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**A DETAILED STUDY OF UNIFORM CIVIL CODE IN INDIA:
ADVANTAGES & DISADVANTAGES**

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Abstract

In the year 1859 in the Queen's proclamation, it was specifically mentioned that there would be complete non-interference in the religious matters. This was specifically done so that the 'Divide and Rule' policy of the Britishers can be easily enforced. This was done as a measure to stop the people from joining hands and to ensure that the Sepoy Mutiny of 1857 or the Revolt of 1857 does not get reiterated. While this concept of codes is not new and many countries have worldwide have adopted Uniform Civil Code. The renowned case of Shah Bano and others acted as reminder for the government for a need of the Code. Fewer attempts were made for the implication of such Codes. But with the recent ongoing debate surrounding the implementation of the Uniform Civil Code in India. It has sparked different sets of responses and opinions from its citizens. Many favouring it and many being against it.

Introduction

In a diverse and secular country like India where each state has its own sets of religion, beliefs, and practices, the implementation of the Uniform Civil Code itself was presented as a difficult task and it was made evident by our nation leaders during the framing of constitution when UCC was placed under directive principles not under fundamental rights of the people. This meant that though state must take them into consideration during their governance but this is not directly enforceable in the court.

"One country, one law" this is what the Uniform Civil Code stands for. It is a set of rules which intends to overrule all the personal laws which regulated every aspect of life that different majority and minority communities have and develop a uniform law for the same. The Uniform Civil Code has been constituted under the Part IV of the Directive Principles under Article 44 which states that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

While the concept of the uniform civil code is not new, it has sparked major debates in the recent years, especially after the Ministry of Law and Justice asked the 21st Law Commission of the India in June 17, 2016 to give them the locus stand point as to how they should implement the UCC. During that time the report for the implementation had not been deemed necessary and had lapsed more than three times since its issuance but it made waves again when the 22nd Law Commission issued a notice on 14th June, 2023 asking the public their views and ideas on the matter within 30 days' time period. Narendra Modi, the prime minister of India made headlines after he made statement in the matter of the UCC and triple talaq in his BJP campaign "mera booth – sabse majboot" one month after.

To comprehend the idea of Uniform Civil Code better, we must understand the basic ideologies of Personal Laws and Civil Code. According to Meriam-Webster dictionary personal law means laws that applies to a particular person or class of people. To grasp it better it is a set of regulations and customs of a particular religion that people follow from a very long period and which holds relevance. For e.g., Hindu Personal Law and Muslim Personal Law. On the other hand, civil code is a code that presents rights and remedies to the ordinary people for the matters relating their ordinary life affairs. This may include administration and acquisition of property. For e.g., Louisiana Civil Code.

Historical Perspective on Uniform Civil Code

While the concept of uniform civil code may be post-independence but the whole concept of codes, civil law, uniform law, and civil codes can be traced back from 2100-2150 BCE and 1780 BCE with the Mesopotamian civilization having one of the oldest surviving codes that is the code of UR-NAMMU and Mesopotamia Code of HAMMURABI, not only that the Romans also governed themselves with the help of codes which they later altered in roman law. For e.g. - the Roman Twelve Tables and the Roman Corpus Juris Civilis.

After, the widespread establishment of civil laws in the 18th century. Jurists felt the need for the adoption of these codes. In the 19th century after the French revolution, Napoleon Bonaparte the Child of Revolution also created code for his people named as Civil des Français which meant Civil Code of French and that was later renamed as Napoleon Code in his honour.

While this was the case in the foreign countries, India had its own sets of transformation in laws and codes. In earlier centuries the codes, laws, and ethics of the society was based on Manusmriti, most prominent of the Hindu Code Dharmashastras. A textbook which laid the rules for both men and women which manually outlined their duties and roles they must play in their lifetime. While this was one part, students who went to gurukul were taught of the same by their gurus about the worldly affair and how should they conduct them. The reference can be seen in Mahabharata and Ramayana where both Lord Rama and his siblings went to gurukul as well as the Pandava and Kaurava brothers. This was the case for several years. The Purushastras, caste system and others also played a major role.

Ancient India saw numerous changes. Whether in art, literature, science, or any other field. Eventually, in the field of law the most important reference from the time was Arthashastra by Kautilya from Mauryan Empire. This text describes the governmental and judiciary system of the dynasty.

In Medieval India, with the arrival of Mughals and the beginning of the Delhi Sultanate in 1206 A.D - 1526 A.D saw a significant sociological and dynamic upheaval. The sultanate rulers administered the mass with the help of Shariat laws or Muslim personal law. With the disintegration of the Sultanate, the Mughal empire emerged as new authoritative rule in 1526 A.D. During the Mughal Reign, the justice system was administered with the help of two codes that is Fiqh-e-Firoz Shahi and Fatwai-i-Alamgiri.

Correspondingly, the advent of the Britisher traders, East India Company altered the long- standing Mughal Empire. The status of royal charter gave the East India Company, monopoly rights over trade in India and they first entered the region of India on 1608 at Surat. Camouflaged as traders, Britishers started to get involved in the politics of the region after analysing the gaps in the system. For the next hundred years or so they kept on slowly seeping into these gaps and taking more control over the system. By 1773, the company strengthened their power when they were given the heads up from the British parliament, after the parliament passed the Regulating Act. The application of Subsidiary Alliance (1798) and Doctrine of Lapse (1848-1856) by both Lord Wellesley and Lord Dalhousie respectively, were other factors which led them to seize the land of ruling monarchs.

The revolt of 1857 or the first war for Independence shook the entire British administration. With this revolt, the power of the company was transferred to the British Crown which was ascended by Queen Victoria. During this time onwards they started the application of their infamous 'Divide and Rule' policy, to sever the ties between the communities.

Changing times led to the need of codification of laws by the Britishers with the objective of attaining uniformity and certainty. Several codifications were also made, such as Indian Penal Code (1860), a Code of Criminal Procedure (1861) etc. The first law commission was also setup in 1883 under the

Chairmanship of Lord Macaulay. Interestingly though, none of these codifications were applied to the personal laws of Hindus and Muslims as the Commission thought that it will hamper the improving state of the population.

Subsequently, when India gained independence in 1947, the necessity to harmonize the personal laws of many religions, once more came to light during the formulation of the Indian Constitution. This triggered numerous debates all over the country. People were divided by their opinion. Many favouring it and many against it. The dissonance in the matter could also be seen among the drafters of the constitution.

Nonetheless, the idea of a uniform code was put on a standstill. But various attempts were made for the application of such codes. One of the best examples is the Hindu code bill. Throughout this period, no such laws were formulated for the Muslims, other than the Special Marriage Act, 1954. The passage of this Act was done with the thought of giving every Indian, the freedom to marry outside their personal laws, which could be called a civil marriage. Under this Act, the Muslim women could marry, thereby gaining the protections provided by it, that were not provided by their personal law. According to this law, polygamy was illegal, and instead of the Muslim Personal Law, the Indian Succession Act would govern their inheritance and succession.

Cases That Advocated the Need of Uniform Civil Code in India

It is a known fact that sphere of Uniform Civil Code covers areas like Marriage, divorce, maintenance, inheritance, adoption, and succession of the property. The immediate need of Uniform Civil Code was felt after the Shah Bano Case (1985), Sarla Mudgal Case (1995), John Vallamattom Case (2003).

SHAH BANO CASE :-

A woman named Shah Bano; a 73-year Muslim woman was divorced from her husband through the application of Triple Talaq and was denied maintenance from him. She applied in district and High courts where the judgement was in her favour. Her husband applied in Supreme Court demanding justice as he justified that he has completed all the rights according to Muslim personal law. Here, the supreme court also ruled in her favour under Section 125 of Criminal Procedure Act which applied to all the citizens.

This judgement ignited a massive debate. With organisation like The Muslim Women's (Right to protection on divorce) Act (MWA) coercing the government to pass a bill to make Section 125 inapplicable to Muslim Women.

This was vehemently opposed by many people all over the country as this subjected to discriminating laws towards the Muslim Women.

SARLA MUDGAL CASE :-

In this case the petitioner was Sarla Mudgal head of NGO named KALYANI. They filed this petition under Article 32 in Supreme Court demanding justice to primary issues such as - If a Hindu guy converts to Islam, is it possible for him to remarry without dissolving his first marriage? Is it legal to get married in this way without ending the first marriage? Does section 494 of the Indian Penal Code, 1860, hold the apostate husband accountable?

The few cases filed under this petition were of two Hindu women named Meena Mathur and Geeta Rani. Here, both of their husband solemnized second marriage after converting their religion into Islam.

The Supreme Court being the pillar of justice ruled in the favour holding that a married man, either Hindu or Muslim, will only be allowed to remarry under two circumstances, either his wife is deceased

or he obtains a divorce from his first wife. Anything other than this will be held unconstitutional and unlawful.

JOHN VALLAMATTOM CASE :-

Both the petitioner John Vallamattom and another petitioner with him were Christians. They filed a petition under Article 32 of the Indian Constitution declaring Section 118 of Indian Succession Act unconstitutional as it was discriminatory towards the Christians. This law constrains the donation of the property to charity for the religious purpose or the succession of the same by the nephew or niece or any other near relative.

The Supreme Court held the section 118 of Indian Succession Act unconstitutional as it violated Article 14 of the Indian Constitution. Furthermore, the court also emphasised the necessity of a Uniform Civil Code in India.

Uniform Civil Codes All Around the World

While India may be in the process of making a supposedly Uniform Civil Code for his citizens. Many countries all around the world that have their own Uniform Civil Code already established.

Countries like France (1804), Italy (1865), Spain (1889), Egypt (1923), Ireland (1937), Portugal (1966), and Sudan (1991) had established their own Uniform Civil Code which applies to all the citizens regardless of their religion. Moreover, these codes have amended several times since their enactment.

While United States does not have a Uniform Civil Code. States have adopted their own UCC like for example the state of California has its own family law that applies to all the citizens regardless of their religion.

The Goa Civil Code

Like the United States, though India does not have a uniform civil code as of now. The only state that does have a civil code for itself is Goa. The civil code of Portugal in 1867 was branched of to its other foreign provinces in 1869. The act as a family law for both Goa and Daman and Diu under Section 5(1) of the Goa, Daman, and Diu Administration Act, 1962. This act is progressive in many ways and have a uniform law for Marriage. This code, even though it is virtuous, still has its shortcoming. For example, the code does not support polygamy or bigamy but will allow an exception to a Hindu man to remarry if the wife does not conceive at the age of 21 or give a male child by the age of 30.

Advantages and Disadvantages of Uniform Civil Code

In 2019, BJP manifesto under the heading of 'Cultural Heritage' it was mentioned that the political party wished to apply the Uniform Civil Code, by harmonising best of traditions with modern times. Now that UCC is a trending topic, we must know its advantages and disadvantage.

ADVANTAGES OF UNIFORM CIVIL CODE

They are -:

- **JUSTICE:** The application of the Uniform Civil Code would lead in the easement of providing justice. By providing this the judicial system would be saved from the complexities and misperception of different personal laws. This would be result in speedy justice. Another aspect can be seen in the gender justice that it would provide. Many personal laws have rules and customs which is biased towards one gender but especially women. The Shah Bano case can be seen as a reference, where the woman was left without any support or maintenance after her husband divorced her using the Triple Talaq, which was accepted by her religion's personal law.

- **MODERNITY:** In a developing nation like India, it should be safe to say that change is the way for development and evolution. With the implication of the Uniform Civil Code, the nation can outgrow all the old customs and laws that do not hold relevance today. In the election rally 'Mera booth - sabse majboot' the prime minister of India, Narendra Modi, himself pointed out that the prevalence of Triple Talaq in the present times is derogatory towards Muslim women and how Islamist countries like Bangladesh, Pakistan, and Egypt have outstrip such laws, so why should India leave in pre-independence era and not enjoy real freedom
- **EQUALITY:** With the enactment of Uniform Civil Code in the country. It would be ensured that the justice would not be biased because of the religion and religion would not be made a factor for making decisions. A law that would be unbiased and fair to all its citizen despite their religion. While many argue it will violate the freedom of religion but that is not the case. It would only have uniform law for areas like marriage, succession and inheritance etc and will not restrict anyone from practicing their religion.
- **UNIFORMITY:** A uniform code for people will ignite a feeling of uniformity and brotherhood among the people. A social cohesion and national integration of the mass.

DISADVANTAGES OF UNIFORM CIVIL CODE

They are -:

- **DIVERSITY:** In a pool of diverse communities, religions, ethnicities, the application of Uniform Civil Code will prove a strenuous task. Many critics argue that application of the same, may hamper the culture diversity of the society. This would be leaving an ill-feeling among the people, making more distance between communities.
- **BURDEN ON LEGISLATION:** The making of the Uniform Civil Code will burden already burdened legislation. Not only that, but the sensitiveness of this matter adds more weight to its making. A law that does not hamper the sentiments of any person and is fair and just to all the people is an unmanageable task on its own.
- **POLITICAL VENDETTA:** The discussion of Uniform Civil Code drafting is happening in 2023 which is one year before elections. Many political parties and communities are viewing this act of implementation of Uniform Civil Code as a political move or we must say 'A Shakuni move' in a game of dice to procure votes from the public. This has made many people suspicious on the real reason for the implementation of the Uniform Civil Code.
- **TIME AND APPLICATION:** The topic of the Uniform Civil Code has seen its fair share of hot fire. However, the need for Code may be seen as the need of the time, but if not applied correctly, this can backfire. There can be a communal disbalance in society, leading to riots all over the country. Even after the application, many communities may refuse to accept it. This may lead to the ineffectiveness of the code. Though the UCC is on the verge of being drafted, we can already see the repercussions. The tribal community and many other minorities are opposing the idea of UCC as they fear that their cultural identity would be lost.

CONCLUSION

In conclusion, the implementation of the Uniform Civil Code in India has been a topic of debate and controversy. While some argue that it would lead to justice, modernity, equality, and uniformity among the citizens, others believe that it may hamper cultural diversity, burden legislation, be driven by political motives, and face challenges in application and acceptance. The historical perspective on the concept of codes and civil laws shows that many countries around the world have already established their own Uniform Civil Codes, while India has had its own transformations in laws and codes throughout history.

The cases of Shah Bano, Sarla Mudgal, and John Vallamattom have advocated for the need of a Uniform Civil Code in India. However, the advantages and disadvantages of the Uniform Civil Code must be carefully considered before its implementation to ensure that it is fair, just, and respectful of the diverse religious and cultural practices in the country.

Change is the law of the nature and with changing times, the laws which are prevalent should also carry the same relevance. India is now at the position to accept this change and move forward.

In the words of T.B. Macaulay himself: "Uniformity where you can have it - diversity where it must have - but in all case certainty." I also agree with his words that certainty is the biggest factor here. If the laws made for the country are not up to the par, then it will prove more damaging than ever. The case of Uniform Civil Code is way more sensitive than one can perceive.

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