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Uniform Civil Code in India: Is it the need of the Hour?

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ABSTRACT

In this article we are discussing the Uniform Civil Code or which is called UCC as it is popularly known in India and whether India really needs Uniform Civil Code. Now what exactly is this UCC, so UCC in common laws it governs personal matters which means things like marriage divorce, succession, guardianship rights, minority rights etc personal aspects of life and the laws related to these matters are what are covered under the UCC. India is a country of diversity. And Unity in India is the beauty of diversity. This article discusses all the arguments in favour of UCC also arguments against UCC.

Keywords: Uniform Civil Code, Equality, Religion, Right to Religion.

I. INTRODUCTION

‘It is not our differences that divide us rather it is our inability to accept those differences.’

In this article we are discussing the Uniform Civil Code or which is called UCC as it is popularly known in India. Now what exactly is this UCC, so UCC in common laws it governs personal matters which means things like marriage divorce, succession, guardianship rights, minority rights etc personal aspects of life and the laws related to these matters are what are covered under the UCC. Since we have a common Criminal Court hence there is a need is felt for a common Civil Court, there has to some constitutional laws which provide for such a discussion to have its first place now under Article 44 of the Indian Constitution (Part IV) we have something called as a Uniform Civil Code “the State endeavour to secure for the citizens Uniform Civil Code throughout the territory of India” so the objective of Article 44 of Indian constitution was to address the discrimination against the vulnerable groups and also harmonizing the diverse cultural groups in the country. In fact that Dr. B. R. Ambedkar in the constituent assembly while formulating the constitution had said that UCC is desirable, however for the moment it should remain voluntary. Now initially in the draft of the Constitution under Article 35 we had this provision for UCC which was added under the DPSP (Directly Principles of State Policy) that means the non-justiciable part of the Constitution so we have a justifiable part that is fundamental rights and non-justiciable part that is directly principles of set

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policies whatever the policy are mention under Directive principles of the State policy they are fundamental in Governance of this country so every government should keep in mind these policies while formulating the regulations, rules, norms etc in country . So it act as more obligation also sometime a legal obligation on the various government, so that is why article 44 provides with the constitutional location that is provision of UCC. It is incorporated as an aspect that would be fulfilled when the Nation was ready to accept this Uniform Civil Code and the social acceptance of this Uniform Civil Code could be late.

The origin of Uniform Civil Code gets back to colonial India where the British government submitted it by reporting 1835 and it lets stress on common set of laws governing matters like crime, contract, evidence but these specifically recommended that the personal matters was of Hindus and Muslims should be kept outside the codification. In 1941 there was a committee formed chaired by Dr D.N. Rao this committee was called as the Hindu law committee which was established at least to codify one religion laws and this committee submitted the report that became the basis for in future the passage of which we knows as the Hindu Code Bill. Presently for Hindus we knows as Hindu code bills there are four laws which governs the personal matters for Hindu, these laws have been passed by the Indian parliament post independent we have-

- 1) The Hindu Marriage Act 1955
- 2) Hindu Succession Act,1956
- 3) Hindu minority and guardianship Act 1956
- 4) Hindu adoption and maintenance act 1956

Apart from it we also have laws for Muslim –

- 1) Muslim personal law (Shariat) Application Act 1937
- 2) Dissolution of Muslim marriage act 1939

Then for Christians, Indian Christians marriage Act 1872

For Parsi's The Parsi marriage and divorce Act 1936

For Sikhs, Anand Marriage Act 1909 (Even though the Sikhs and Jains covered under the Hindu Marriage Act they have a separate law called Anand Marriage Act)

So all these are the personal marriage laws governing the personal matters of different religion. In our country we have one religion neutral law that is Special Marriage Act 1954, this is a religion neutral law so this is a current scenario there is always discussion on why one country is having different personal religious laws. Dr Ambedkar is in favour of having common

state of personal law for every citizen of country. At the same point of time among the people who were opposing this, the people like the chairperson of constituent assembly Doctor Rajendra Prasad who said that new concepts that new ideas which have foreign to Hindu law they are susceptible of dividing every families in this country so we have both people who have supported the Uniform Civil Code and who were in opposed the Uniform Civil Code. Anyway due to the effort of parliamentarians one group of laws for one religion that is for Hindu, we made some modification and that we tried to codify as much as possible even by keeping in mind all the traditions and Customs into a four set of laws which are now known as the Hindu Code Bill so this was past but the fact remains that other communities did not have such a provisions and that is why we are yet to have a common set of laws in the country.

II. NEED FOR UCC

1. Foster National and social integration
2. ensure equal rights for marginalized
3. securing gender equality
4. present sub-National identities
5. using the task of judiciary

So some issues came across due to the lack of Uniform Civil Code.-

1. Very firstly it goes against equality, Under Article 14 everybody should be treated equally and the separate group are treated separately it also violets article 15 of the Constitution that is the discrimination on the case of religion so that one point of view
2. It also comes in the way of the people believe the national and social integration the laws based on religion and religious practices always undermine the secular ethos of the country is what is believed beyond that we have you CC it will ensure equal rights for the marginalized group in every religion because groups in every cause the loss the social Customs in religion when you have securing general equality has equal place in the political arena but do we have equal place for a woman in our family affairs?, definitive not, all because of social customs and practices.
3. Beyond this if you have different groups following the different customs and traditions practices it is felt that sometime it tends to create a sub National identity i.e. a nation within a nation and it creates and acute sense of group consciousness which may threaten the national regulation.

4. that so many laws were placed, also create a problem for Judiciary because now they have to look into the all these aspects and incorporate all these aspects when they are giving judgment or verdicts so if you have a UCC it will also ease the Burdon of judiciary. In 1996 the Prime Minister Atal Bihari Vajpayee called for National debate on UCC during one of the speech while no confidence motion was going on in his Parliament. Actually many demands are coming from the people, from the society to have one set of laws which will govern every citizen of the country.

Now above all are the arguments in favour of having the Uniform Civil Code in India but there are some arguments against the Uniform Civil Code too.

III. CHALLENGES FOR HAVING UCC

- Diversity Of The Country
- Guarantee And Promise Of Article 25 And 26
- Framing A Uniform Civil Code
- May Alienate Minority Communities

Diversity of the country- India is extremely diverse country and despite of this diversity we have been able to survive as a nation. Diversity can only be accommodated only when we have allowed to various communities to practice their customs and traditions that always going to beneficial to the country in the long run.

Secondly what about the guarantee of article 25 and 26 article 25 gives to every individual freedom to practice their religion freedom to propagate the religion and article 26 gives every religious group the freedom to manage their own affairs related to their religion. The promise given by the constitution makers what about the promise given by the founding fathers to every community what who decided to choose India as a nation frankly the personal matters in our country are in nest with religion that is why the founding fathers did not incorporate The word secularism in the Indian constitution the Indian secularism is completely different from that of the Western secularism. in India what we follow is Principal intervention that means apart from the fact that there are the provisions in the constitution under Article 25 which allow the state with the religion so it is very difficult to equate and balance both of them then Supreme Court has also gone ahead and tried at a various points of time not just to force but also give her call to let's have a Uniform Civil Code but then countering the supreme court in a very easy at this point of time Supreme Court in various judgements or observations has been very diverse and

diverse were not in the right sense for example - Sarala Mudgal case² 1995 Justice Kuldeep Singh make the observation in this case he said that the Hindus along with Sikhs, Buddhist and Jains they have their sentiments in the case of National Integration some other communities would not do the same thing for the establishment of common Civil Code there is this is like a making allegation against the community some community trying to have a different opinion on Uniform Civil Code. beyond this a very simple counter has been presented to the argument by many famous Scholars even some other legal luminaries they simply said that the many anti-women by biases in Hindu code Bill Still remain which have never be adequately brought forward with respect to the Indian public debate.

There are also other problems for impeding Uniform Civil Code like the Hindu code bill which has been codified are nearly codified and the personal laws and they have not been reformative surprisingly The Hindu rights has always supported for the need for Uniform Civil Code over looking this the basic argument that the four laws we see they are simply co-fide the existing customs and practices it has not deal deeper into the providing a sense of equality to women.

Beyond this, has anyone ever come up with a draft of UCC? a draught bill of it? it is so difficult to incorporate various aspects under one broad roof to say that we should have a UCC is a different thing but formulating UCC in itself is going to be a huge challenge. personal laws are difficult to unify and inner watched and divorce country like India. North East states like Nagaland Mizoram they may their own personal laws that follows their customs and not the religion. Even even in those places where we have UCC even in those places we have no equality of thoughts and also we so different community is tribes which have different custom traditions then who is going to protect their customs if you are going to give exceptions for some communities then other will demand the same exceptions so the problem is also in framing the Uniform Civil Code. the government is itself confused about whether to go for Uniform Civil Code or should we not. The Law Commission in 2018 has also said the same thing that Uniform Civil Code in our country is neither necessary nor desirable it is not required at all then what exactly the solution there is no denying the fact that various aspects of religion are deeply divisive and patriarch and sometimes the government get involved in the basement we in 1980 in shah Bano case³ sometime government became over enthusiastic where trying to curbed some kind of discriminatory practice in one religion while over looking The Other religion that also need to be taken care so eventually the best way in that the problem we have that the personal

² AIR 1995 SC 1531

³ AIR 1985 SC 945

law exist in the country.

IV. WAY FORWARD

- Weed out practices violating dignity of individual
- Raise awareness
- Promote special Marriage Act
- Try for an optional UCC

There are aspects in every social custom practice which is derogatory to the dignity of an individual which violets the freedom of individual. These practices have to be readout and these practices violets the dignity of individual women and group those practices are to be legally removed that's way form.

Beyond that we can make people more and more aware that they can also promote the special Marriage Act and better thing would be to try to formulate some optional Uniform Civil Code asking people to get themselves register under the optional Uniform Civil Code. If more and more people specially a new coming generation if get themselves under the optional Uniform Civil Code we would not need to force anyone and slowly and suddenly the society itself will read out or will remove the religious practices and customs. The largest diverse country like India there will always be people to whom you can never please and this is bound to happen. So let us try to frame the uniforms will code and make it optional and spread awareness about the discriminatory practices in most religious text not what the people preach. the problem we are facing these days are that there are three or four people who are preaching things and most of the people have no time to go back and read the basic books so we have to spread awareness about the what written in religious books which is against and which is increasing the fundamental rights then slowly and sturdily these things wipe out the and removed those and also tell the people that what actually the challenges and when awareness spread we will find that there is a genuine sense of acceptance for the Uniform Civil Code in personal laws the moments society get educated it will be more accepting of such a kind of laws it is very clear that Uniform Civil Code is not a magic bullet as uniformity does not always bring any value to the law that and that is very true in fact late alone bringing up big value we have seen sometimes uniformity is not desirable actually it's a beauty of diversity what mix a good law is that it must be just fair clear it should be constitutional one moral valve rational that's what makes a fair law so this also.

To think about Uniform Civil Code is all about Hindu Muslim relations and identities we are

for forgetting the various diverse groups and communities exist in the country and if we make Uniform Civil Code and en4 sheet mandatory it will also take away the beauty of diversity and even allowing of a various groups to have their own social customs that should never be forgotten we have to view these beyond them narrow prison of Hindu Muslim identity and sadly since Independence no group either in favour of Uniform Civil Code or against the Uniform Civil Code has ever been able to prepare a single text on Uniform Civil Code what a Uniform Civil Code realistically looks like it's a question what it would mean is something that is a thing that have to be given to people of this country so we don't know and given the toxic political climate that has been treated right now or with a diversity being attached constantly it is possible that the efforts made by any party in any state will always tense to some kind of majority minority spin to such an exercise it will always look up on an either appeasement of a minority or domination of majority that's also a challenge. And that is why Unity not uniformity must be our aim we attained Unity only through variety differences must be integrated. they should be analysed is the process that we are following but differentiation should not be removed we have to accept those differences and that is why what divide us page in comparison to what unite us.

V. REFERENCES

1. M.P. Jain, Indian Constitutional Law, Lexis Nexis Butterworths wadhwa, Nagpur, P.928-985,987-1016,1315-1336,1510-1512
2. M.P. Jain Outline of Indian Legal and Constitutional History, 7th Edition
3. V.D. Kulshreshtha's Landmarks in Indian Legal & Constitutional History, Sumeet Malik, 11th edition.
4. Dr. Kailash Rai, The Constitutional Law of India, Central Law Publication, P. 411-422.
5. Dr. J.N. Pande, The Constitutional Law of India, Central Law Agency, P.131-142, 326-345.
6. <https://indianexpress.com/article/upsc-current-affairs/the-360-upsc-debate-is-uniform-civil-code-unnecessary-and-undesirable->, visited on 22/06/2023
7. <https://www.legalserviceindia.com/legal/article-773-uniform-civil-code.html>
8. <https://www.business-standard.com/about/what-is-uniform-civil-code>
9. <https://economictimes.indiatimes.com/news/how-to/what-is-uniform-civil-code>
10. <https://www.thehindu.com/news/national/explained-the-uniform-civil-code>
