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NAVIGATING CHALLENGES: EXAMINING THE PROSPECTS AND PITFALLS OF A UNIFORM CIVIL CODE IN INDIA

INTRODUCTION:

The Uniform Civil Code is currently a widely discussed topic across the nation. It is a subject of regular political debates. While many Muslim organisations are speaking out against UCC because they believe it will interfere with their traditions and beliefs, many Hindu organisations have backed it because it is anti-Islamic and will outlaw practices like polygamy and Nikah Halala.

The Uniform Civil Code means a uniform personal law for all citizens of the country. This code will modernise India's current religious non-public laws and provide a uniform legal framework to accommodate all citizens, regardless of their religious beliefs. Our Constitution's drafters intended for this to happen under Article 44. However, it has had a very negative impact because it is believed to be a violation of Article 25¹ of the Constitution.

Article 44² lays the provision for Uniform Civil Code and states that:

“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”.

‘Civil’ refers to family-related laws in the Uniform Civil Code. ‘Code’ refers to a body of laws that must be obeyed. ‘Uniform’ denotes parity. All-together, it denotes the presence of a single personal law that is applicable to all religions practiced in that particular country. Uniform civil code means that all states of the society irrespective of their religion shall be treated equally according to a natural civil code which shall be applicable to all uniformly.

¹ Article 44, Part IV, Constitution of India, 1950.

² *Id.*, Art 25.

The term “secular” means that the State will now not comply with any specific religion and neither will the human beings be discriminated due to the faith that they comply with. This reflects “ONE COUNTRY ONE RULE” policy.

The father of Indian constitution Dr. Ambedkar speaking about Article 44 calls that it is perfectly possible that the future parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to bound by it, so that in the initial stage the application of the code may be purely voluntary. He was clear in his feeling that the state had the power to legislate over the personal law but he also cautioned that no government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion.

The state must give the goals outlined in Article 44 of the Indian Constitution serious consideration and work to put them into action as soon as possible. However, enacting a single, comprehensive code governing every aspect of marriage, divorce, succession, adoption, and other related matters could make it extremely difficult to alter the long-standing traditions and practices of the populace as a whole. A gradual approach is the most effective way to bring about changes in the customs and habits of the populace.

HISTORICAL CONTEXT AND EVOLUTION:

During the British Raj, personal laws were created for the Muslim and Hindu communities. Women activists first called for a Uniform Civil Code at the start of the 20th century, saying that their goal was to secure “rights for women, equality, and secularism”.³ Though the National Planning Commission, which was established by the Congress in the 1940s to examine women’s status and suggest changes to personal laws regarding gender equality, was the one who first proposed the idea for this uniform code.

Later, Dr. B.R. Ambedkar argued vehemently for this to be included in the constitution during the constituent assembly. Consequently, it has been included as a mandate for the state to execute in Part IV of the Directive Principle of State Policy.

³ Uniform Civil Code: *One Nation One Code* by Qwerty9729, Legal Service India <http://www.legalserviceindia.com/legal/article-685-uniform-civil-code-one-nation-one-code.html>, *Uniform Civil Code- The Need of Hour*, by Dr. R.I. Parikh, IRJMISH, Vol-9 Issue 12(Year-2018) ISSN 2277-9809

In 1985 the Supreme Court in the case of *Mohammad Ahmed Khan v. Shah Bano Begum*⁴ directed the Parliament to frame a Uniform Civil Code reiterating the words of the then Chief Justice, Y.V. Chandrachud:

“A common civil code will help the cause of national integration by removing disparate loyalties to law which have contracting ideologies”.

Lastly, in *Lily Thomas v. Union of India*⁵ it was held by the Supreme Court that “the desirability of Uniform Civil Code can hardly be doubted.” Though it is only possible if the social climate is appropriately built up and political leaders must come forward and awaken the masses to accept the change.⁶ It also laid emphasis that "uniform" would not mean the same laws for all the people but it would mean having similar laws for all with respect to equality within the religion and gender justice.⁷

DIVERSITY OF CUSTOMS AND RELIGIONS IN INDIA:

A Civil Code: What Is It?

A collection of laws known as the civil code governs the civil matters of the nation's citizens, including marriage, divorce, adoption, child custody, inheritance, and property succession. If the Common Civil Code is passed, it will address the private laws of all religious communities concerning the aforementioned topics, all of which are secular in nature and will strengthen the bonds of unity among Indian citizens by giving them access to a set of personal laws that uphold the fundamental principles of humanism.

The lack of UCC results in acrimonious, unjustified, and unpleasant circumstances. The court stated: “Marriage is the cornerstone of civilised society.” The word “secularism” has been added to the preamble following the Fourth Amendment, which makes India a secular country. The freedom to practise any religion was guaranteed by Articles 25 and 26, and secularism is not prohibited by the Uniform Civil Code. No one shall be subjected to religious discrimination in a secular state.

⁴ *Mohammad Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 94.

⁵ *Lily Thomas v. Union of India*, AIR 2000 SC 1650; (2000) 6 SCC 224.

⁶ *Uniform Civil Code- The Need of Hour* by Dr. R.I. Parikh, IRJMSH, Vol-9 Issue 12(Year-2018) ISSN 2277-9809.

⁷ *Uniform Civil Code: An Attempt to explore its affordability* by Vijender Kumar & Naresh Kumar Vats, 1-19, Journal Of Law and Public Policy, Uniform Civil Code, Vol-IV, 2017.

In the case of *S.R.Bommai vs Union of India*⁸, the SC held that the "religion is the matter of individual faith and cannot be mixed with secular activities, Secular activities can be regulated by the State by enacting a law". So secularism is the basic feature of the constitution.

In the judgement of *Sarla Mudgal vs Union of India*⁹, the Supreme Court stated that "there is no justification, whatever to keep in abeyance any more the introduction of the Uniform civil code fix well the citizen in the territory of India."

UNIFORM CIVIL CODE AND ROLE OF JUDICIARY:

The courts in India in several judgments they have pronounced in the time being have specifically emphasized the need for the applicability of UCC in India.

In the Case of *Mohamad Ahmed Khan V Shah Bano Begum*¹⁰ popularly referred as Shah Bano's case. In this case, in 1985, Shah Bano moved to Supreme Court for looking for renovation under Section 125¹¹ of the Code of Criminal Procedure when her husband divorced her after forty years of marriage by using giving triple talaq and denied her everyday preservation. The Supreme Court gave the decision in want of Shah Bano by way of applying Section 125 of the Indian Criminal Code and its miles carried out to all citizens regardless of religion.

The Supreme Court remarkably noted that 'it is a matter of regret that article 44 has remained a 'dead letter'¹² and also observed that 'a common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies' and that 'it is the State which is charged with the duty of securing a uniform civil code'.¹³

The Supreme Court in the case of *Pannalal Bansilal Patil v State of Andhra Pradesh*¹⁴ held that "a uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation."

⁸ S.R.Bommai v Union of India,(1994)2 S.C.R. 644(India).

⁹ *Sarla Mudgal v Union of India* A.I.R.1995 S.C.1531(India).

¹⁰ AIR 1985 SC 9455.

¹¹ Code of Criminal Procedure 1973, s 125

¹² 'What is Shah Bano Case?' *The Indian Express* (New Delhi, 23 August 2017).

¹³ *Id.*

¹⁴ *Pannalal Bansilal Patil v State of Andhra Pradesh* (1996) AIR 1023.

In the instant case of *John Vallamattom and Ors. v Union of India*¹⁵ The Supreme Court of India held that “*there is no necessary connection between religious and personal law in a civilized society. It is no matter of doubt that marriage, succession, and the like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution. Any legislation which brings succession and the like matters of secular character within the ambit of Articles 25 and 26 is suspect.*”¹⁶

The need to implement the UCC was recognized by the Supreme Court a long time ago, but certain factors like social, political, economic, and cultural, etc., have paved their way into this very development thus hampering the development and growth of the civilized Indian Society by necessarily creating a connection between the personal laws and the religion.

PITFALL OF A CONSISTENT CIVIL CODE: GENERALIZATION OF OPPRESSION OF WOMEN:

For a very long time, advocates of uniformity in civil law have argued that it will ease women's rights and empower women who have been suppressed through the use of ill religious and cultural practices. The discussions surrounding a model civil code have consistently examined the experiences of various groups of women from their point of view. Not only does UCC aim to advance human rights, but it also prioritises gender justice and national integrity. Furthermore, it suppresses minority identities and poses a serious threat to the diaspora of cultures. Two drawbacks of a common civil code, which one could refer to as:

- 1) The opportunity to experience people's various identities as well as the group identities collectively.
- 2) The vague and somewhat stalled prescription of uniformity became sufficient to secure women's rights; the latter may have been a side issue lost in the political din, while the former may have been a more thoughtful and focused argument against the Uniform Civil Code.

ADVANTAGES OF ENFORCING A UNIFORM CIVIL CODE:

❖ Facilitation of National Integration:

¹⁵ *John Vallamattom & Ors v Union of India* WP (C) 242/1997.

¹⁶ *Mohd Ahmed Khan v Shah Bano Begum & Ors* (1985) AIR 945.

The implementation of a Uniform Civil Code stands as a catalyst for enhanced national integration in India. The historical preferential treatment accorded to distinct religious communities based on divergent personal laws has generated animosity. The adoption of a Uniform Civil Code can mitigate these tensions by promoting equality among all Indians, irrespective of caste, religion, or tribe. Such a code becomes a vital tool for the state to uphold national unity and stability while adapting personal laws to the evolving values of modern society.

❖ **Attainment of Gender Justice:**

The existing personal laws have perpetuated gender inequality, particularly against women. Before 1955, practices like polygamy were prevalent, hindering women's rights. Hindu and Muslim women faced discriminatory laws concerning property ownership, divorce, and maintenance. Implementation of a Uniform Civil Code is crucial in rectifying these historical injustices, ensuring equal rights for women across all communities, and dismantling patriarchal norms that persist in Indian society.

Additionally, the code would address disparities within communities, like the difference in punishment for polygamy between Hindu and Muslim laws. This move is integral to fostering gender equality and justice.

❖ **Promotion of Genuine Secularism:**

Enforcing a Uniform Civil Code aligns with the principles of true secularism. Presently, India experiences selective secularism, where different religious communities have distinct legal frameworks. The UCC would ensure that citizens, regardless of their religious affiliations, adhere to the same laws. This doesn't impede religious freedom but rather promotes equal treatment, fostering a more genuinely secular society. Regulations on personal laws, such as the uniform prohibition of polygamy and equal distribution of inheritance, would contribute to a more equitable and secular legal landscape.

❖ **Elimination of Personal Laws as a Loophole:**

Existing personal laws serve as a loophole that allows those in power to exploit the system. Panchayats often deliver judgments that contradict constitutional principles, leading to human rights violations such as honour killings and female foeticides. The adoption of a Uniform Civil Code would dismantle this alternate judicial system rooted in outdated values, reinforcing the supremacy of constitutional rights.

COUNTERARGUMENTS AGAINST THE ENFORCEMENT OF A UNIFORM CIVIL CODE:

❖ Concerns Regarding Government Intervention in Personal Freedom:

Opponents of the Uniform Civil Code argue that the government should refrain from intervening in the religious practices of individuals. In a nation as diverse and multi-religious as India, where each religion maintains distinct laws concerning marriage, divorce, and succession, governmental interference is perceived as encroachment upon citizens' individual rights. This perspective contends that citizens should have the freedom to practice their chosen religion without external interference, causing unrest and resistance when such interference is perceived.

❖ Risk to Communal Harmony:

Detractors express apprehension that the implementation of a Uniform Civil Code may pose a threat to communal harmony, particularly among minority religions. There is a prevalent fear that practices of majority religions might be prioritized over the unique customs and values of minority religions. Given the history of communal riots and misunderstandings leading to conflicts, opponents argue that enforcing a single code might exacerbate tensions instead of fostering unity.

❖ Timing and Perceived Threats to Minority Identity:

Critics argue that the timing for implementing a Uniform Civil Code may not be opportune, particularly concerning the Muslim community. Members of this community view the code as a potential threat to their cultural identity and an intrusion into laws they consider of divine origin. The perception that the code favors the Hindu majority has sparked concerns, with some advocating for a delay in implementation. The ongoing silence on issues such as saffronization of schools and beef-related controversies further intensifies the debate, raising questions about the fair treatment of minority communities.

❖ Limited Scope and Potential for Conflicts:

Skeptics posit that even after implementation, personal laws will persist on various fronts, as the Uniform Civil Code may only address specific aspects of personal laws. In the event of a

conflict between personal laws and the uniform code, questions arise about which set of laws would prevail. This uncertainty adds complexity to the situation, raising doubts about the efficacy and comprehensiveness of the proposed Uniform Civil Code.

CONCLUSION:

In contemplating the implementation of a Uniform Civil Code (UCC) in India, the nation grapples with a profound juxtaposition of promises and challenges. Envisioned to foster national integration, gender justice, and genuine secularism, the UCC proposes a unified legal framework transcending religious boundaries. It aspires to rectify historical gender inequalities, dismantle outdated legal loopholes, and establish equal rights for citizens. However, counterarguments emphasize concerns about government intervention, potential threats to communal harmony, and the timing vis-a-vis minority identities. Skeptics raise questions about the UCC's scope and its ability to harmonize with existing personal laws, highlighting the need for a nuanced approach. Amidst this discourse, Mahatma Gandhi's vision of a tolerant India, where religions coexist, resonates as a guiding principle, emphasizing the importance of inclusivity, respect, and understanding on the journey toward legal reforms.

In the end, we should recall the words of Mahatma Gandhi: *“I do not expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religious working side-by-side with one another”*.