

‘UNIFORM CIVIL CODE AND ITS IMPLEMENTATION: A HARD PATH AHEAD’

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Abstract

Directive Principles of State Policy, being non-subjective to judicial remedy, results into diverse issues. One amongst them is ‘Uniform Civil Code.’ India, being a country with a secular constitution is expected to uphold social justice with freedom of religion under part III of the Constitution. Uniform Civil Code is a means with which extinction of gender based biases is possible. Traditional mindset of Indian people irrespective of their religion is biggest hurdle for rather thinking of UCC than its future implementation. UCC has been one of the most intense and debated topic in India’s public life from the very moment when Constitution of India was adopted in 1950.

KEYWORDS: Uniform Civil Code, Constitution, India, Secular, Equality

Introduction

"I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations and other things, which conflict with our fundamental rights."

- Dr. B.R. Ambedkar¹

The people of India solemnly resolved to constitute India into a Secular state. The very meaning of word ‘Secularism’ is- the principle of separation of the state from religious institutions.² Indian Society being heterogeneous is divided on the basis of Caste, creed, religion etc. A general observation to Indian society shows that every caste and community is excessively conscious to its identity and our polity is having base of these different identities, resulted into more aggravated feelings towards identity. In today’s political scenario, it is very difficult to imagine of enacting Uniform Civil Code (hereinafter referred

¹ Available at, <https://www.outlookindia.com/website/story/ambekar-and-the-uniform-civil-code/221068> last seen on 20/10/2018, 08:54pm

² Secularism, available at, <https://en.oxforddictionaries.com/definition/secularism> last seen on 22/10/2018, 04:36pm

as- ‘UCC’). In order to be acceptable, a law needs to be socially rooted which thoroughly lacking with the Indian mindset. While framing an opinion about UCC, we must understand the civil code. The civil code is ‘a set of laws governing the civil matters of the citizens in the country relating to matters like marriage, divorce, adoption, custody of children, inheritance, succession to property etc.’

The need for UCC was felt from existence of Indian Constitution. The underlying objective behind it is to provide social reforms and also to uplift the status of women. It is eminently desirable to have UCC in the interest of modernization of society and for true welfare state which strives to provide common justice to all on the basis of neutral identity.

Constitution of India and uniform civil code

Initially, the idea of UCC was raised in the constituent assembly in 1947 and it was incorporated as one of the Directive Principles of State Policy by the sub-committee on Fundamental Rights and clause 39 of the draft Directive Principles of State Policy provided that State shall endeavour to secure for the citizens a Uniform Civil Code. The argument put forward was that different personal laws of communities based on religion, “kept India back from advancing to nationhood” and it was suggested that a Uniform Civil Code “should be guaranteed to Indian people within a period of 5 to 10 years.”³

Dr. S. P. Sathe, while differentiating between Common Civil Code and Uniform Civil Code, provided three ways to bring uniform civil code: 1) Formulate Uniform Civil Code and enforce it. 2) Undertake selective reforms to personal laws, for example Marriage, Divorce, Adoption etc. 3) make it optional at the beginning.⁴

Article 44 in the Indian constitution, advises the state to provide by enacting a uniform and undifferentiated set of civil laws throughout the territory of India which reads as follows: ‘*The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*’

Dr. B. R. Ambedkar, the Chairman of Drafting Committee of the Constitution has said, “We have in this country uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the Indian penal code and Criminal Procedure Code. The only

³ B. Shiva Rao (ed.), *The framing of India's constitution: Select Documents* Vol .II, the Indian Institute of public administration (IIPA), New Delhi, 1968. Debates of 14, 17-20 April 1947.

⁴ S.P. Sathe, “*Uniform Civil Code: what, why and how*”, Published in *Towards Secular India*, a Journal of Center for Study of Society& secularism, Vol.-I, January-March 1995, p.40.

province the Civil law has not been able to invade so far is marriage and succession... and it is the intention of those who desire to have Article 35 as part of constitution to bring about the change.”⁵

Judicial Approach on UCC

The judicial approach towards UCC can be realized through various judicial pronouncements of Indian Supreme Court which took serious note of gender discrimination of female folk and injustices being faced by them through various personal laws. The main concern of these judgments was to have uniformity in all the personal matters of citizens. The case of *Shah Bano Begum*⁶ became the foundation pillar for the aggravated demands of UCC. The case revolves around the issue of ‘liability of Muslim husband to maintain his wife who is unable to maintain herself beyond *Iddat* period.’ Hon’ble Supreme Court of India in its historic judgment held that- Section 125 of Cr.P.C-1973 is secular in nature and it imposes liability on all husbands, irrespective of their religion and personal laws, to maintain their wife. Justice Chinappa Reddy, in the case of *Ms. Jordan Deigndeh v. S.S. Chopra*⁷, referred observations of Chief Justice of India Y.V. Chandrachud in the case of *Shah Bano Begum* and observed that, “The Present case is yet another event which focuses on the immediate and compulsive need for a Uniform Civil Code. The totally unsatisfactory state of affairs consequent on the lack of Uniform Civil Code is exposed by the present case.”

The case of *Sarla Mudgal & Ors. v. Union India*⁸ is yet another example wherein hon’ble Supreme Court of India stressed for the introduction of UCC. The Division Bench of Kuldeep Singh and R. M. Sahai, JJ, held the conversion of Hindu male into Islam to save from penal consequences under Sec. 494 of I.P.C-1860⁹ as void. Hon’ble Court also focused on the failure of successive governments due to political unwillingness, to implement the Constitutional mandate of Art. 44 of the Constitution of India. In *John Vallamattom v UOI*¹⁰, Hon’ble Supreme Court declared Sec. 118 of The Indian Succession Act, 1925 unconstitutional as it imposed unreasonable restrictions on the Single Community i.e. Christians in the religious and charitable bequests.

⁵ Lok Sabha Secretariat, *Constituent Assembly Debates* Vol. III 551 (23 Nov 1948).

⁶ *Mohd. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945.

⁷ AIR 1985 SC 935

⁸ AIR 1995 SC 1531

⁹ S.494 of IPC-1860 Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹⁰ AIR 2003 SC 2902

Though *triple talaq* was challenged by Muslim women previously, the case of *Shayara Bano & Ors. v. Union of India and Ors.*¹¹ is first one, wherein *triple talaq* was challenged as violation of fundamental rights under Part-III of the Constitution. Hon'ble apex Court held *talaq-e-bidat* as unconstitutional. Hence, by observing various pronouncements of apex Court, it is crystal clear that Judiciary is having reformist approach towards the introduction and adoption of UCC. It is the task henceforth for the Legislature to pay serious attention towards this issue for the betterment of the nation as a whole.

UCC WITH ADVANTAGES AND DISADVANTAGES IN CURRENT INDIAN SCENARIO

As each coin is having two sides, UCC is nowhere an exception. When we compare the same, advantages of UCC will ultimately overshadow its disadvantages. The Pros of UCC will be:

1. It will provide equality of status to all its citizens

To seek status of 'Welfare State', the state should have uniform civil and personal laws for all its citizens irrespective of their religion, place of birth, caste, gender etc. To keep country under practical application of '*Secular State without State Religion*', UCC is must.

2. It will promote gender equality and supersede on the Personal Laws

Directly or indirectly, almost all religions are discriminatory towards female folk through their personal laws. Since the time immemorial, male are granted upper preferential status in matters of succession and inheritance compared to female counterparts. In India, UCC is a ray of hope which will bring both at par.

3. It will depict the will and aspirations of youth

Indian Civilization, being one of the oldest civilizations, is consisting with more than half of its population below the age group of 25 years. They require a neutral identity. To keep the country unite, social attitudes and aspirations of youth must be shaped with universal principles of equality, humanity, and modernity. UCC with its implementation, surely provide an opportunity for the youth to use their potential to the fullest extend for the nation building.

4. It will support the unity and integrity of nation

UCC will suffice its very purpose for non-politicization of diverse issues like- enjoyment of special privileges or concessions by particular community through their personal laws. The

¹¹ (2017) 9 SCC 1

notion of equality in all its forms will overwhelm all the anti-national and anti-social elements with the implementation of UCC.

Even though, UCC is having various advantages, still some cons cannot be ignored and those are:

1. Diversities in India: A major hurdle

India is a country with unity in diversity. Various habitual, cultural and traditional diversities in India will make it troublesome for the UCC for its implementation. It is practically very difficult to cope up with traditional practices at one hand and UCC at the other. The best example is- Marriage. Till a particular community is ready for the change from its within, it will not digest the implementation of UCC.

2. UCC is an encroachment on religious freedom: A fearful perception

Still, various communities, minorities in particular are pretending that UCC is nothing but an encroachment on their Personal laws which they were practicing from ages and believe that UCC will curtail their religious freedom. Majority will influence the government and bend the laws in their favor is the general fear of the minority groups. It is deeply rooted in them. To have lenient approach towards introduction and implementation of UCC through minority groups in particular, will require some time period.

Conclusion

For wellbeing of its subjects, government requires to take some stringent steps beneficial not only for the present but for upcoming generations too. A law needs to combat with these situations; otherwise personal interests may supersede collective interests. Implementation of Uniform Civil Code is a need of the day. To foster principles of equality which will balance genders as well as religious institutions is the ultimate aim and is sought to be achieved through UCC. Unless and until these institutions are modernized, democratized and uplifted, there cannot be change of perception towards UCC. To uplift the status and dignity of women, to promote communal harmony and to strengthen the Secularism, UCC is must. A change cannot be readily accepted by traditional societies. If UCC be made compulsory, it is very hard to achieve the very object. Hence, in the beginning, it must be made optional. As the time surpasses, whole society will accept it exclusively. UCC can be a reality for the country like India. It requires a Will which unfortunately lacks in our polity.