



UNIFORM CIVIL CODE – A DREAM OF UNITY WITHIN THE SPHERE OF DIVERSITY

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Abstract

As the evolutionary historians cite, that we humans churned ourselves to beat what nature has to offer against us by uniting ourselves and realising the potentiality of such unity. But with the evolution of humans and growth of civilisation there was an inherent difference which was created through the emergence of religion. Such growth through unification but the inclination of religion within the personal laws is slowly tearing the society apart and discriminating the individuals on the basis of religion and actions one could perform. Uniform civil code or an uniform code for all the people has the potential to eliminate discrimination between several individuals belongs to different religious background within the ambit of personal laws but it has been a much-debated topic in India where still old customary practices are codified to form laws of the land for every separate major religious group that exists. A unified code won't just bring every religious community to much encouraged uniformity rather it would also adapt them to move on to a new era of modernization and innovation. We can witness such was emancipated by our forefather who drafted our Constitution and inscribed it under Article 44 of the Constitution of India. As with the enactment of this law the country could witness several grievous consequences as well as it could address several other factors such as recognition of homosexuality, gender

inequality, following uncodified and discriminatory laws.

Keywords: Personal laws, Constitution, Codification

II. Introduction

Uniform civil code means equal laws which would govern them regarding their civil matters like marriage, succession, adoption, divorce and maintenance. With the advent of this unified code all the existing personal laws would cease to exist and every community would be wide open to relinquish their differences to adopt the new found uniformity in them. This sort of uniformity won't just lessen the communal violence rather it would also let them adopt the concept of being one and together. This would lead the country to secularity which has been mentioned in the heart of the constitution of India and which has been in the core of our basic establishment under Article 15. This uniform code would also be able to address the issues like homosexuality and their struggle to have an equal status in the society in terms of civil matters and address the differences that has been created in the personal laws of various religious groups. It would also trigger a change in the gender inequality that has been constituted in different religious books and followed though different customs which now has been termed and codified as personal laws.

III. Conflicts within the Constituent Assembly

The history of Uniform Civil Code went through a lot of struggle to bring a uniform civil code has been an age-old argument even during the writing or the framing of the constitution of India. Since the early history



of India whether be it during the rise of the Mughal empire or during the advancement of the British forces none of them ever interfered with the personal laws of the people as they were afraid the discontent would rise to such an extent that people would revolt and that would lead to the demise of their ruling. And this was the most conflicting point as to how the introduction of Uniform Civil Code would affect the people when no sovereign dynasty could ever bring upon the people of India. Nation head like the then prime minister Jawaharlal Nehru was in favour of the UCC but this was opposed by other senior leaders like Vallabhbhai Patel and Dr Rajendra Prasad. Constituent Assembly² struggled as there were heated debates as to whether the uniform civil code was a proper step in the new India that was supposed to unfurl in front of them. There were arguments both in favour and against the said step to bring uniformity of the personal laws. Muslim members at that time strongly opposed the said step to bring uniformity in personal laws as this would jeopardise their said faith and they won't be able to follow their religious or the pious obligations. They also feared that a uniform civil code would just be biased on the part of Hindus and they won't have a say in that thus, they put forward every way to oppose the move. But most of the Hindu members were in favour of the said uniformity of the personal laws as they preferred a radical change in the new India regarding the laws and the personal beliefs. Chairman of the Constituent Assembly, Dr B R Ambedkar was in favour of the interference in the personal laws to bring uniform civil code as he was of the opinion that this would bring forward all the communities and extinguish the communal anger that still been flickering in the society over the partition of

the country. There was strong opposition from M. A. Ayyangar who was also a member of constituent assembly and he contended that India was too big of a country and thus, it would be volatile to bring a single code of law for all religion. He also contended that there are various other European countries which follows separate personal laws and that's what let them strive through the new world. Against to the notion and contention of Ayyangar, K M Munshi argued that there are European countries who followed the uniform civil code and even Turkey and Egypt doesn't have separate personal laws for different religions. This contention was supported by A. K. Iyer and he even added that religion shouldn't interfere in the new India and so it's better to get over it at the rise of new India. During such contention Dr B R Ambedkar asked the Muslim members "not to read too much of the Article 44" as this was said as an assurance to them over their agitation. He also added that uniform civil code would only be applied against the ones who would be able to accept it. But such contention in the approval of having a Uniform Civil Code was rejected and thus it never came into force rather all the religions were allowed to have their own personal laws to govern them.

2 2 S Pal, India's Constitution – Origin and Evolution (Constituent Assembly Debates), 1948

3 The Constitution of India, 1950

IV. Article 44 of the Indian Constitution – The soul of Uniform Civil Code

The notion of Uniform Civil Code is very much inscribed in the heart of the Constitution of India under Article 44. It's read as "The State shall endeavour to secure



for the citizens uniform civil code throughout the territory of India.”. This text meant that the State shall put in every effort and means to secure a uniform code in the land to govern people. But with the advent or the introduction of personal laws for every religious groups this Article of the Constitution has become a vestigial part of the Constitution that has been neglected over the period of time and the progress of India as though there’s equality before the law and abolishment of discrimination has been envisaged under Article 14 and 15. Currently with the interference of laws there has been wide discrimination as some laws prevent certain person from committing certain acts as they’re termed as unconstitutional while on the other hand it is considered to be valid for a person belonging to other religion. Like polygamy which is considered to be an offence for the Hindus but it is legal for the Muslims as it has been an age-old practice for them and it has been imbedded under their holy Quran. The framers of the Constitution had a vision that in the near future the UCC would be implemented and a uniform law would prevail over this sacred land where there won’t be any discrimination based on religion as well as based on old customs. But after the framers put forward this provision it has been neglected and never been recovered or put forward to the people as there has been a political motive to manipulate the population to gain votes to win elections. From this it could also be deduced that the political parties had misguided or lured the people out of uniformity to gain power and they’re still doing it. With every passing time the community as well as the political parties are growing more ignorant and thus, it would become bothersome to bring such provision in the near future.

V. One nation one law

As with the anticipation of unifying the civil laws as well as lower the burden over the Courts because of such complicated and diversified laws, the “One nation one law” rule⁴ was suggested at various times and been promised to its people by the Government. It means in a single country there would be only one civil code or the uniform code and the whole population has to abide by it irrespective of their religion or their religious ideologies. For this to be implemented the government has to be slow but swift and make the people aware of the benefits of such provision and how it would help them in the long run. The Government also needs to stop aiding or posing themselves with any religious groups or ideologies so that people can become more comfortable with the said change. The political parties also need to work with the Government to bring the said change and educate the local masses so they too can adapt to it. This said change or the uniform civil code could be brought with the use of Article 355 of the constitution. By this the State can amend the existing laws to bring a single code of law to govern the people. The masses may oppose at the very instance of the enforcement of this uniform code but in the later period of time they could get adapt to it and a better sense of nationality, equality and above all secularity would prevail. This would bring down the incidences of communal violence as well as the discontentment between the genders over various issues that still exists in India as predicted by the constituent assembly members. While framing such laws leaders from all religious community would be present so they look through that the code isn’t just biased to a single community rather



it is neutral from the perspective of all the religions. It would be a communal renouncing of the religious ideologies for the people and bring them closer without any feeling of being different or that their laws are biased towards a certain religion. This would bring a secular state for real and the true nature of the Constitution would truly be achieved.

4 Namita Bhandare, Uniform Civil Code: One Nation, one law, Livemint, <https://www.livemint.com/Opinion/5pwNnS5hmjm4iOtnsvWo0M/Uniform-civil-code-One-nation-one-law.html>

5 The Constitution of India, 1950

6 Rupam, Uniform Civil Code Towards Gender Justice, Legal Service India, <https://www.legalservicesindia.com/article/1832/Uniform-Civil-Code-Towards-Gender-Justice.html>

VI. Enforcement of new laws to open the eyes of the people

Over the years the idea of UCC has always been triggered whenever there was a want to reduce the gender inequality in the Indian society and to empower the women with equal rights, status and dignity. The uniform civil code would also bring about gender equality⁶ in the matters of claiming maintenance by either of husband or the wife, or regarding the partition of property or succession as there won't be any age-old customs involved in deciding such matters. It would also abolish all the unwritten or uncodified laws that still exists in India like the concept of coparceners. And custom which doesn't correspond to the current ideologies would cease to exist with the advent of such provision. Uniform civil code

won't just bring uniformity in the personal laws rather it would also pave the way for the recognition of LGBT community and offering them equal status in the society as they long deserved and fought for. With the uniform civil code in force people won't be biased or guided with their religious ideologies towards the acceptance of LGBT community⁷. With advent of such steps the Sec 377 of IPC would cease to exist as such community won't be disregarded or be treated as inferiors. Advancement of such a step would let the community be able to adopt children and be viable for marriage, divorce, maintenance and succession. And such provisions would let them have a respectful life to lead to without being discriminated or feeling the guilt of being different.

7 Scroll Staff, Allow gay marriages, give couples police protection if needed, suggests draft Uniform Civil Code, Scroll, <https://scroll.in/latest/853850/allow-gay-marriages-give-couples-police-protection-if-needed-suggests-draft-uniform-civil-code>

VII. Analysis of having an UCC

Just like any other legal provisions this step would also have pros and cons. But while taking any such step we look forward to how such step would affect in the immediate time and in the future. Such step would raise discontent in people after the application of such step but in the long run it would be beneficial to the whole of the community as well as for the sovereign authority that is present to govern. The pros of such a step as deduced by the framers of the constitution were that there would be less communal repulsion in the society or in the long run, people would be truly secular in mind and in action, people would be more open minded



towards any other steps that would liberalise the society, there would be less conflict regarding the application of civil laws thus it would decrease the time for the people to get justice as well as it would be beneficiary for the judiciary. Though the words of secularism had been spoken wisely and widely but it's hard to implement in a situation where such amount of diversity exists. The western or the developed country could establish a perfect sense of secularism and uniformity only because the diversity existing in not as wide as it is in India. The cons that would include are like interference with the personal laws and the beliefs of the people, ignorance of the minority views, forcing of certain laws on the people and rise of discontent in people. This step would be really complicated and lead to wide protests against the said government. But as framers predicted this would be just for the initial time after that people would start getting adjusted towards the system of uniformity and ultimately it would be beneficial to them. Many people are of the view that in the current scenario where personal laws for different religions are applied is a way of showing secularity but that's not the case since personal laws are mostly driven and influenced by religion and religion brings unevenness and disparity in the laws. As there are provisions which is constituted to be unconstitutional for one religion but it is absolutely allowed for some other religion.

VIII. Enriching the dream of UCC - Current scenario

Over the period of time there had just been political clashes whether the uniform or common civil code could be a possible reality or not. Dr B R Ambedkar tried to bring changes in the Hindu code bill which targeted

two concepts, one of them is casteism and untouchability. The Hindu code bill was passed and came into force in the year of 1955. But in 1954 there was a step taken towards the acceptance of UCC by enforcing the Special Marriage Act, 1954 that allowed marriages irrespective of religion, case and without any specific religious ceremonies. But it was not enough to open the minds of the people. In 1985, during the Shah Bano case there was huge out roar towards having a uniform civil code but that agitation was extinguished as the then Government in lieu of gaining appreciation and votes of the minority community enacted Muslim Women Act, 1986 to nullify the judgement of the Supreme Court which gave a judgement in favour of the enacted legal provision of Sec 125 of CrPc disregarding the personal laws. Previously Jana Sangh which was the predecessor of Bharatiya Janata Party also known as BJP first put the idea of uniform civil code and later on BJP too put out the same notion of uniform civil code as a promise to win Hindu votes but didn't take any steps over the years to make any progress towards achieving that. But the current political stigma is pretty obnoxious and confusing as in 2015, the Supreme Court while dealing a matter related to Christian divorce Justices Vikramjit Sen and Shiva Kirti Singh was of the opinion that not all religion can come and ask for their own personal laws as this would be really confusing for the judiciary to function efficiently and asked for the Government's view on this.⁹ But the Government didn't provide the Court with any concrete answer. In 2016, Tufail Ahmed who's a Muslim scholar put forward a 12-point document draft regarding uniform civil code so that it could attract a public debate. He also targeted the political parties as well the public as to



their inefficiency in bringing a uniform law in the country. In the same year in the month of February, Justice Sen said “religion should not be part of civil laws”. But in 2018, as per the recommendation of the Government the Law Commission held a detailed questionnaire regarding the said matter and in 185-page analysis¹⁰ it commented that “uniform civil code is neither necessary nor desirable”. How far this analysis is apt not yet know or analysed but the Supreme Court of India still adamant about having a uniform law devoid of religious interference. Only Goa in India has a uniform civil code but it’s not strictly uniform as it has few laws pertaining to different religious groups. But still Goa puts forward a very good example to the whole of India towards their success of having a uniform civil code¹¹ which was taken from Portuguese Civil Code, 1867 without jeopardising the law and order in there. Though there were attempts to bring non-uniform laws into it but it was met with strong opposition from Muslim Youth Welfare Association and Goa Muslim Women’s Association. Such acts of the government also bring into light their callous attitude towards having an UCC. But such examples are ignored to satisfy the common view of the people that India is too diverse to have uniformity of laws. People should learn from it that changes could be brought even in such a diverse field and it’s never too late to do so.

8 Mohd. Ahmed Khan v. Shah Bano Begum [1985 (1) SCALE 767 = 1985 (3) SCR 844 = 1985 (2) SCC 556 = AIR 1985 SC 945]

9 Supreme Court Seeks Status on Uniform Civil Code, NDTV, <https://www.ndtv.com/india-news/supreme->

[court-seeks-status-on-uniform-civil-code-in-country-1231879](https://www.ndtv.com/india-news/supreme-court-seeks-status-on-uniform-civil-code-in-country-1231879)

10 Krishnadas Rajagopal, Uniform civil code neither necessary nor desirable at this stage, says Law Commission, The Hindu, <https://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-necessary-at-this-stage-says-law-commission/article24833363.ece>

11 Albertina Almeida, Goa's Civil Code Shows That Uniformity Does Not Always Mean Equality, The Wire, <https://thewire.in/law/goas-uniform-civil-code-is-not-the-greatest-model-to-follow-X-Unsewn-dreams-of-having-a-Uniform-Civil-Code>

After several decades of procuring independence from a foreign sovereign India is still struggling to have a UCC. A list of factors that leads to such disparity in the dreams of the framers are as follows:

- Diversity – India is known around the world for its richness in diversity and culture and this is also the reason that leads to not having an UCC. Such diversity is fuelled with age old customs which are backed by religion. Though with the advent of this such diversity would be affected but it won’t be nullified.

- Orthodox mindset – People in India carry an orthodox mind set which has always prevented the State from exercising its power to put forward a concrete step towards the achievement of uniformity.

- Political ignorance – Over the years different politicians has promised an UCC but they always failed to perform such promises either because of their



incompetency or their unwillingness. They had always ignored it and never truly understood its value in the achieving of secularity. Currently it has become an agenda to lure people into gaining support.

independence, a single set of laws governing every person irrespective of their religion and earning a true sense of secularity as it has been envisaged in our Constitution of India.

XI. Recommendation & Conclusion

A detailed conclusion that could be deduced from this paper is that the matter of UCC is very controversial but it's possible for the Government to enact a uniform law governing every religious groups and bringing them under a common umbrella of law if it's determined enough to do and put forward authentic amount of effort towards achieving that rather than putting forward hollow promises. As always, the Supreme Court is of the opinion of supporting the said act but the Government is too reluctant towards the said issue as they're more motivated towards gaining the public votes rather than thinking about the long-term goal of achieving uniformity. If the Government is supposed to enforce such provision then it must be swift enough and should educate the masses in advance to avert any sort of agitation from the very beginning as the execution of such a law requires huge amount of patience. And while framing such laws it needs to keep in view all the major religions as well as the minor religious and their ideologies so that none of the laws in it doesn't become one sided or biased towards a certain religion or any single religion becomes more oppressed than the other. They also need to focus on the condition of Goa as well as other countries where UCC already exists and understand how they were able to enforce singular law without disrupting the social fabric. But as of now India still struggles to have its own uniform civil code in-spite of covering several decades of

