



UNIFORM CIVIL CODE AND ITS LAWFUL ASPECTS

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ABSTRACT:

Concept and legal concepts of the Uniform Civil Code (UCC) are discussed in this paper. Legal potentials, theories and what is the actual concept of the UCC are mentioned in this paper. Origin of the UCC, the actual point from where it has been derived are discussed in the introduction part of this paper. History and personal laws of UCC has been discussed in brief. In addition to this, this paper gives information about the necessity of UCC under personal laws, what can be done for implementing, do's and don'ts are also been discussed. Constitutional guarantees are also mentioned in this paper. UCC and its relations with gender justice and human rights are also discussed. This paper also talks about the judgements and the take of the Judiciary towards the UCC. Finally, what is the view of Indian judiciary towards UCC and some of its judgements are also discussed. Last but not the least, this paper concludes with certain sets of recommendations and conclusions. Spreading the knowledge about the approach of UCC and such legal aspect is the basic motto of this paper.

Keywords: UCC, Personal Laws, Secularism, Constitution, Judiciary

1. Literature Survey

Giving a brief explanation about UCC by analyzing all concept of UCC and spread it so that as many people can Analyzing the concept of UCC so that as many people can be aware of the basic concept of UCC and then can decide themselves is the implementation of UCC is beneficial to them or not. A survey has been conducted, to observe the roots of the concept of the UCC with the help of some research papers and some history books as it helps for easy understanding of the UCC concept for the readers. The main aim is to provide all the concepts of the UCC understandable to the readers. The critical analysis of the UCC, is a topic, which is otherwise understood to be something which already been established in various different papers, a we see a lot of journals getting publishes on the issue of the UCC and the gender rights and human rights and also the secularism and the UCC but this paper also analyses the legal perspective and personal law plea, so as to understand that it we introduce the concept of the UCC. It has its own advantages and disadvantages, so we have to consider every concept when to discuss and implement UCC. The vitality of understanding the concept of the UCC is critical when it comes to the understanding of the Indian society and especially the effect of the Indian personal laws.



2. Introduction

India is a secular state and country, which means that it does not follow any one particular belief or there is no official religion for the country. It means that the state will not be dependent on any kind of sacred institutions for taking decisions for the state, it will not interfere with the religious matters and the religion will not interfere with the effectiveness of the state. India is also, the world's largest democracy and the second most populous countries of the world and it is emerging as a major power since the 1990's¹. It has a strong military and has cultural influence over everything and its economy is fast growing and powerful. India is a highly different country with so many linguistic, cultural and religious identities.

This is also reflected in its federal political system, whereby power is shared between the central government and the states. Religions not only have been serving as the foundation of the culture of India, but have had enormous effect on Indian politics and society. In India, religion is a way of life. It is an integral part of the entire Indian tradition. A vast majority of Indians, (over 94%) associate themselves with the religion. According to the 2001 census 81.5% of the population of India practice Hinduism, Islam, Christianity, Sikhism, Buddhism and Jainism are other major religions followed by the people of India². There are also numerous minor tribal traditions, though these have been affected by major religions such as Hinduism, Buddhism and Christianity. It is in this diverse context that the concept of the UCC needs to be analyzed.

As it is already said that India has several religions and languages, the people of various religions have been governed by their own personal laws since time immemorial. It leads to a different treatment meted out to different classes of people in their personal laws. There are different personal laws for different religious people such as for the Hindus Hindu marriage act, Hindu succession act, Hindu adoption and maintenance act, and also the Hindu guardianship act, for the different purposes such as the marriage, adoption, succession, guardianship etc. Muslims and Christians are governed by their separate personal laws and the reason why we have separate personal laws is that every religious group has different beliefs, customs and practices and it is possible that the practices and beliefs of one religion may contradict with the other one and so for the peaceful running of the society, we have different personal laws. It can be seen often that the personal laws often face difficulty when the question of succession, marriage, divorce, inheritance, adoption, maintenance, guardianship etc. The difficult portion of them arises because different kind of judgments should be given in different situations and there is difficulty in the distribution of justice. The part of the distribution of justice does not remain uniform in its application and faces a lot of difficulty and so to solve this decisive

¹ K. Hingorani, "Do we need a Uniform Civil Code" The Economic Times, July 30, 2003

² Carmo D'Souza, Family Laws of Goa – Research and Reforms



steps were taken towards the national consolidation in form of idea of UCC which was for the first time disputable seriously in the Constituent Assembly in the year 1947 [6].

The UCC as envisaged in the Article 44 of the Constitution includes inter alia, entire gambit of family laws. As far as the uniform legislation is concerned, we have almost covered every aspect of law except matrimonial laws. There is no UCC of law applicable to the marital relation of all, irrespective of ethnic or religious affiliations. So through Article 44, the modern State is called upon to perform its onerous responsibility of giving UCC on the above subject, applicable to all the citizens of the country.³ The term UCC and its meaning itself came under intense scrutiny during the Constituent Assembly Debates. Muslim members were very self-protective against this provision and did not shy speaking against it. The term UCC stand for and which particular law of which particular community were the framers of the provision going to take as the standard. This was really important and even if we talk about a UCC today, we need to know about the standard condition of all the religions that we have right now in the country. The difficulty is that if take anything standard out of the law of the religious majority, then the minorities will rebel and complaint and it will not be fair on the part of the government to do so because India is a secular country and the secular provision is the basic structure of the foundation and it cannot be altered in any manner.

The Muslim member's opined that the word civil code did not cover strictly personal law of the citizens .If it was Muslim law which was to be kept as the standard law, then the situation would have been that the minorities would have been ruling the majority and then the never ending quarrels between the Hindus and Muslims have been the talk of the town since time immemorial. It is very wrong to set standards in a secular society and especially in a society like India where there is ethnic and religious and even linguistic plurality. The reason is that if we give importance to one, the others will rebel and it will lead to havoc in the society, which is very much evident in the history of the country. Giving importance to any one religion and setting standards which does not suit the other religions, is a call for the disintegration of the country, disturbing the internal peace and security and the unity of the country. The country can face major disasters in a situation like this. Mr. M.C. Chagla, a former Minister while making a violent plea for UCC wrote, Article 44 is a mandatory provision binding the government and it is incumbent upon it to give effect to its provision. The constitution was enforced and enacted for the whole country, which means every section and community has to accept its provisions and its directives.

3. UCC and the Individual Laws

In this section, we will focus mostly on correlating personal laws with the personal laws of UCC. We will discuss about the flaws in the personal laws with which the mankind has a problem and hence we strongly need UCC for eradicating those flaws in the personal

³ K. Hingorani, "Do we need a Uniform Civil Code" The Economic Times, July 30,2003



laws.

Personal laws, survey or study has been conducted on personal laws, this states that women are always given less importance than the men especially in India since ancient times. The women are considered low-grade in most of the personal matters as compared to men, especially when it comes to the discussion of the topic of the matrimony or the succession, adoption or even the inheritance. There are many incidents which prove the above statement is true.

In 1955 and 1996, there are certain Hindu laws, basing on which women have not at all enjoyed equal rights compared to men in all the matters. Before 1955, according to the polygamy, Hindu women are not independent to hold any property as its absolute owner except in the case of Stridhan. She should have limited estates and which should be handed over to the last heirs of the male owner, this is called revisionary on her death. She has many limitations, when she has to mortgage or sell she had no right to do it on her own. Even in the case of adoption also, a Hindu women cannot adopt a child on her own. She cannot be guardian of her children when her husband is present. There are many more such examples which illustrate that the women have less importance or priority than men. Even though the Hindu law has been codified, certain discriminatory provisions still exist even today. For example a Hindu woman is not a coparcener in Hindu coparceners except in a few states like A.P, Maharashtra, Karnataka and TN⁴. Consequently she is not entitled to the share in the coparcenary. Thus it is void to the fact that the codification of personal laws of Hindus has not succeeded completely in eradicating the gender inequality.

When we discuss the Muslim laws, in the Pre Islamic Arabia, the women enjoyed a secondary status because since then it has been a patriarchy since then. Women are considered secondary to the men. Due to many laws, Muslim women are weakened and their growth is very limited. The Holy Quran gives equal rights to men and women and places women in a respectable position. Even then, there are many issues in Islam which give insecurity and inferiority to women than men. Man can marry four times but women cannot, if they do they are considered as impure and unchaste. They do not have any right to divorce to their husbands, there is a way for divorcing, if husband **pronouncing triple talak is highly discriminatory**. This is the message of the Holy Quran. This has been held void and unlawful, recently in the Allahabad High court judgment.

3.1. Secularism and the UCC

As per Indian Constitution and its Preamble India is a Democratic, Republic and Secular country, which states that there is no State religion. Secular state is a state which cannot discriminate people on the basis of the religion. A relation between the man and the

⁴ MC Chagla, Plea for UCC, Weekly Round Table, Mar 25, 1973, page 7



God is the religion, the state or the country has no right to interfere in this matter. The process of secularization is intimately connected with the goal of UCC like a cause and effect. In the case of S.R. Bomai v. Union of India, as per the Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities and can be regulated by the State by enacting a law. Positive secularism is another concept that existed in India, this is most famous secularism which is accepted by United States and in European States and i.e. there is a wall of separation between the religion and the state.

Positive secularism is separated by spiritualism with being faith. The reason is that America and the European States went through the stages of new beginning, reformation and enlightenment and thus they can ratify a law stating that State shall not interfere with the religion. On the other hand, in India renaissance has not occurred in any way and so state will not interfere in the religious matter and hence no change occurred. Renaissance has not occurred in India, which is crystal clear. India is a country where diversity is present with different religions and customs with their particular personal legislative laws. Due to this reason, conflicts may increase instead of decreasing which results in negative effects of the laws which are made. Individually one's own personal law can be changed but others personal laws cannot be changed. So, when the traditions will be in practice, the nature of the difference will transform itself from general differences to hardcore generosity.

Adapting or accepting the changes related to the religion, in a society like Indian society is very risky and tricky. Here religion defines the way of life and they connect with each other with the religion. They will not understand that, we, human beings made the religion. Religion is for humans, humans are not for religion. Uniform law should be implemented to regulate all the religions and their behaviors to the whole society⁵. According to the Indian Constitution, India is a Democratic, Republic and Secular, which states that we cannot discriminate on the basis of religion. Article 25 and 26 of the Constitution of India as enforceable basic rights guarantee freedom of religion and freedom to manage religious affairs [3].

According to the Article 44, court of Law can try to attempt a state with UCC in India. UCC is one uniform method, which can regulate the people uniformly with not any discriminations basing on religion or faith. This is a new principle, when people come to know about these laws due to their incomplete knowledge they will get many questions and many hesitations come into the picture⁶. In this implementation, the main question is what the complete instructions of UCC are. Since, the personal laws of each religion contain separate provisions, their unification will bring not only resentment, but also enmity in the public towards one another, and therefore the UCC will need to bring in such laws that strike a

⁵ Constitutional Assembly Debates, Vol VII (1949) page 543

⁶ K. Hingorani, "Do we need a Uniform Civil Code" The Economic Times, July 30, 2003



balance between the protection of the fundamental rights and the religious principles of the different communities that exist in the country. Law can regulate issues like marriage, divorce, maintenance etc.

3.2 UCC and the Gender Justice

As per the above discussions, it is clear that personal laws are not for the women, they do not give equal preference or value to the women with regard to the men. Women are always secondary to men. We just wish that everyone should realize that women are also human beings and they are also important in all the aspects and they deserve respect and value. There is a lot off controversy regarding the gender justice and the UCC in being. We have to consider all the issues and concepts of UCC before we move with UCC, as it may result in different manner if we cannot understand the concept or rules of UCC before implementing them.

Empowering women is being a topic of the town for many decades but now when we consider personal laws, the scenario is different. Women empowerment in the core areas like the social status, gender bias, health, security and the main core empowerment are of exigent needs. This has been encouraged by an Indian State in some tribal communities' laws, but the problem is that they change time to time. According to Article 44 of the Preamble of Indian Constitution states that a State can be secured with UCC for all the citizen of the India. UCC is not there in India but it exists. When we consider legal procedures law is uniform, but when we consider personal law uniformity is not there in the country. Laws which relate religions changes, Laws are different from one religion to the other religion. According to the Article 44, court of Law can try to attempt a state with UCC in India. UCC is one uniform method, which can regulate the people uniformly with not any discriminations basing on religion or faith.

Many researches and people are insisting to implement UCC so that we will have uniformity in India, but we propose to make necessity changes in UCC as per the Indian circumstances. It's not only about gender equality; there are many other concepts or issues which will come into existence when we consider UCC in the country. Personal laws are different for different issues like marriage, adoption, succession, inheritance, succession and guardianship and all of them differ with each other when it comes to different religious groups in the country. Finally, we state that UCC should be implemented with necessary modifications for it to be adopted in the country like India.

4. Conclusions

If a question rises for the utilization or regarding the desirability of the UCC, we strongly believe that it has to be used or implemented under supervision, as the result depends of how UCC is enacted and implemented, there is huge chance for massacre and riots like situations happening again which will lead to the disintegration of the country. There is no problem with UCC and its personal laws, they remain as they are in terms of



UCC, there will be a set standard of rules which will further not be able to cover each and every aspect of the personal law and which will led to even more problems that we have today. While we set the standards for the UCC, it has to be modified so that it can be adapted to the India culture in all aspects. Before we implement the law, we have to consider the views of the people and change accordingly. Unity in diversity is the best feature of the county India, so we have to understand and give respect to the beliefs and opinions of all the religions in India. Considering all the above aspects, we have to modify the code. When we make laws they should be accepted by the people especially when we make personal laws we have to consider all the aspects and make the documentation.

References

- [1] *Constitutional Assembly Debates, Vol VII (1949) page 543*
- [2] *MC Chagla, Plea for UCC, Weekly Round Table, Mar 25, 1973, page 7*
- [3] <http://indianexpress.com/article/explained/in-fact-equality-freedom-the-key-issues-in-continuing-uniform-civilcode-debate/>(last accessed on 20 Nov, 2015; 10:15 am)
- [4] <http://www.theguardian.com/world/2014/apr/07/india-bjp-election-manifesto-uniform-civil-code-legislation>(last accessed on 20 Nov, 2015; 11:00 am)
- [5] Carmo D'Souza, "Family Laws of Goa – Research and Reforms", available on <http://www.fd.ulisboa.pt/wpcontent/uploads/2014/12/Souza-Carmo-Family-Laws-of-Goa-Research-And-Reforms.pdf> (last accessed on 20 Nov, 2015)
- [6] K. Hingorani, "Do we need a Uniform Civil Code" *The Economic Times*, July 30, 2003 http://articles.economictimes.indiatimes.com/2003-07-30/news/27512988_1_uniform-civil-code-personal-lawjohn-