and also the right to guarantee the disclosure and protection of religious practice that every person may freely practice and propagate his religion.

Marriage, succession and divorce and conversion are carried out according to the nature of any religion and are based on faith and harmony. The agreement of the 'seven pheras' around the fire or 'Qazi's consent' is a matter of faith and inner consciousness which is worship in itself. When a Hindu converts and recites Kalma or a Muslim converts and recites Mantras, it is a matter of faith and conscience.

Religious freedom is at the core of our customs, even a slight change can cause an earthquake in the entire social structure but with difficulty can be facilitated by incorporating individual law within a uniform civil code. For this, those individuals will have to come forward in the society, who have an impact on the society, whose words have an impact on the society, forgetting the political mileage, the leaders will have to work in a positive role through social awareness, only then this dream can turn into reality.

The Hon'ble Court in the case of "Pannalal Banshilal Pitti Vs. State of Andhra Pradesh"^[6] made personal law aware of the difficulties in the way of Uniform Civil Code that although Uniform Civil Code is an urgent matter but by making law immediately on it, its adverse effect can be seen. Due to which the unity and integrity of the country can be threatened.

In the case of "Lily Thomas Vs. Union of India"^[7], the Supreme Court gave its view in this regard that the court cannot issue any order to make Uniform Civil Code, but the court constituted a separate Constitutional Bench to hear the facts and circumstances and arguments in this regard, which can give suggestions to the government in this regard.

After over two decades, the Hon'ble Supreme Court's division bench, which was comprised of Justice Deepak Gupta and Justice Anuj Bose, ordered that a Uniform Civil Code be created and put into effect for the benefit of all citizens, In spite of the fact that the Hon. Supreme Court's directions indicated a number of difficulties in establishing a Uniform Civil Code of Law. Considering the circumstances, the court did not issue any order to the government to make a law on it and in this regard, in all the cases, it has been giving only its suggestions and views to the government.

View of the Government

The NDA government, backed by the BJP, entrusted the Law Commission with the task of conducting an examination regarding the Uniform Civil Code in the year 2016. The Law Commission, after examining it and studying the legal issues, sent suggestions in this regard to the government. The government agreed to make laws in favor of Uniform Civil Code on the recommendations of the Law Commission. Various scholars were disappointed to be in favor of Uniform Civil Code of the government, mainly former Law Commission member Tahir Mahmood Bhoot and Chairman Minorities Commission etc. People

considered this move of the government as unfortunate step^[8] Nivedita Manon, Feminist Scholar and Jawaharlal Nehru University professors criticized the government's move to frame a Uniform Civil Code as a Hindu nationalist agenda and an attempt to give second class status to Muslims.

The All India Muslim Personal Law Board and others who are associated with Muslim communities said to the government, that the government was threatening them on the basis of the majority, so they boycott the government for this step^[9]. Women's rights organizations demanded for absolute law making like 'Special Marriage Act' applicable equally to all classes. Emphasizing the need for other similar laws, the government was requested to make absolute laws for all that applies equally to all religions.

Report and Recommendation of Law Commission

The Law Commission did extensive research on the Uniform Civil Code for two years and submitted its report in this regard under the name "Constitution Paper on the Form of Family" Law to the government. The Law Commission, in its advice, said that at present there is no need or need for a Uniform Civil Code. It was emphasized that these provisions of the Sixth Schedule and 371A of the Indian Constitution are creating problems in the implementation of the Uniform Civil Code. Under this, the states of Assam, Meghalaya, Tripura and Nagaland have got exemption in relation to family law. In the case of Sixth Schedule Tribal Areas within which the States of Assam, Meghalaya, Tripura have immunity from laws made by Parliament in the matter of personal law. The making of laws for these states is done on the district and regional councils, those areas. Article 371A in Nagaland region, the community of Naga caste on religious and cultural basis has immunity from the law made by the Parliament.

Legislation for them will be made according to their traditional practices, if the State Legislature thinks it appropriate. On the basis of these provisions, the need and situation of these states is different from other states. The Law Commission observed that regional diversity cannot be neglected in framing the Uniform Code as it threatens the unity and integrity of the country. Although it was also argued that the Uniform Civil Code is helpful in the unity of the country. It can be said that without ignoring the culture and customs of all communities, make a uniform code of this guarantee in which no community has any objection. The Law Commission also made it clear that if there is no consensus among the communities on this, then it is appropriate to preserve the diversity of the country through personal law and it has to be kept in mind that personal law should not be violation to the fundamental right of the citizens. Don't be Wicket laws should be codified as far as possible so that they retain their clear existence.

The commission also suggested that all personal laws should be subsumed under a uniform code that is applicable as a public law, which is basically in relation to succession. Suggestion is not limited to personal law only on religious grounds. It is appropriate to implement the Uniform Civil Code only after emphasizing on the need to adopt it unanimously by the people of all communities.

Argument in the favor of Uniform of Civil Code

- It will help unite all Indians under a single National Civil Code of Conduct, regardless of caste, region, or tribe.

- A uniform civil code will also aid in reducing the political vote bank in each election.
- Personal laws are a loophole because by allowing them, we created an alternate legal system that continues to adhere to 1000 of your traditional principles. That would change if the law were uniform.
- It will contribute to the advancement of society and drive India closer to its objective of being a developed country. It will be a symbol of a modern, progressive nation.
- It will give women more rights: The condition of women in India will also improve with a uniform civil code.
- The laws governing marriage, inheritance, family law, and other matters should be applied equally to all Indians.
- It encourages true secularism: A uniform civil code does not imply that people's freedom to practice their faith would be restricted. It just means that everyone will be treated equally.

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Concluding Suggestion

India has a distinct identity in terms of religious and religious diversity and culture. Diversity never poses a threat to the integrity of the country. It is also known that ancient Indian civilization was based on the ideology of 'Vasudhaiva Kutumbakam'. 'Unity in diversity' has been included in the Indian Constitution. The protection of religion and culture is protected by the fundamental right of the constitution under freedom of religion. Other social conditions and for the purposes which are available to the people of tribal areas, they have been provided security by making special provisions in the constitution from Schedule five and six and till 371A to 37I. It is also known that personal law is an inevitable obstacle in the making of a Uniform Civil Code, due to which it is not easy to implement it under the Constitution. Its implementation can lead to side-effects.

The Law Commission proposes a separate Uniform Civil Code for all individual laws. Therefore, the government should take steps to make the people of Hindu Muslim Christian and Parsi community aware of this suggestion. Along with this, by modifying the existing laws, discrimination on the basis of gender should be abolished among them. Slowly over time some states have started thinking about Uniform Civil Code, as a good initiative some states like 'Uttarakhand' have also been ready to codification on it. Lawmaking work has started on.

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