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UNIFORM CIVIL CODE IN INDIA

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ABSTRACT

Indian constitution's preamble states that India is a secular nation. There has been a lot of discussion about what being a secular state means. There have been many definitions or ideas given about what is the function of a secular state government. The biggest conflict which exists is that everyone has the right to follow a religion. The main problem that arises out of this is that one needs to understand what is the extent to which a government should intervene with the religious part. This is the reason why our forefathers, makers of the constitution gave the idea of a uniform civil code. The constitution in the DPSPs gives the idea that our government should strive to form a Uniform civil code. This research paper is focused on what is uniform civil code is and how the judiciary has performed on this topic.

INTRODUCTION

India is a country where most religions have homes. In the language of Kelsen, India is a nation with the constitution being our grundnorm. The source of all the laws in the nation. It is the highest authority of law of the land. Hence, every type of law that is made in the country must be per the constitution. But Kelsen forgot that what would happen if the grundnorm gives way to two contradicting norms. In the case of India, this can be pointed out when we talk about the personal laws of every religion. By the way of article 25, the Indian constitution guarantees every Indian right to freedom. Every Indian is free to follow their religion, profess and practice it. The only bar to this right is that there must not be anything against the public order, morality, and health. Article 26 gives the right to manage religious affairs. But the same constitution under the DPSPs asks the government to take the initiative of forming a UCC. The formation of a uniform civil code will mean that we will be removing the personal laws. All citizens will have to adhere to the Uniform civil code. The progressive part of Indian society often portrays UCC as the magic wand that will solve the two major crises of the Indian subcontinent. First is the solution to the major communal

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conflict that has existed in India for a long time. Meanwhile, the second thing that they think UCC might solve is the discrimination against women. It is not a hidden fact that most religions have rules and regulations which are sexist and discriminatory to women. Some of the discriminatory customs have been removed for different religions. Whether UCC is the magic wand as portrayed or not can only be decided once it is implemented. Here it is an attempt to understand the implications of UCC in India.

ORIGIN OF UCC IN INDIA

If one wants to understand how the concept of UCC was enshrined in the Indian legislation, we may have to take a peek at Indian history. We have to go back to the date of 23rd November 1948. For a large section of society, this date is of no importance. But for the people who study the Indian constitution, it is quite an important date. A constituent assembly was formed to draft the document which will become the constitution of India. India had just got its freedom; we had just witnessed one of the worst communal riots of our history. British had left our nation after 200 years of rule by the use of divide and rule policy. Our forefathers at that time predicted that the nation needed a uniform civil code to establish a rule of law. It was on that date that the Indian constituent assembly started the debate on the Uniform civil code. It was introduced as article 35 of the draft constitution. However, with the demand of UCC, another demand was raised in the assembly. Some people demanded that a proviso be added to article 35. This proviso would make the UCC non-obligatory in nature and give a choice to the religion to opt-out. The proviso was stated as, "Provided that any group, section or community of people shall not be obliged to give up its law in case it has such a law."²

It was also said that there was an attempt by the majority population to sweep over the minorities right by this article. K.M Munshi was the person who spoke against this idea profusely. He said that it would be wrong to project UCC as a way of the tyranny of the majority. He gave examples of the European countries where UCC was an accepted norm. Nobody there had said that the majority had tried to control or do wrong to the minority. In his view, it was the need of the time that religion and personal laws should be separated. The most passionate part of his speech was the idea that when the whole nation is under one law then only, we can say that we are secular. But it was Shri Alladi Krishnaswamy Ayyar who spoke and gave a more acceptable reason for UCC. He gave the reasoning that in a society like ours, there is no way that we can keep people in

² Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948

watertight compartments. The personal laws of the different communities come in contact with each other on regular basis. He pointed out how the personal laws of some communities are inspired by a different community. He also laid emphasis on the fact that never before an attempt had been made on creating a unified India. Hence, those who formed the personal laws had never thought of different communities living in a nation as free citizens. That is why there is no point in keeping ourselves attached to the past.

It was after Mr. Ayyar that the biggest supporter of the UCC in the constituent assembly stood to speak. It was the time that Babasaheb Ambedkar gave his view on the topic. He at first, completely devastated the idea that it was impossible to implement a uniform civil code in a diverse society. He said that apart from the topic related to marriage and succession, we have already implemented UCC. He laid the example of the western model of law in front of the assembly. He was in favor of the UCC but said that it is upon the future generations on how to follow it. It might happen that the future government may bring in a clause that may exempt people from following UCC. Though in his opinion this method was not viable or correct.

Majorly it got opposition from the Muslim representatives. After much ado, it was decided that the rights would be divided into two sets of rights. One would be justiciable rights and the other non-justiciable rights. UCC after getting much opposition was kept in the second category. The second set of rights later became the DPSP's. That's where we can still find the word UCC in the constitution of India.

When this happened, a dissent note was registered by three members: Rajkumari Amrit Kaur, M.R Mansai, and Hansa Mehta. In the note, it was stated that the existence of personal laws which are based on religion is one of the reasons why the feeling of nationhood has not developed in India. It further stated that if not right now, the right of UCC should be given to Indians in the next 5 or 10 years. The note said that "personal laws based on religion which keep the nation divided into watertight compartments into many aspects of life"³. But they were not able to change the mind of the majority of the people in the assembly. A year later, the draft constitution was presented in the assembly.

THE APPROACH OF THE JUDICIARY

³ Sanjay Hegde," Is India ready for a Uniform Civil Code?", Business Standards (September 27,2017), https://www.business-standard.com/article/economy-policy/is-india-ready-for-a-uniform-civil-code-117092700222_1.html

The Indian judiciary has till now has shown an inclination towards the idea of UCC. First time when the Indian judiciary discussed UCC was during the case of Shah Bano case⁴. The case was followed by a lot of political drama. And the political whirlwind initiated by congress after this case resulted in the destruction of the Babri Masjid. The case was about the right of maintenance of Muslim women after divorce. The Supreme Court gave the judgment that a Muslim woman is entitled to maintenance after divorce even if the iddat period has expired. The honorable court bought the Muslim women under the ambit of section 125 of the Criminal Procedure Code. The court famously said that “*What difference would it then make as to what the religion is professed by the neglected wife, child or parent?*” The court said that the provision of section 125 of CrPC was a tool to look out for the class of people who are unable to maintain themselves. They said that the liability imposed by section 125 is meant to prevent vagrancy and destitution in society. It was held by the court that section 125 ensured a moral edict of law and morality should and cannot be clubbed with religion.

This case highlighted that when one talks about the right to equality, the remedy provided must be seen without considering religion.

The Indian judiciary also showed us the way to how we can make the UCC. To avoid the conflict of majoritarian rule or appeasement of minorities, we must select the best laws from everyone. This viewpoint was put forward by Justice V. R. Krishna Iyer in the case of Bai Tahira v. Ali Hussain Fissalli Chowthia⁵. He pointed out that there were many provisions of the Mohammedan law which are liberal and help women and orphans. He said that no religious custom or practice should be allowed under the garb of the right to freedom if it is violating basic human rights. He in his book also wrote that “*Religion cannot and should not be allowed to suffocate dignity and freedoms of the citizens*”⁶

Another case is the John Vallamattom case⁷. The Supreme Court in the case scrapped section 118 of the succession act. This section was only applicable to the judgments. In this judgment, the court said that any sort of confusion and injustice relating to divorce, marriage, and other similar things

⁴ Mohd. Ahmed Khan v. Shah Bano, AIR 1985 SC 945

⁵ Bai Tahira v. Ali Hussain Fissalli Chowthia, AIR 1979 SC 362

⁶ V. R. Krishna Iyer, *The Muslim Women (Protection of Rights on Divorce) Act, 32* (Eastern Book Company, Lucknow, 1987)

⁷ John Vallamattom v. Union of India, AIR 2003 SC 2902 (India).

can be removed by UCC. Another case where the Indian judiciary talked about UCC was the Narasu Appa case⁸.

THE CURIOUS CASE OF GOA

From the 28 states, Goa is the only state where we have implemented the Uniform Civil Code. There are no different laws regarding marriage, divorce, succession for the different religions. The current civil code which is implemented in Goa was passed by the Portuguese in 1867. The law has been amended multiple times till now, but it still is the only example for India. In the state of Goa, marriages are just simple contracts between two persons of the opposite sex. They have to get themselves registered in the office of the civil registrar. The state even though really small in terms of area and population, yet is the future of India. It has successfully given the whole nation the way to implement the UCC and follow it.

PROBLEMS WITH UCC

Even though the concept of UCC seems to everyone like a magic wand, to fully understand the concept, we must learn about the problems that may come with UCC. The first major problem that UCC may lead to generalization of oppression of women. There are various reasons behind the problems that women face in their life. If we generalize the cause of all such problems, we may just solve a few of the problems but fail at helping women.

With the advent of UCC, it is expected that the chance of majoritarian dominance may also increase. The prime example of this can be France. Even though it is one of the most advanced nations, its recent laws show the sign of majoritarian. A ban on turban, hijab, and similar things is a clear attack of the majority on the minority of the nation.

It might often seem like the UCC may curtail the fundamental right of freedom. This has to be ensured that nothing of this sort happens in the country. We must ensure that even though UCC is applied, we must not be curtailing the other fundamental rights to such an extent that we cause injustice to people.

CONCLUSION

Religion is the major cause of the troubles that exist in various communities in India. A lot of the condescending sexist practices find their origin in these laws. Thus, this increases the need for the

⁸ State of Bombay v. NarasuAppa, AIR 1952 SC 84 (India).

UCC in a large nation like ours. The way as pointed out by Justice Iyer should be one of the best ways to ensure that our nation gets a splendid UCC. There must be representation from all religions and everyone must be given chance in forming the UCC. Also, UCC should not be implanted in a way that injustice is done to others. We must also ensure the survival of diversity. UCC must not act like the death of the diversity; which we are proud of. It seems like that in a society like ours, to ensure the homogeneity of law, UCC is necessary.