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Uniform Civil Code in India

Introduction:

Uniform civil code (UCC) is an idea that proposes to let go of personal laws in India, and bring a uniform set of laws, under which every citizen is governed equally regardless of their caste, gender, religion, creed, race, etc.

This idea aims to bring together the citizens of the country and prevent further divisions, especially on the basis of religion, as currently, different religions in India are governed according to their specific personal laws.

Presently, there are various personal laws in India, that govern different aspects when it comes to religious laws or family laws.

Through this research paper, I aim to find out whether India is really in need for uniform laws or whether this will widen the existing gap between religious communities in the country.

Research Questions:

1. Does Uniform Civil Code violate the fundamental rights of the citizens?

Limitations of Study:

This paper aims to keep the perspective and study the scope of UCC in India and does not intend to have a global context of the topic. The main agenda of writing this paper is to highlight the pros and cons of bringing out a common set of laws for all the citizens regardless of their religious identities.

Research Methodology:

This paper is based on secondary resource materials.

Literature Review:

History of Uniform Civil Code in India:

It was during the period of British colonisation in India, when the concept of UCC first emerged. But, the aim for the implementation of such a framework had a different motive, to disregard our culture and impose western ideologies.

The Britishers thought it necessary to bring uniformity in the laws to make administration processes easier for them.

According to the “Lex Loci Report”, which was released in the year 1840, importance was given on the necessity to introduce uniformity and codification in the Indian law, in relation to crimes, evidences and contract but it did not provide any recommendation with regards to the personal laws of Hindus and Muslims. This idea to have separate laws governing the Hindus and the Muslims, was part of their strategy to divide and rule that the British empire to exploit the people of the country and create rift between the different religious communities and rule over India. Going with their understanding of religious divisions in India, the colonisers separated the line which would be governed by religious scriptures and customs of the various communities like the Hindus, Muslims, Christians and later on the Parsis as well. These laws were applied by the local courts or panchayats when dealing with regular cases involving civil disputes between people of the same religion; the State would only intervene in exceptional cases.

Therefore, it was during this period that criminal and civil laws were codified but personal law till date are continued to be governed separately.

Post Independence:

After gaining independence from the British, India wanted to abandon orthodox policies and favoured a more modern and developed India. Hence, the first Prime Minister of the country, Jawahar Lal Nehru, along with B.R Ambedkar, pushed for the introducing of uniform civil code in the country. Though Mr. Ambedkar did introduce the bill in the parliament, he was met with great criticism, due to which he had to withdraw.

This proposal was met with opposition by the fundamentalists of different religions as they saw this idea as a threat to their traditions and religious practices. Looking back at it, the lack of awareness amongst the people can also be blamed for this outraged reaction to UCC.

Keeping the interests of the majority in mind, many provisions were introduced under different personal laws.

These legal provisions were:

The Hindu code bill:

This bill was drafted by Dr. Ambedkar to bring reforms to Hindu laws, which included the legalisation of divorce, discarded practices of polygamy, gave inheritance rights to daughters. There was witnessed quite severe opposition towards this code, hence, a more diluted version was passed through four different laws, that were:

1. The Succession Act:

The Hindu Succession Act which was established in the year 1956, originally did not allow for inheritance rights to daughters in ancestral properties. They could only ask for a right to sustenance from a joint Hindu family. But this discrimination was removed through an amendment to the Act on September 9, 2005. In the year 2000, the law commission of India released its 174th report, in which it highlighted the gender discriminatory nature of the Hindu Succession Act, 1956, when it came to property inheritance or succession. The commission emphasised how this act, has continued to establish male dominance in the society, as the male members of a Hindu joint family have rights as coparcener since birth, but the women are given only rights pertaining to their maintenance. The law commission called for attention to this unequal nature of the act, and suggested amendment to it, especially to section 6 and also section 23 of the Hindu Succession Act.

2. The Hindu Marriage Act

3. Minority and Guardianship Act
4. Adoptions and Maintenance Act

The Special Marriages act:

Introduced in 1954, the Special Marriage Act permits civil marriages between citizens, regardless of their faith, allowing Indian people to wed outside the purview of any specific religious personal law. All of India was included by the statute, with the exception of Jammu & Kashmir. The Hindu Marriage Act of 1955 and this act were practically identical in many ways, which demonstrates how secularised the law had become with regard to Hindus. Muslims were able to wed under the Special Marriage Act and keep the protections that were not available under the personal law—protections that are normally advantageous to Muslim women. This act outlawed polygamy and established the Indian Succession Act as the legal framework for inheritance and succession.

the corresponding Personal Law of Muslims. Secular law would likewise regulate divorce, and civil law guidelines would apply to a divorced wife's maintenance. As a result, religious minority that were not covered by their religion's personal law, such as the Muslim Personal Law, received important protection under the Special Marriage Act.

The Shah Bano Case:

This landmark case in the legal history of India, was a turning point for the concept of Uniform Civil Code in India.

In this case, a 73-year-old woman named Shah Bano was divorced by her husband under the triple talaq choice given to the Muslim husbands and she was also denied any maintenance by her husband. She decided to take this matter to the courts where judgement was given in her favour by the District Court as well as the High Court. This led to her husband appealing to the Apex Court claiming that he had fulfilled all his obligations according to the Islamic law.¹

The Supreme Court gave the judgement in Shah Bano's favour in the year 1985 under section 125 of the Criminal procedure code- "maintenance of wives, children and parents",

¹ Wikipedia, <https://en.wikipedia.org/> (last visited Feb 1, 2024)

which was applicable to all citizens irrespective of their religious beliefs. Furthermore, the SC also recommended that a uniform civil code be set up. Impact of this judgement:²

² Byjus, <https://byjus.com/> (last visited Feb 2, 2024)

This was a historic decision, which was given after numerous nationwide discussions, meetings, and agitations. The case was under a lot of scrutiny since, any order made, would have serious societal implications. The then government proceeded to pass *The Muslim Women's (Right to protection on divorce) Act* (MWA) in the year 1986, which made Section 125 of the Criminal Procedure Code (CrPc) inapplicable to the Muslim women.

Uniform Civil Code and the Constitution of India:

According to Article 44, underpart fourteen, (which comes under the Directive Principle of the state policy), of the Constitution of India: "The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India".

But this statement gets contradicted by the Constitution itself under Article 37, that the Directive Principle of State Policy, "shall not be enforceable by any court." From the very beginning, it was made clear that DPSPs are just some values that need to be kept in mind when making laws, but no where does the constitution make them legally binding. Therefore, even though Uniform Civil Code is seen as a necessary principle, our constitution does not legally mandate it.

Answer 1:

Religious freedom under the Indian Constitution:

Part III of the Indian Constitution, contains fundamental rights of the citizens, ranging from articles 12-35, are rights that cannot be violated under any circumstances. Under these articles we also have rights that allow for freedom of religious practices. The main and the most important argument given against UCC, is that it violates the freedom of practice of religion, and that it also disrespects the the people's religious sentiments.

Here are some articles that allow for religious freedom:³

- Article 15- No discrimination on grounds of religion, race, caste, sex or place of birth.

- Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on the grounds of public order, health and mortality.
- Article 25 (2)-provides for regulating secular activities associated with religious practices, social welfare and reform.
- Article 26- Right to establish and administer religious institutions.
- Article 27- Prohibits the state from levying a tax, proceeds of which are used for the benefit of a particular religion.
- Article 28- deals with the issue of religious instruction in educational institutions.

In the year 1976, the 42nd Constitutional Amendment, also known as the ‘mini constitution’, inserted the word ‘secularism’ in our preamble. Later on in 1994, in the case of S.R. Bommai vs Union of India, the Supreme Court held secularism was a basic feature of the constitution.

What is needed to be understood is that the bringing of a uniformed set of laws to govern, in no way to undermine the principles of secularism in the country, instead it aims to bring more unity and curb arbitrary practices done in the name of religion. There are certain practices in every religion that in a bigger picture, violate other fundamental rights of the people, taking the example of the triple talaq system or the sati pratha, which now is abolished, but there are still many other such practices that are needed to be kept in check, which cannot be possible till there are personal laws in place, which in one way or another are hindering a smooth functioning of the society.

UCC is set to replace various laws that are currently in place under various respective (religious) communities, which are inconsistent with not only each other, but also with other laws in the country. These laws include the Hindu Marriage Act, Hindu Succession Act, Indian Christian Marriages Act, Indian Divorce Act, Parsi Marriage and Divorce Act. Meanwhile, certain laws like the Sharia (Islamic laws) are not codified and are solely based upon religious scriptures and interpretations, are also needed to be incorporated under UCC.

The major ideas that are proposed under UCC include: monogamy, equal rights for son and daughter over inheritance of paternal property, and gender and religion neutral laws with regards to will, charity, divinity, guardianship and sharing of custody. These proposals may not

result in much difference to the status of Hindu society, as they have already been applicable on Hindus through the Hindu Code Bills for decades.

The Nation's perspective on UCC:

The Constitution of India states India as a secular country, which place importance on the separation between religious affairs and state affairs. However, the aspect of secularism that the critics of UCC fail to see is that India also believes in the equality of all religions and practitioners of all religions before the law. In the present situation, when a bunch of different laws and codes for governing different religions exist, citizens are treated differently by law and by courts based on their religion. With no disrespect to any religion, it is quite evident that the rights given to Hindu practitioners, especially women, are far more open minded and accepting (and less violative of the other constitutional provisions, by keeping in mind equality) than those of Muslim women, who are governed under the Muslim Personal Law, which is based on the Sharia law, and have to face a lot of restrictions, The supporters of rights for women have said the issue of a uniform civil code is only based on the rights and security of women, regardless of sensationalism by religious conservatives and the press.

The arguments in favour of UCC are:

its mention in Article 44 of the Constitution, need for strengthening the unity and integrity of the country, rejection of different laws for different communities, importance for gender equality, and reforming the archaic and patriarchal personal laws of Indian Muslims — which allow unilateral divorce and polygamy. India is currently, in some sense, among the nations that legally apply the Sharia law. According to Qutub Kidwai, it is said that the Muslim Personal Law is "Anglo-Mohammadan" rather than just being completely Islamic.⁴

The Hindu nationalists see this issue within the concept of the Hindu law, which they believe is secular and equal for both the sexes, so there is less opposition from their side. In the country, the need for a set of uniform civil codes can be seen as a negative initiative by religious establishments and the so called “secular” sections of the society because of identity politics. The Bhartiya Janata Party (BJP), one of the two major political parties in India, have taken up this matter to ensure that every citizen of the nation has equality before the law. The BJP was

the first party in India to promise to introduce uniform civil code in India if it is elected to power.

Out of the few states of India that have implemented UCC, Goa is one of those states that adheres by the Goa Civil Code. It is a set of civil laws, which is continued to be implemented even after the Indian annexation of the state in 1961.

In the October of 2015, the Supreme Court of India asserted urgent requirement for a uniform civil code and said: "This cannot be accepted, otherwise every religion will say it has a right to decide various issues as a matter of its personal law. We don't agree with this at all. It has to be done through a decree of a court". On 30 November 2016, British Indian intellectual Tufail Ahmad revealed a 12-point draft proposal, citing no effort by the government since the year 1950. The Law Commission of India stated on August 31, 2018 that a uniform civil code is "neither necessary nor desirable at this stage" in a 185-page consultation paper, adding that secularism cannot contradict the plurality prevalent in the country. On June 14 2023, the 22nd Law Commission of India requested input from religious organizations and the general public regarding the matter of implementing a Uniform Civil Code (UCC). According to a notification released by the commission, individuals who are interested and willing can express their opinions within a 30-day time frame.³

The criticisms against UCC continue to view it as a threat to freedom of religious practices. They consider the abolition of religious laws as a disregard of secularism, and the UCC as a means for BJP to target Muslims under the pretence of progressivism. However, the members of BJP stay firm on their stance and continue to claim that they stand with uniform civil code as a way of achieving religious equality and equal rights for women by discarding off of unfair laws in place in the name of religion.

Legal expert and rights groups suggest amending gender discriminatory laws, rather than implementing a uniform civil code. An example of such a law is Protection of Women from

³ Wikipedia, <https://en.wikipedia.org/> (last visited Feb 1, 2024)

Domestic Violence Act, 2005 which applies to women of all communities without the need for a uniform civil code.

On 17 July, 2023, Justice Krishna Murari, who had recently completed his tenure in the Supreme Court of India, stated that "uniformity in anyway is beneficial", but before the implementation of the Uniform Civil Code, extensive deliberations and consultations, on a large scale, with the general public should take place.

The task of actually devising a set of rules that will govern all communities is a very risky and tedious and needs to be done with utmost care and caution one keeping in mind the diverse range of interests and sentiments to be accounted for.

- Misinformation regarding UCC- The main agenda of UCC has not been discussed correctly which has lead to minorities believing that it is a way of imposing majority views on them and disregarding their traditions.
- Lack of political will due to the complexity and sensitivity of the issue.
- **Different religious communities** have different personal laws which lead to the politicization of the UCC debate.

Opponents of UCC argue that personal laws are derived from religious beliefs. They maintain that it is prudent not to disturb them, as this runs the risk of engendering a great deal of animosity and tension between various religious communities. Also, India being a secular country guarantees its minorities the right to follow their own religion, culture and customs under Article 29 and 30. They argue that implementing UCC will contravene these articles.⁴

Suggestions for Implementing a Uniform Civil Code:⁷

To realize the aims of the DPSP and to maintain the uniformity of laws, the following recommendations need urgent consideration of the relevant authorities:

⁴ Byjus, <https://byjus.com/> (last visited Feb 2, 2024)

- A progressive and broadminded outlook needs to be encouraged among the people to understand the spirit and actual meaning of UCC. For this, education, awareness and sensitisation initiatives and programmes must be taken up.
- The Uniform Civil Code should be drafted keeping in mind the best interest of all the religions.

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- A committee of recognised jurists should be constituted to maintain balance among with uniformity and proper caution must be taken to not hurt the sentiments of any particular community.
 - Since this matter is of a sensitive nature, it is always best if the suggestions of the religious groups concerned are also taken into consideration.

Conclusion

India features a distinctive fusion of the codified personal laws of Christians, Muslims, Hindus, and Parsis. All Indians do not live under a single statute book that has all of the family-related laws that are acceptable to the several coexisting religious communities in India. But the bulk of them think that UCC is unquestionably desirable and would significantly contribute to the fortification and consolidation of Indian nationalism. There are disagreements over when and how it should be accomplished.

It is the responsibility of political and intellectual leaders to work towards a consensus rather than utilising it as a wedge issue to further their political agendas and widen the rift between the religious communities. The issue is simply one of treating every individual with dignity, not of protecting minorities or even maintaining national unity.