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APPRAISAL OF UCC IN INDIA WITH RESPECT TO JUDICIAL SYSTEM

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ABSTRACT

The Indian Constitution under Art. 44² which deals with the Directive Principles of State Policy defines the Uniform Civil Code, which is also called “One Nation One Law”. It considers the duty of the state to ensure that all the reforms and law is same and interpreted equally throughout the country. The primary aim of this code is to replace the existing Personal laws with a uniform set of rules and regulations that is equally enforceable to each and every citizen in the country. Since the existing personal laws are based on traditional rules, customary practices and vary diversely. The main area of focus of the UCC is the involvement of the Marriage practice, divorce, adoptions, inheritance, maintenance and other such attributes, where there is a touch of Religious Sentiments. The enforcement of the UCC will have a binding effect on such laws. The paper will cater to all the round journey of it's from the introduction to the advantages and the disadvantages, the involvement of the Judiciary System and towards the end the paper will be concluded by providing a critical analysis on the current scenario and the major attributes that have been involved in the crafting of UCC.

In addition to it, the paper also reflects its view on the political discourse along with public perception, and the socio-legal implications that may be caused because of the implementation of such a code. It highlights a comparative perspectives from other countries and examine whether India is ready, both constitutionally and socially, to adopt a truly uniform civil code in its truest spirit.

KEY WORDS- UCC, PERSONAL LAW, RELIGIOUS SENTIMENTS, MARRIAGE, JUDICIARY

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² Constitution of India 1950, Art. 44

LITERATURE REVIEW

ARTICLES

1) “Charting a New Path Toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code”³ By- Shalina A. Chibber (2008)

This article talks in detail protection of gender equality and religious groups that are also protected under our Constitution. Any personal law will be prevailed by general law. Then it talks about the debate over Article 44⁴ of the Constitution and the problem with the religious personal law that is injurious to the minority and women of our country. At the end it discusses in detail a step-by-step process through which the formation of UCC will be possible.

2) “Uniform Civil Code (Article 44 of the Constitution) A dead letter”⁵ By- Shabbeer Ahmed (2006)

As the title states a dead letter because since the Constitution was drafted no one has the courage or sense to touch Article 44⁶ of the Constitution. This article explains in detail how UCC personal laws regarding marriage, divorce, adoption, inheritance, and maintenance can be brought together in such a way that it will not violate the fundamental rights of the citizens and will bring people from different religions close.

3) “Politics of the Uniform Civil Code in India”⁷ By- Peter Ronald Desouza (2015)

Debates on UCC in India have gone through 3 different phases which are based on national consolidations, equity of laws, and gender equality. It looks at the debate in such a manner that it can be used to make our constitution stronger. This article suggests after going through the debate that there are two ways to reach the goal- First, by changing the laws that affect women and the basic structure of the Constitution, and second by adopting the UCC that is adopted in Goa.

³ Shalina A. Chibber, Charting a New Path Toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code, Vol.83, (2008)

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/indana83&div=27&id=&page=>

⁴ Constitution of India 1950, Art. 44

⁵ Shabbeer Ahmed, Uniform Civil Code (Article 44 of the Constitution) A dead letter, Vol.67, Issue no. 3, pp.545-552, (2006)

<https://www.jstor.org/stable/41856241>

⁶ Constitution of India 1950, Art. 44

⁷ Peter Ronald Desouza, Politics of the Uniform Civil Code in India, Vol.58, Issue no.48, pp.50-57, (2015)

<https://www.jstor.org/stable/44002900>

4) “Religious freedom in India”⁸ By- Rajeev Dhavan (1987)

India is a diverse country where people of different religions and cultures are there. In this paper, B.R Ambedkar said while drafting the Constitution that it is not based on groups but on individuals and the fundamental rights mentioned in our constitution and its basic structure is supreme. At the end of the article in the subheading of personal laws it talks about UCC and its need with a few landmark judgments where judges have mentioned the need for UCC while delivering the judgment. Detailed and descriptive analysis of the landmark Shah Bano case is done.

BOOKS

1) “Shimon Shetreet, Hiram E. Chodosh, 2015, Uniform Civil Code for India”⁹

This book talks about Article 44¹⁰ of the Constitution of India and even after more than 6 decades this has not yet been implemented. This book gives a plan on how to bring UCC to India by also providing a comparison from other countries. It also specifies that the legislature should take the charge of implementing the UCC in India.

2) “Mahendra P Singh, 2022, VN Shukla’s Constitution of India”¹¹

Article 44¹² of the Constitution talks about the Uniform Civil Code as while drafting the Constitution the idea of bringing the UCC was given by B.R Ambedkar. Part IV of the Constitution talks about the directive principles of the state and the landmark cases related to these are mentioned like the Minera Mills case.

3) “Paras Diwan, 2022, Family Law”¹³

⁸ Rajeev Dhavan, Religious freedom in India, Vol.35, (1987)
<https://www.jstor.org/stable/840167>

⁹ Shimon Shetreet, Hiram E. Chodosh, Uniform Civil Code for India, published by OUP India, 2015 edition, ISBN: 9780198077121, (2015)

¹⁰ Constitution of India 1950, Art. 44

¹¹ Mahendra P Singh, VN Shukla’s Constitution of India, published by eastern book company, 14th edition, ISBN:9789387487208, (2022)

¹² Constitution of India 1950, Art. 44

¹³ Paras Diwan, Family law, published by Allahabad law agency, 1st edition, ISBN-10: 938158740X, ISBN-13: 978-9381587409, (2022)

Laws related to marriage, divorce, inheritance, and maintenance are referred from this book. The law which is common for all religions and the personal law of a few religions how are so different in cases like maintenance.

STATEMENT OF PROBLEM

The main contention of the enforcement of the UCC is still a matter of debate in the country. There is a mixed opinion that some believe that it is important to it will impinge the rights of the various diverse religion and the segregated community. This paper deals with some suggestions on how the reforms should be adjusted and how must it be implemented so that none of the Community shall be hurt and all the aspects of a religion will be intact. The recent years have seen that there have been many renewed calls for the UCC, the argument mostly favours the uniformity of the gender inequality, religious discrimination and the involvement of social justice. The judiciary plays a crucial role in the implementation of the UCC, with the Supreme Court calling for its implementation repeatedly. This problem statement aims to explore the extent to which the UCC has been effectively appraised and implemented in India with respect to the judicial system. The paper also addresses that as to what extent the personal law can be replaceable. The SC has repeatedly call for implementation of the UCC, but still it is yet to be done. Therefore, this paper will answer this question further so that all the necessary outlook with respect to UCC.

INTRODUCTION

The vast set of guidelines that are currently in effect covering family issues, such as the involvement of commencement of a marriage, a divorce, an inheritance and many more are referred to as family laws. When one gives the status of interpersonal involvement of the legal validity, along with legal enforceability of the rights and obligations emerge.

To assure protection of individual rights and to uphold certain values that are vital to human dignity, regulations are necessary even if they influence the most intimate elements of our lives.

There are five main sets of family laws in India:

Hindu, Sikhs, Jains And Buddhist are governed under The Hindu Marriage Act and other Hindu laws;

Muslim Personal law for Muslims;

Christian Personal law for Christians;

Parsis under Parsi Law and

The Special Marriage Act 1954.

These religion-based laws are derived from religious texts and beliefs. Amendment has been taken from time to time to improve these personal laws for society's overall benefit.

UNIFORM CIVIL CODE

As a word, “uniform civil code of India” describes it is the idea of a comprehensive Civil Law Code in India. All citizens, regardless of their race, ethnicity, or religion, would be subject to the same body of civil law under a system. This may lead to a citizen's right to be governed by a different set of personal rules based on their religion to be null and void.

Common topics addressed by a civil code are family law, property law, marriage law, divorce and adoption law.

Question arises that whether Uniform Civil code should be applied or not. Why Goa has Uniform Civil Code and not whole of the country. Why when article 44 talks about UCC then still it is not applied.

The research paper whether aims to answer all of these questions.

CHAPTER-I

INTRODUCTION TO ARTICLE 44

The Article 44¹⁴ of the Constitution of India states that there is an uniform law present for all the citizens of the country. This article in the Part IV of the constitution deals with the directive principles of state policy which means the state can make guidelines to be followed for governance but that should not violate the basic fundamental rights of the people and it should not be against our basic structure doctrine.

There is a famous landmark case called *Minerva Mills v. Union of India*¹⁵ in which the 42nd amendment to the constitution was challenged, and which resulted in the striking down of S-4¹⁶ and S-55¹⁷ of the 42nd amendment.

As section 4 gives parliament unlimited power to make changes and section 55 used to give them power that any changes made by them cannot be challenged in court. That takes the power of judicial review from the courts.

CHAPTER-II

WORKING OF THE UNIFORM CIVIL CODE

Designing the UCC in a way that strikes a balance between the protection of core basic rights and a code that is not biased towards any specific religion or belief or political reasons. This is the most significant barrier to the implementation of a Uniform civil code in India.

¹⁴ Constitution of India 1950, Art. 21

¹⁵ *Minerva Mills v. Union of India*, AIR 1980 SC 1789

¹⁶ Constitution of India, 42nd Amendment Act, 1976

¹⁷ Constitution of India, 42nd Amendment Act, 1976

MARRIAGE AND DIVORCE

When, we come to the concept relating to the marriage and divorce. Since the above is also governed by the Personal Law, thus, it will also be dealt with the UCC. Although the laws consist of faith for a necessary sound marriage, the need for the UCC arises when the elements as mentioned below is followed. The UCC, shall uniformly ban multiple marriage at the same time and allow polygamy only, the age criteria for a marriage shall be fixed. Also, the registration of marriages shall be held compulsory. Coming down to divorce, the grounds on granting divorce shall be based upon the Principles of Natural Justice and should be reasonable and a common ground irrespective of any religion. An important case laws of *Ahmedabad Women's Action Group (AWAG) v. Union of India*¹⁸, shall be used as a landmark case where the uncommon and differentiated grounds, were showcased and it was tried to make it Equitable. Since the above case talks about 'Tripple Talaq, only present in the Muslim law, violated Art. 14¹⁹, when compared to other religions. The court by abolishing it made it very clear about its contention of having a common code for all citizens

SUCCESSION AND INHERITANCE

There is one more problem that is difficult to address as according to Hindu Succession Act²⁰ there is a difference between a property by a joint family and an individual, but this is not the case in the Muslim Personal law.

MAINTENANCE

Secular law for everyone for maintenance is given under S- 125 of CrPC²¹. Hindu Personal and the Muslim Personal Law of Maintenance Hindu law women can after divorce but Muslim law 3 months to avoid unwanted pregnancy.

¹⁸ Ahmedabad Women's Action group v. Union of India, AIR 1997 3SCC 573

¹⁹ Constitution of India 1950, Art. 21

²⁰ Hindu Succession Act, Acts of Parliament, 1956 (India).

²¹ Section 125, Criminal Procedure Code 1973.

CHAPTER-III

ARGUMENTS IN FAVOUR OF UCC WITH RESPECT TO JUDICIAL INTERPRETATION

While raising the question of the conflict between the UCC and the Personal Laws, there is a consistent impact of the Judicial Review, which plays an important role in determining the development of the UCC. As we can see in the Shah Bano²² case, the Lily Thomas²³ case, where the SC expressed its view that UCC is very desirable and it's difficult to resist the utility of the same. On one hand the Judicial Body wants the implementation of the UCC, whereas it's acceptance while the enforcement is dependent upon the Executory Body. It is completely dependent upon the executory to enforce it.

Hence, it can be inferred that the Judiciary body can over right any of the Personal Law, if found of a violative nature, that it conflicts with the provisions of the Constitution.

In the case of *T. Sareetha V/s. T. Venkataubbiah*²⁴ the S-9²⁵ of the HMA was struck as unconstitutional as it was violative of Art.21²⁶ but through the case of *Harvinder Kaur vs Harminder Singh*²⁷, the provisions of S-9 was upheld.

If, some additions could be brought forward by the judiciary, then the implementation of the UCC would be in turn be practical. The main intention of introduction of the UCC is to amend and modernize the current Personal Laws, and not be stringent a rigid and mandatory common code. If certain steps are followed, then the existing personal laws will be converted to the UCC, without rebranding it. Since the main purpose is to put the missing elements into power.

There should be an increase in the number of the court with under the supervision of specially abled judges who expertise in dealing in family issue. There should be gather and collective assistance of full time consultants and interpreters, who would come together and would reconcile

²² Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

²³ Lily Thomas v. Union of India, (2000) 6 SCC 224

²⁴ Sareetha v. T. Venkataubbiah, AIR 1983 AP 356

²⁵ Section 9, Hindu Marriage Act, 1955

²⁶ Constitution of India 1950, Art. 21

²⁷ Harvinder Kaur v. Harminder Singh, AIR 1984 Delhi 66

the mediation process, in case of any disputes, be able to provide for the just and equitable provisions.

Since the present administrative Government has announced its desire to create such a legislation, there has been a renewed emphasis on the implementation of a UCC. Yet, the implementation of a UCC is still a difficult problem that requires a careful comprehension of the many religious and cultural traditions that are common in India.

In conclusion, the Indian court system has been instrumental in stressing the necessity for a UCC and defending the constitutionally guaranteed ideals of equality and non-discrimination. Yet, putting in place a UCC requires a considerate and knowledgeable strategy that takes into consideration the many cultural and religious customs followed in India.

Despite these Judicial Interpretations, the current Government have also, failed to put the UCC actually into picture, because of the opposition of the various religious groups like the Muslim Board, the various Hindu groups. The main opposition to it is that it would infringe their Personal Laws and the pre-inherited customs. It has become a very stringent believes of the communities to oppose the UCC, without even evaluating the true essence and the benefits that it brings along with.

JUDICIAL PRECEDENTS OF RELEVANT CASE LAWS

The judicial precedence about the UCC in India with respect to the Judicial System is an essential aspect when it comes to the implementation of the UCC. Since always, the Indian Judiciary has a vital contribution in the shaping the cases and laws, in dealing with the UCC it has provided significant precedence on this topic.

The first instance where there was a need for an uniform and a common civil code was felt was in the case of Mohd. Ahmed Khan vs Shah Bano Begum (1985)²⁸, where the SC held that even Muslim women have the right to maintenance and that to regardless of the personal Muslim law, which violates the same. This, was the case, which sparked the need of the Common Code and

²⁸ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

hence a debate. In the above case, we have seen that how a Muslim Women was granted an allowance, in the form of maintenance at Rs. 25 every month and that too beyond the Iddat period. The above concept of the Maintenance post the Iddat period is violative of the Muslim Personal Law, which states that it is not obligated for the husbands to pay maintenance beyond 3 months. To which, the SC delivered a judgement which under S.125²⁹ of the CrPc provides for it regardless any provisions under any personal law. Also, in this case, it was discovered that majority of law provision in the Muslim Personal Law violates the provisions laid down in the Constitution. And according to the Art. 13³⁰ the law was not under force.

As it can be seen in the landmark judgement of *John Vallamattom v. Union of India* (2003)³¹, where the petitioner, who was a catholic priest had challenged the S-118³² of the Indian Succession Act, the petitioner argues that the act makes it difficult for a Christian Personal to leave his property at will to any Religious or Charitable organizations, the above provision is only applicable to the Christians. It also states that any person who has a nephew, or a niece, or any close relative alive, would not be able to donate their property upon his will without following a certain procedure, which was often very complicated. Thus, it was the contention of the petitioner that it was an unfair and was discriminatory in nature from the past 5 decades. This in-turn violates Art. 14³³, which deals with the provisions relating to Equality amongst the citizens. The SC observed that the provisions of the said sections are truly discriminatory in nature and violated Art. 14. The court also observed that UCC was actually necessary to empower the citizens with the true essence of equality, which would also in-turn promote National integration, Gender Justice and secularism amongst the citizens. When considering the suggestion aspect, the SC left the application of the UCC to the Indian Govt. This judgement highlights the need for a uniform and non-discriminatory legal system which emphasizes the importance of the UCC.

²⁹ Section 125, Criminal Procedure Code 1973.

³⁰ Constitution of India 1950, Art. 13

³¹ *John Vallamattom v. Union of India*, [Writ Petition (civil) 242 of 1997]

³² Section 118, Indian Succession Act 1956.

³³ Constitution of India 1950, Art. 14

Supreme Court ruled that there is no constitutional bar towards the enforcement of the uniform civil code. The court stated that the state has a duty to secure a uniform civil code for all citizens, but it should be done gradually and without disturbing any of the existing personal laws of communities.

One of the landmark cases which dealt with the ongoing need of the UCC in India is the case of *Sarla Mudgal v Union of India*³⁴. In this case, Sarla Mudgal had argued that the Hindu men were using polygamy techniques by converting to Islam thereby by marrying again without obtaining a divorce. The case strongly violates the principal of equality and would be a question on their dignity amongst the religions and is discriminated against the constitution of India. Through this case the SC was on the same page with the petitioner and then it was held that those Hindu's converting to Islam, just for the conversion of Polygamy, won't be protected against the suit of polygamy, and under the Art. 25³⁵ which guarantees, the freedom of choosing any religion. He the common debate of violation of Art. 25 is that some argue that this violates, but the actual scenario is that conversion is allowed, if the person who is willing to convert shall be allowed to convert without any restriction, but because of following a malpractice, he can be considered liable. Thus, to avoid such instances, and such scenario, the presence of UCC is also an utmost need of the hour.

Despite having various Judicial Precedence, the implementation of the Uniform Civil Code in the country has a slow pace alongside, facing a backlash in the country by its countrymen. The challenges to implementing the UCC in India are complex and involve political, social, and legal factors.

In conclusion, judicial precedence on the appraisal of UCC in India with respect to the judicial system highlights the importance of the judiciary in shaping the discourse on the UCC. While there have been significant judicial pronouncements on the issue, the implementation of the UCC in India remains a challenge, and its effective appraisal in the judicial system is necessary to promote gender equality and secularism while respecting the diversity of Indian society.

³⁴ *Sarla Mudgal v. Union of India*, (1995) AIR 1531

³⁵ Constitution of India 1950, Art. 14

CRITICAL ANALYSIS OF THE PAPER

Time and again judiciary in India has placed its concern about implementing UCC in India. It's been more than 6 decades since the Constitution of India was implemented but Article 44³⁶ remains a dead article since then and no effect has taken place. The judiciary can give its point of view and judgment but it is the legislation that has to take final action and pass the year-long pending bill to give away with the inequality prevailing in the country.

Uniform Civil Code in Goa was implemented in 2005 which deals with marriage, divorce, inheritance, and maintenance. Since 2005 it has become a huge topic of discussion to implement the UCC across the whole of India. But the problems with the implementation of the UCC are drafting it and taking a consensus from all the stakeholders and people who believe that if UCC will come their freedom of enjoying, believing, and practicing their religion will be get infringed upon. Another drawback is that there is a lot of difference in the personal laws of different religions like the Hindu personal law differs a lot from the Muslim personal law of maintenance.

The reason why the UCC that is implemented in goa cannot be implemented in India is because of its population. As we know that India is a diverse country that follows different religions and customs that does not mean Goa does not have people who follow different religions but the population in goa is much less than the whole country. Therefore, implementing UCC in India is a much bigger task than implementing the same in a small state like Goa.

People think the implementation of UCC will violate their personal law and religious practices. But what people don't understand is that the idea is not to dilute the religion, the idea is that if any practice of any religion violates the constitutional rights of an individual it should be restricted or abolished as a practice as the fundamental right of a person is above any law.

³⁶ Constitution of India 1950, Art. 44

SUGGESTIONS & CONCLUSION

A nation's approach to gender equality and other forms of diversity is central to the debate over the Uniform Civil Code. Religion is protected in India alongside other rights such as equality and non-discrimination. The liberal diversity of India finds a happy medium between imposing one culture on another and leaving each culture to its own devices. It has been more open to changing the ways the majority does things and protecting the most vulnerable members of minorities.

Western democracies are often held up as examples of successful liberalism. But, the Western countries cannot serve as a model for India because their circumstances are vastly different. Most Western nations, despite their claims of secularism, exhibit a strong preference for one main religion.

While we work towards a Uniform Civil Code, we must keep in mind that the rule of law is inextricably bound up with accepted social norms. There will be a greater risk of people turning to other forms of alternative community justice, if we do not have the social backing or state capacities to apply our own ideas. One must exercise caution when drafting a universal civil code. The argument then becomes whether it should be mandatory, thereby replacing all personal law, or whether Indians should be allowed to continue living under their own religious tenets if they so choose. There is a high potential for bias to emerge when combining personal laws from different jurisdictions. The Special Marriage Act of 1954³⁷, does not give special treatment to any particular religion, in the same way the government should enact a new law that would prohibit discrimination on the basis of religious belief.

The general populace needs to grasp the distinction between religious doctrine and statutory legislation. Implementation of UCC does not mean that their right to follow their religion will be ruled out as it a fundamental right given to every citizen under Article 25³⁸ of Constitution of India. UCC will just make sure that there's no more discrimination on basis of religion, gender, caste or creed as everyone will be governed under one law.

³⁷ The Special Marriage Act (1954)

³⁸ Constitution of India 1950, Art. 25

Uniform Civil Code, as observed and stated by Supreme Court as well in many of this judgement, should be implemented keeping in view that it eliminates inequality for the country without hurt religious sentiments of the population.

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