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THE CRITICAL EVALUATION OF UNIFORM CIVIL CODE

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INTRODUCTION

India is a secular country. There are various different religions in India, and each and every religion has full freedom and are totally respected. Each religion has its own personal laws governing matters like marriage, divorce, inheritance, adoption and maintenance. Due to this disparity between different personal laws, there arises conflicts between different religions. According to the High court of Delhi, the Uniform civil code is required in India to reduce these conflicts between different religions and to protect the youth from the issues and repercussions of these conflicts. This difference between religions, castes, tribes or classes, often creates a ground for inequality and discrimination between the people of India, where the secularism is recognized and adopted as well. The need of Uniform Civil Code is to curb this discrimination in marriage, divorce, inheritance, adoption and maintenance. Having a uniform code for all religion will not only curb the discrimination and conflicts and promote equality but will also protect the youth from struggling due to the conflicts occurred.

Implementing a uniform civil code has been a very controversial matter since the independence. Various women members of constituent assembly, Jawaharlal Nehru and B.R. Ambedkar wanted to implement a uniform civil code for all. But the President Rajendra prasad and the Congress Party president Vallabhbhai Patel, opposed this. The Assembly added the implementation of Uniform civil code under Article 44 of the Directive Principles of the Constitution of India. This was also opposed by some women members but was not taken away. The judiciary has

highlighted its importance in many cases till today. It was also proposed in 2019 and 2020 but was not introduced in the parliament and was withdrawn before.

Though, there is a need to bring a uniform civil code but it has its negative impact as well. It is violative of Article 25 which is the freedom of conscience and the right to freely profess, practice, and propagate religion. And the SCs, STs, other backward communities, minorities and indigenous community also fear its implementation.

There are various different views on this topic, proponents say that if India is secular, why shouldn't the laws be secular and opponents say that it interferes with the Article 25.

Let's see this in detail.

MEANING

A uniform civil code is a uniform code for all religious communities in India. It would be applicable to all the citizens and their personal matters such as marriage, divorce, inheritance, adoption and maintenance would be governed by a single code. It is a one set of personal laws for all citizens irrespective of their religion instead of various personal laws according to the religion. It is based on the principles of equality, fairness and justices and is consistent with the human rights.

The Article 44 of the Constitution of India deals with the same and states that "*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*"

It was added by the virtue of Article 35 of the draft Constitution of India under Directive Principles of State Policy under Part IV of the Constitution of India. And it is not enforceable by law as the DPSPs are only directory in nature. Its implementation is not mandatory.¹

LEGAL STATUS

¹https://www.constitutionofindia.net/constitution_of_india/directive_principles_of_state_policy/articles/Article%2044

UCC under Article 44 of the Constitution of India is not yet introduced in parliament and there is no certainty that it will be implemented. Since post-independence period, it is facing a plethora of oppositions and cannot be imposed on people. The biggest hurdle in implementing the UCC is that it is unconstitutional in nature. It violates Article 25, 26(b) and 29 of the Constitution of India, which are fundamental right to profess, practice and propagate religion, manage their own religious affairs and conserve their cultures, respectively. But bringing a uniform code for every religion will deprive them of their fundamental right under the said article. The uniform code, if implemented, will govern every citizen's personal matter such marriage, divorce, inheritance, adoption and maintenance, irrespective of their religion. Whereas, India is a secular country where each and every religion is respected and tolerated. Implementing UCC would imply that India is no longer a secular country. The Secularism and UCC are in a debate since many years. Either of them has to be chosen, as they seem, somehow, two totally opposite competitors.

Where in *S. R. Bommai v. Union of India*², the Supreme court held that the '*Secularism is a basic feature of the Constitution*'. But in *Shah Bano's Case*³, the Supreme Court had recommended a 'uniform civil code'. The same court has favored both the two opposites.

UCC is not only facing the biggest challenge of legal status because it violates the fundamental rights of the people of India, but also that it is a part of Directive Principles of State Policy, and hence it is not enforceable by law. No form of government can impose it on people. It is only directory in nature. Implementing UCC being a Directive Principle, would imply that it has prevailed over the Fundamental Rights, which is not permissible in eyes of the Judiciary.

The Supreme Court in *Minerva Mills Ltd. v. Union of India*⁴, held that "*Indian Constitution is founded on the bed-rock of the balance between Parts III (Fundamental Rights) and IV (Directive Principles). To give absolute primacy to one over the other is to disturb the harmony of the Constitution*".

THE ROLE OF THE JUDICIARY

² *S. R. Bommai v. Union of India*, (1994) 2 SCR 644.

³ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.

⁴ *Minerva Mill Ltd. v. Union of India*, AIR (1980) SC 1789.

The judiciary is totally in favor for implementing a uniform civil code. Since 1985, when the Supreme court first recommended a set up of uniform civil code till now when the Delhi High Court has urged to bring the uniform code. But it also promotes secularism.

As mentioned above, the S. R. Bommai v. Union of India and the Shah Bano's Case and how these two are clashing with each other. The Supreme Court has not yet clarified on this matter that which is more important, Secularism or Uniform Civil Code.

But in Sarla Mudgal v. Union of India⁵, the Supreme Court held that *“the Article 44 is based the concept that there is no connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law.”* And the court requested the government of India through Prime Minister, to have a fresh look at Article 44 of the Constitution of India and *“endeavor to secure for the citizens a uniform civil code throughout the territory of India”*

In John Vallamattom v. Union of India⁶, the Supreme Court held that *“It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.”*

The Supreme Court has also reiterated the need for a Uniform Civil Code in ABC v. State (NCT of Delhi)⁷.

Recently, the Delhi High Court in Satprakash Meena v. Alka Meena⁸, also highlighted the need for a Uniform Civil Code to come out of the dreamworld and actually be a reality. It stated that *“The need for such a Code -- 'common to all', which would enable uniform principles being applied in respect of aspects such as marriage, divorce, succession etc., so that settled principles, safeguards and procedures can be laid down and citizens are not made to struggle due to the conflicts and contradictions in various personal laws. In modern Indian society which is gradually becoming homogenous, the traditional barriers of religion, community and caste are slowly dissipating. The youth of India belonging to various communities, tribes, castes or*

⁵ Sarla Mudgal v. Union of India, (1995) 3 SCC 635.

⁶ John Vallamattom v. Union of India, (2003) 6 SCC 611.

⁷ ABC v. State (NCT of Delhi), (2015) 10 SCC 1.

⁸ Satprakash Meena v. Alka Meena, 2021 SCC Online Del 3645.

religions who solemnise their marriages ought not to be forced to struggle with issues arising due to conflicts in various personal laws, especially in relation to marriage and divorce. The hope expressed in Article 44 of the Constitution that the State shall secure for its citizens Uniform Civil Code ought not to remain a mere hope.”

IMPACT ON MINORITIES

The most important and positive impact of UCC would be that it would curb the discrimination amongst different religion. Most importantly discrimination amongst women. The gender equality can only be maintained when there is a just and fair uniform code for all.

It would also promote nationalism amongst the people and the country will have more unity than ever. A Uniform civil code will promote modernization in the country and the country will grow socially as well, which means that the castes and religions would not be the ground of distinction anymore.

It would also bring multiplicity of laws to an end. All the citizens will be governed by one law

Also, it is pointed out by many that *“when the minorities have agreed to a uniform criminal law, then why not a civil law.”* In other countries, the minorities have supported the implementation of UCC, so why not in India. In India, the minorities and other indigenous communities, fear the implementation of UCC. They argue that the UCC is a clear interference with their personal laws and right to practice religion.

There are more than 500 tribal groups in India, whose cultures have to be protected. The Rashtriya Adivasi Ekta Parishad, a group of tribes representing 11 crore tribals, moved the

Supreme Court for the protection of interests, rights, customs and cultures of the tribal people. They highlighted that the UCC has a negative impact on these tribes' cultures and heritage.⁹

However, the implementation of UCC will not only affect the Tribal people but also other minority communities and indigenous communities, such as Muslims or Christians, etc. They are against the UCC to protect their own culture and heritage. They fear it because a uniform code, on one hand, will remove discrimination and promote equality, but on the other it will totally detach people from their culture and customs. A classic example would be that in some of the personal laws, there are some provisions (for example – polygamy) which are valid and not objected to, but it will not be so if the Uniform Civil Code is implemented. A Uniform Civil Code may take their right to polygamy away, which is not acceptable by many. They also fear it because it is one of the possibilities that these minorities would be suppressed by the majority.

CONCLUSION

The Uniform Civil Code is though a modern way of living but cannot be used as a weapon to vanish history. The UCC is very much needed in today's world, but it has as much as negative impacts as positive impacts. If implemented, it can be a tool to bring nationalism amongst citizens and promote equality and can be a tool for suppressing the minorities. It can make our country socially rich. It can be implemented but cannot be imposed on people because it is directory in nature. It has many supporters as well as many challengers. The judiciary is in its favor but the minorities and indigenous groups are not. It is a matter of great care and controversies; the judiciary has recommended UCC many times, now it's for the legislature to contemplate on this matter and communicate its decision to the people.

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