CRITICAL ANALYSIS OF THE UNIFORM CIVIL CODE

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ABSTRACT

The urge for a uniform civil code has increased immensely in the recent times where the rule makers as well as the implementers find it difficult to appease all divisions of the society. The personal laws related to religion or state have increased the urgency for the implementation of a uniform code of law. Also, the recent legal developments done for the betterment of a class of society, to protect minorities against suppression or to prevent gender bias have paved a way for the filing of a plea for introducing the uniform civil code law in the constitution. A uniform law helps the legislative reform existing personal laws related to marriage ceremonies and rites, divorce laws, adoption and succession laws. It also secures the interests ambitions of the youth from the external and internal influences which are shaped by the universal and global principles of humanity and modernity. It is a very common notion that the enactment of UCC would pose a threat to the secular nature of the country and thereby, amending the basic structure of the constitution. It is for the same reason that the law makers introduced the word ‘endeavour’ in the article so that no obligation falls on the legislature to enact anything against the public will.
INTRODUCTION

The urge for a uniform civil code has increased immensely in the recent times where the rule makers as well as the implementers find it difficult to appease all divisions of the society. The personal laws related to religion or state have increased the urgency for the implementation of a uniform code of law. Also, the recent legal developments done for the betterment of a class of society, to protect minorities against suppression or to prevent gender bias have paved a way for the filing of a plea for introducing the uniform civil code law in the constitution. One of such developments is the abrogation of article 370 which permits the state of Jammu and Kashmir to enjoy special status and autonomy in drafting laws for its permanent citizens. The involvement of the centre into the state affairs of Jammu and Kashmir is restricted to a certain extent which led to the occurrence of a number of illegal activities and crimes for all these years. The abrogation of this article has strengthened the control of the centre on the state with the increase in safety standards for the Kashmiri pandits and also laid path for economic and industrial development. The triple talaq bill has declared the process of giving divorce by saying talaq thrice unconstitutional. This served as a reasonable contribution to the gender equality struggle and sought for the amendment of personal laws through implementation of a uniform civil code. A uniform civil code seeks to promote secularism amongst the various religious groups and different sections of the society. Also, a sense of unity is inculcated among the citizens of different states in the country. A uniform law helps the legislative reform existing personal laws related to marriage ceremonies and rites, divorce laws, adoption and succession laws. It also secures the interests ambitions of the youth from the external and internal influences which are shaped by the universal and global principles of humanity and modernity.

RESEARCH OBJECTIVE

1. To understand the concept of ‘uniform civil code’
2. To acknowledge the contributions of the legislative and the judiciary to the plea filed for the implementation of the ‘uniform civil code’- the history
3. To understand the pros and cons of the uniform civil code and the immediate need for its implementation.
4. To relate UCC with laws of the land
RESEARCH QUESTIONS

1. How did the recent judgements or amendments to laws help in triggering the process of filing an appeal in the courts?
2. What are the implications of the uniform civil code of Goa?
3. How did the recent cases of triple talaq and Sabarimala bring about a need for UCC?
4. How does a ‘uniform civil code’ effect the aspects of secularism and gender justice?

RESEARCH METHODOLOGY

The paper has been drafted after making a thorough research on the recent news reports and articles. Every topic which the reader might find important has been supported with case laws and explanation. The paper has been drafted in a proper order in a way a reader understands and comprehends. The research method followed by the author is doctrinal research. It is a library based- research where the legal provisions are read analysed and then related to the topic of research. It follows the method questioning the drawbacks in existing laws.

LITERATURE REVIEW

Books-

1. This article speaks about the uniform civil code and the aspects of the constitution it effects. Also, it reads of how a secular country like India has to be open to article 44. (Ahmed, 2006)

2. This article takes a reader through the journey of the UCC from the time of British rule to till date. It also lays down various discriminations in personal laws. The author explains the difference between religious belief and legal provisions. (Manooja, 2000)

3. This article reads about the uniform civil code in terms of international law and various countries’ domestic laws. The author discusses about the origin of UCC in the United States. (Franklin, 1951)

NEWS REPORTS

4. The congress spokesperson Ranudeep Singh Surjewala, while addressing the students’ parliament mentioned about the right of citizens to either accept or reject the enforcement of a uniform civil law. The need for a uniform code of law should be
realised by the people without any external influence. Citizens have to interpret the pros and cons of the implementation of a uniform law in other countries and decide if they can really do justice to it. The government can for its own reasons of governance or peace and security, not compel the citizens to abide by it. (THE ECONOMIC TIMES, 2021).

5. The bench of Chief Justice D N Patel and Justice C Hari Shankar has filed a petition ordering the centre to respond to a plea filed for the drafting of a uniform law by BJP leader and lawyer Ashwini Kumar Upadhyay.

6. “BJP’s political agenda of a Ram temple in Ayodhya, scrapping Article 370 and adopting a Uniform Civil Code (UCC) has for several decades seemed like a statement of intent that did not have much chance of being translated into reality.” (THE ECONOMIC TIMES, 2021). Although the possibility of UCC has been considered impossible for years, with this the notion that it is unachievable has faded away.

7. “Senior Congress leader Jairam Ramesh on Tuesday sought to know from the government the action it has taken on the Law Commission opinion in a consultation paper that a uniform civil code is neither necessary nor desirable at this stage.” (THE ECONOMIC TIMES, 2021) The consultation paper contained topics of divorce, marriage, adoption and maintenance, succession etc.

8. “BJP MP Nishikant Dubey on Tuesday demanded in Lok Sabha that the government bring in bills for Uniform Civil Code and population control to "save the country". Speaking during the Zero Hour, Dubey said to save the country and its demography, the government should bring Uniform Civil Code Bill and Population Control Bill.” (THE ECONOMIC TIMES, 2021). He said the bills were necessary for minority appeasement and for having a check on the pollution levels across the country.
CONSTITUTIONAL PROVISION

Article 44 of the constitution encompasses the concept of uniform civil code under Part- IV of the constitution. Part IV of the constitution speaks about directive principles of state policy. Directive principles are precisely, the goals laid down by the constitution makers which are to be achieved through implementation of policies for social welfare. These policies aim at promoting social order, justice in terms of economic, social and religious equality. To make progress towards the same, the constitution itself states in one of its provisions under article 44 that, ‘The state shall endeavour for to secure for the citizens a Uniform Civil Code’. Although, the constitution has written down the provision for uniform civil code, it would remain as a mere academic practice if the implementation is not duly undertaken. The implementation would require mobilisation of various interests of the society which are presently divided by the personal laws. The constitution has cautiously worded so that there is no obligation on the government to implement the uniform civil code. In a country like India where diverse cultures and religions live in harmony, such implementation can be possible only when the public at large accents to it through their right to democracy. The uniform civil code endeavours to crate a homogenous society without any divisions or discrimination based on religion, caste or location. At the same time, the law is meticulously written to not contradict the religious and cultural diversity of the country.

MERITS OF UCC

A uniform civil code is included in the Part 4 of the constitution to stimulate the legislature to enact laws for strengthening the unity and integrity of the country without having a negative effect on the religious sentiments of the public. UCC aims at unifying people of different states and territories by placing them under a common law governed by the centre and not split by the state laws which are different in different states. For example, article 370 of the constitution guaranteed special status to the state of Jammu and Kashmir and permitted the state to have their own constitution. This provision, for years, has caused hindrance in carrying out governmental activities in the state of Jammu and Kashmir. It made the handling of the citizens and maintenance of law and order, a nightmare. A single code of law would apply to all sections of the society which will make the people agree to one rule. The nation would speak together. This will also clear the laws overlapping due to their existence in more than one state law. Since there would be same law applicable to citizens of each state, there would be no delay in the rendering of justice. An injured person can approach the nearest court of law to the location.
he suffered the damage in. Another major advantage would be the protection of the rights of people from the infringement by the personal laws. The rights of women especially a married one, would be easier. The importance of those freedoms which are restricted by the religious laws, can be upgraded to the level where those not a part of that particular religion, enjoy. The entire country would move forward with one force and one goal irrespective of their gender, place of residence, caste or religion.

**DRAWBACKS IN PERSONAL LAWS**

**HINDU PERSONAL LAWS**

The Hindu laws refer to the personal laws governing Hindus in aspects like marriage, succession, adoption, property etc. The Hindu personal laws have been derived from ancient texts like Dharmashastra texts, hermeneutics texts, smriti and Vedas. In the ancient India, these laws were considered to be applicable to specific communities following Hinduism and the others followed their own customary laws. The laws governing Hindus were stringent and immoral. It involved illegal practices like sati, female infanticide and child marriage. For the reason that these laws were derived from ancient texts and then prevalent customs, they were strictly adhered to resulting in a number to atrocities. For example, sati involved sacrifice of a women’s life in case of the death of her husband, female infanticide crated the fear of having a female child and child marriage in general infringed the rights of minors including the right to education. This arose the need for an immediate amendment. The efforts of freedom fighters led to the enactment of laws under the British rule to eradicate sati and legalise widow remarriage. Later the law commissions also played a role in bringing various amendments to the Hindu marriage act, 1955 amongst many others. The modern Hindu law has evolved out and above all such atrocities. The laws under the modern Hindu law are Hindu Marriage Act, 1955, The Hindu Succession Act, 1956, The Hindu Minority and Guardianship Act, 1956 and The Hindu Adoption and Maintenance Act, 1956. Despite the legalisation, gaps like dowry system, caste system etc., establish the need for a uniform law. The present-day crimes like honour killings as a response to inter-caste marriages and the violence against women for dowry related issues can be curbed only when the rights of people are prioritised over the long-believed customs. The sensational case of Sabarimala also put before the courts the need to choose between religious laws and rights to equality and freedom to worship.
MUSLIM PERSONAL LAWS

Muslim personal laws are the laws which govern the personal agreements of the Muslim community. These laws are largely derived from the holy text, Quran and from the preaching of various prophets. The present Muslim law is largely based on customary law. The Muslim law also, is not clear of dark spots infringing rights of people. The customs like polygyny where a man re marries during the time when his first marriage is still active and the practice of triple talaq, an unethical way of divorce, have proved the laws to be unsafe for the betterment of the society and for protection of the rights of the citizens. It is a certain fact that a community of Muslims disagree with triple talaq as a mode of divorce. It is also a fact that a man is not obligated to provide maintenance to his wife beyond the iddat period. It is due to this conflict of ideas amongst people of the same community that there arises a need for a uniform law.

CHRISTIAN PERSONAL LAWS

The personal laws of the Christians are governed by various acts enacted by the legislature post-independence. Like the amendments made to the Hindu law, by the law commission, the 2nd law commission, 1960 led to some amendments to the law relating to marriage and divorce amongst Christians in India. Presently, the Indian Christian Marriage Act of 1872, governs the marriages in Christian community. Although, the laws are clearly stated, there is always an ambiguity in their execution.

UCC AND SECULARISM

It is a very common notion that the enactment of UCC would pose a threat to the secular nature of the country and thereby, amending the basic structure of the constitution. It is for the same reason that the law makers introduced the word ‘endeavour’ in the article so that no obligation falls on the legislature to enact anything against the public will. India, is a country with diverse religions and cultures having their own respect and place of interest in the heart of the people. Citizens with different religions stay at one place and freely celebrate their culture. The history of India is gloriously decorated with the contributions of great people from various religions in a compiled form. Some contributions like the beautiful monuments like the forts built by the Marathas and the Taj Mahal built by the Mughals, continue to astonish people even on the present day. Religious texts like the Vedas, Quran and Bible are read and followed by people across the world. The country in the recent times is witnessing a lot atrocities in relation to religion, caste etc. Heinous crimes like murder in the name of honour killing, physical abuse
for dowry, domestic violence as a right of the husband and many more. The rights of equality and freedoms are being violated in the name of religion and culture. The notions previously stated regarding the implementation of UCC is false. The preamble states that India is a secular country which in turn means that there is no state religion and no one would be discriminated based on their religion. UCC would ensure the same.

The case of Shayara Bano v. Uniformof India\(^1\) speaks about a mode of divorce under the Muslim Law. A community of Muslims legally divorce their wives by pronouncing talaq thrice. This is a right given only to men and not to women. A case was filed by the plaintiff, Shayara Bano in the year 2017. She was divorced in the year 2016 by way of triple talaq. She filed a petition asking the court to make the practice of talaq, polygamy and nikah halala where a divorced women to remarry her first husband should marry and divorce another man before doing so. The court with a bench of 5 judges held that the practice of triple talaq is unconstitutional. The above mentioned three practices violate various rights of women under article 14- right to equality, article 15 right against discrimination, article 21- right to life and article 25- freedom of religion.

The Sabarimala case Indian Young Lawyers Association vs The State of Kerala\(^2\) witnessed major controversies in the recent times. A number of women through the Indian Lawyers Association filed a petition before the supreme court to declare the prevention of entry of women into the Sabarimala temple as unconstitutional and discriminatory. Women in the mensural age between the 10 and 50 are prevented from entering the temple as a religious practice by Hindus. The court after a lot of hearings held that the discrimination is unconstitutional.

By referring to the above cases, the author wishes to explain that secularism is posing threat to itself. People enjoying their right to religion, in some situations, are depriving others of the same. A secular country is one where each and every citizen enjoys the right to practice a particular religion of will.

**UCC AND JUDICIARY**

The judiciary is the interpreter and the sole guardian of the constitution. The constitution vests

\(^{1}\) Writ Petition (C) No. 118 of 2016  
\(^{2}\) WRIT PETITION (CIVIL) NO. 373 OF 2006
in the judiciary, the power of judicial review. Judicial review is the function of the judiciary by which it prevents the state or any citizen from acting beyond the limitations by the constitution. The judiciary does this through checks and balances. It ensures that any law enacted by the legislature or any law implemented by the executive is not contradicting the basic structure of the constitution and considers those laws null and void. Not only the other organs of the government, but also the courts below the supreme court in the hierarchy come under judicial review. It is for the same purpose that the right to issue writs under the right to constitutional remedies is guaranteed to the citizens. The supreme court heard a number of cases in relation to women rights, maintenance issues, property conflicts, etc., and handled the conflict between the personal laws and the fundamental rights with utmost contemplation.

The case of State of Bombay v Narasu App Mali\(^3\) is one of the landmark cases in the history of UCC. The case involved the prevention of Hindu bigamous marriage by the Bombay Prevention of Hindu Bigamous Marriage Act, 1946. The case questioned the supremacy of the personal laws over the fundamental rights of people. It also opposed the 67-year-old Bombay high court judgement that personal laws and customs are outside the ambit of the fundamental rights of life, equality and dignity. The court held that considering personal laws outside the ambit of fundamental rights would question the supremacy of the constitution on the whole and hence declared the judgment void. Regarding the Hindu bigamous marriage, it held that different personal laws have different origins and have been followed from different times and so they cannot be treated similarly. The court also held that although UCC cannot be demanded as it is a part of directive principles of state policy, minute steps can be taken for its implementation as a future goal.

The case of S.R. Bommai v Uniform of India\(^4\), justice Jeevan Reddy held that religion is a matter of personal and individual faith and that it cannot be mixed with secular activities. Hence it can be regulated by the state by enacting laws.

In the case of Mohammad Ahmed Khan v Shah Bano Begum\(^5\), the Muslim wife was entitled to maintenance from her divorced husband. This case led to a number of communal protests in the country. People rebelled to the extent where the government had to withdraw support but, the court stayed oblivious to everything and protected the rights of women. It is these situations

\(^3\) AIR 1952, Bombay, 84.
\(^4\) 1994 AIR 1918
\(^5\) 1985 AIR 945
that the independence of judiciary from the other organs and the public is tested.

Therefore, if it is in the public interest the judiciary needs to step forward and suggest for a UCC although not demand for the same.

**UCC AND LEGISLATIVE**

The legislative has a major role to play in the enactment of the UCC. The legislative body is witnessing one of its drawbacks growingly affecting its role in the present times. The organ is not completely aware of the ground root problems of the public in the rural or abandoned areas. It is for the same purpose that the state governments are delegated legislation to cover such areas and to make laws for their welfare. Different states make different laws based on their cultures, climatic conditions, peace obstructions etc. Like stated earlier, the state of Jammu and Kashmir has the power to draft its own constitution as a part of special status. For a very long period of time, the women, both Muslims and Hindus, were physically abused, raped and murdered in the open. Hindus were dragged out of their homes and killed for merely belonging to their religion. Even after being aware of such offences, the legislature couldn’t enact laws for their protection as that would intervene the provisions of their constitution. Laws related to immovable property and land could not be enacted as a non-resident was not capable of purchasing land in that state. The personal laws are majorly guided by customs. Customs are sources of law which are practiced and followed without intervention from a long period of time by the society at a large. For a custom to be a law, apart from the above-mentioned conditions, it must also be clear of intervention of any of the provisions of the constitution. One can observe that the few customs in the personal laws deny citizens few basic rights like the right to equality, right against discrimination, freedom to practice a particular religion, freedom of movement etc. An act lawful in one religion is unlawful in another which led people to change from one religion to another to justify their acts and escape the punishment. For example, in one of the cases, a man converted to Islam to have more than one wife. This is treated as an insult to the customs and culture of the religion itself. To curb such malpractices, legislature must strive to enact a uniform code of law which is same for all the citizens irrespective of their religion, caste, place of residence etc. This will also lead to easier enactment of laws.

**UCC AND EXECUTIVE**

The executive has an important role in bringing the laws that need to be enacted into reality. It
is also entrusted with the duty of stimulating a growth in the economy and standards of the society. The example of the state of Jammu and Kashmir can be taken here too. Article 31 of the constitution states that a non-resident of the state cannot make transactions of sale or purchase of land within the territory of the state. This hindered economic development in the state for a long period of time. Later when the abrogation of article 370 and 31 was undertaken, the economists thought that there would be considerable growth of economy but, till date there is confusion among the investors. Although there is a legal right to start business in the state, private companies are not coming forward due to lack of confidence in the safety both in terms of life and money. The government in such situations must take the lead and invest so that a path is laid for development. Growth of business increases the standards of living and provides employment opportunities. Also, ensures educational facilities are provided. All these activities ultimately ensure welfare of the citizens. Similar procedures for implementation of law in every part of the country helps in smooth execution of laws and maintenance of peace and order. For example, in case of a national emergency, the president rule is declared. Any law enacted is implemented and the public opinion is not usually taken into account. During those times, democracy is put at stake and the freedoms are restricted for the bigger of protection of the citizens. in the same way, if there is a need to amend the personal laws for the protection of the rights, it can be done. Here, the personal interests of an individual must be subordinated to the public welfare at large.

**UCC AND CRIMINAL LAWS**

The criminal laws of the country are governed by the Indian Penal Code IPC, Criminal Procedure Code CRPC and The Evidence Act. Although most of the criminal laws are implemented uniformly, there are a few which vary from state to state and also depending on the personal laws. One aspect of it is section 125 of CRPC which obligates a man to maintain his wife or legitimate or illegitimate child until they start maintaining themselves, he would be punished according to the procedure.

In the case of Mrs. Zohra Khatoon v Mohd. Ibrahim, the high court of Allahabad overruling the decision of the district court held that when the divorce is initiated by the wife, there is no provision of maintenance either under the Muslim law or according to the section 125 of CRPC. The supreme court overruling the judgement of the High court held that the section doesn’t

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*1981 AIR 1243*
require for the divorce to initiate from the husband’s side. Even if the wife seeks to divorce her husband, the husband is compelled to maintain the wife. In this case two objections arise. One, that even if the husband is not responsible for the divorce, he is obliged to pay. Second, it is always the husband who is obliged to maintain irrespective of the financial position of the husband. Keeping these aside, although contrary to the provisions of the Muslim law, the judiciary successfully imposed punishment according to the criminal laws of the land.

**UCC IN THE STATE OF GOA**

The state of Goa has a uniform civil code enacted for its residents. It is the only state to have a uniform civil code. Chief Justice of India S A Bhobde has recently plauded the state of goa for enacting and successfully implementing the UCC despite the diversity in the religion and culture of the residents. Goa is a place of love where a number of marriages are witnessed daily. The marriages take place between citizens following different religions, between citizens belonging to same gender and between citizens and non-citizens of the country too. In spite of such diversity, the state of Goa regulates the article 1057 of Goa’s code which provides for registration of marriages, in a smooth way. Article 1024 deals with the right to divorce on the grounds of adultery. The articles mostly deal with Christian marriages. In the marriage laws of the nation where a divorce can be obtained non-consummation, the Goa’s civil code denies it as a reasonable ground. The recent protest for LGBTQ rights and same sex marriage could to some extent pressurize the government in amending the previous laws regarding the same but, article 1056 of the Goa’s civil code recognises different sex marriages alone. This cannot be challenged even if it intervenes the personal interests of people. Other major topics under the Goa’s civil code are property related laws. Unlike the Hindu Succession Act which given unlimited powers to transfer property through will, Goa’s code restricts the transfer to 50%. The Goa’s civil code is a perfect example for smooth enactment and implementation of a Uniform Civil Code.

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