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The Role Of Uniform Civil Code In India: Balancing Secularism, Personal Laws, And The Protection Of Minority Rights.

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Abstract

This paper focuses on the role of uniform civil code (in brevity UCC) to balance the social fabric of secularism, the various personal laws of different people in the Indian democracy and about how to protect the rights of minorities guaranteed under the Indian constitution. It examines and explores the various constitutional provision, statutory laws by the two states goa and Uttarakhand, role of Indian judiciary time and again pronouncing the various judgements for the implementation of UCC, the need of Uniform civil code and the ways forward.

Introduction

Indian is renowned for its unity despite its diversity. This is a source of pride for us, but what about the diversity of applicable law? That has become a contentious issue since the first petition, filed in 2019 to seek the establishment of a uniform civil code (UCC) in order to advance national integration and gender justice, equality, and the dignity of women. The concept of UCC will eliminate conflicting personal and religious laws, bringing all citizens under one law regardless of religion or gender.

The applicability of UCC is found in Article 44¹ of the constitution of India. The article is located in part IV of the constitution, which is dedicated to Directive Principles of State Policy (DPSPs). The UCC is inapplicable even when our constitution implies its application because of non-enforceability of DPSPs as per Article 37 of Constitution. The Constitution itself expressly states that the Directive Principles of State Policy “shall not be enforceable by any court” but are “fundamental to the country’s governance.” It’s almost liking a form of advice to the country.

Uniform civil code is a separate set of rules that primarily covers the personal matters of Indian people without prejudice or regard for religion in order to safeguard the fundamental rights and constitutional rights of Indian citizens. DPSPs are the guiding principles around which the state bases its policymaking for the benefit of its citizens. These DPSPs serve as a guide for the state and must be considered when enacting new legislation, but a citizen cannot compel for the state to obey DPSPs.

Research Questions

1. What is the need to legalise UCC?
2. How to balance the social fabric of secularism while legalising UCC?
3. What are ways to balance personal laws of different communities?
4. How the rights of minority will be protected?

Research Methodology

This paper adopts doctrinal method of research using S. sources. There will be a comprehensive review of scholarly articles, statues, supreme court judgments and other legal documents and journals.

Background

Though the concept of UCC has gained a great prominence recently, it has been in discussion for a long period of time, most notably since-independence, because British colonists had always adopted a divide and rule tactics. This may be observed from The Lex Loci Report of October 1840, which emphasised the importance of keeping concepts such as UCC outside the legal domain .Additionally, the Queen's 1859 proclamation vowed to abstain from interfering in religious affairs. However, this was not consistent from the point of view of India's well-wishers, since notable leaders such as Jawaharlal Nehru and Dr B.R Ambedkar fought for a uniform civil code during the constitution's drafting process following independence. However, to avoid resistance from religious fundamentalists and due to general lack of knowledge on the subject at the time, they included the UCC in the Directive Principles of State Policy (DPSP, Article 44).

Several significant reforms, in fact, contributed to the promotion of UCC: the Hindu code bill to reform Hindu laws; the Amendment to the Hindu Succession Act 1956 on September 9 to provide daughters with inheritance rights; the Hindu Mariage Act 1955, The Minority and Guardianships Act 1956, The Adoptions and Maintenance Act; and the Special Mariage Act 1954 for civil marriages outside of any religious personal law.

The Constituent Assembly debates² offer valuable insights into the intent behind promoting a uniform civil code.

Dr.BR Ambedkar: Why religion should be given so large jurisdiction that it controls our whole life and does not allow the executive to interfere into it.”

In the words of KM Munshi: “The point however is this whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of the life be reunified and secular... what have these things got to do with religion I really fail to understand”

Alladi Krishna Swami Iyer: When Britishers ruled this country they framed single unified civil code for criminal laws. Did Muslims revolted against britishers?”

Reading works of Article 37- which prompt the state to apply the principles in making laws? Clearly indicates that the makers of the constitution wanted uniformity to be gradually affected in the heterogeneous family law system of the country by suitably amending the old laws and enacting new ones to serve the purpose.

The need for uniform civil code³.

After understanding the concept and background of UCC We will look at its need in India for the present scenario

1. To address the gender disparity produced by specific religious laws

India has history of severely patriarchal and misogynistic traditions perpetuated by society and ancient religious norms that continue to dominate family life. These subject all Indian women to subjugation and cruelty. One such example is that men are typically accorded superior special status in succession and inheritance affairs in some religious communities.

Additionally, the UCC will eliminate these disparities and contribute to the improvement of women's conditions in India.

2. To address personal laws that constitute a loophole in the legal system

India faces serious problem with personal laws due to their bias toward the upper-class patriarchal conceptions of society in all religions. As may be seen, Panchayats continue to issue verdicts when a couple does inter caste or inter religious marriage that violate our constitution, and no action is taken. Human rights are abused throughout our country through honour killings and female foeticide. By legalising personal laws, we've established a parallel court system based on thousands of ancient values. By eliminating all loopholes, the universal civil code would tip the balance in favour of society.

3. To aid in the integration of India

A uniform civil code will contribute more to India's integration than at any point since independence. Much of the resentment stems from some religious sects receiving preferential status under the law, which may be eliminated with a consistent civil code. It will contribute to the unification of all Indians regardless of caste, religion code of conduct similar to that found in criminal and other civil laws.

4. To ensure that all citizens have an equal status

While Muslims are permitted to marry many times in India, a Hindu or a Christian will face prosecution for doing the same. Similarly, there are significant disparities between many religious-related regulations. Equal laws in the areas of marriage inheritance, family, and land are required. Here UCC serves as a saviour, bringing everything under one roof and assisting not only in ensuring greater equity but also in streamlining the legislative and judicial processes.

5. To deal with vote bank politics

The concept of a uniform civil code will also aid in reducing vote bank politics, which is practised by most political parties during every election. If all religions are subject to the same laws, there will be no room for politicising issues of discrimination, concessions, or special privileges enjoyed by a particular community on the basis of their religious personal laws.

6. To meet the aspirations of the youth

With 55 percent of the population under the age of 25, India is emerging as an entirely different society. These individuals will be future India, and moulding them in an environment that is equal for everyone is essential for India. They are shaped by universal and global principles of equality, humanism, and modernism in their social

attitudes and goals. Their concept of the surrender of identity-based on religion must be taken seriously if they are to fully contribute to national progress. Having a Uniform Civil Code allows children to understand the rules and respect the principles of equality in a better manner.

7. To keep pace with global progress

A Uniform Civil Code has become the hallmark of a modern progressive nation's legal structure. It demonstrates the nation's transition away from caste and religious politics. While our economic growth has been the fastest in the world, our social development has been non-existent. Indeed, it is possible to argue that we have degraded socially and culturally to the point where we are neither modern nor traditional. A unified civil code will aid in the advancement of society and help India achieve its goal of becoming a developed nation.

Secularism⁴ and balancing of personal laws

Any interpretation of a constitutional concept should be a purpose in interpretation and that interpretation should be adopted which promotes fraternity. The ultimate goal of every concept on constitution is to promote fraternity and frat would in turn assure dignity of individual and unity and integrity.

Negative/Restricted Dimension

The State will not have a religion of its own. It is clearly provided in Article 27 that State shall not impose any fees for promoting any religion and in Article 28(1) it is provided that in state sponsored schools/institution no religious education shall be promoted. The implication is that state shall remain neutral in the matters of religion and it shall not promote any religious issues. The State shall not discriminate on the basis of religion. Every individual according to Article 25 has equal right to freedom of religion.

Positive/wider Dimension

Secularism would also mean the conservation of multi-religions in the country. It would include a positive attitude of various religious communities towards each other that is the feeling of mutual respect and mutual accommodation of one religious community towards other religious community. This not just a mutual tolerance rather it's mutual respect. There may be chances that between the people of one religious community there are centripetal forces acting and between the people of other religious community there are chances that centrifugal forces may exist. These centrifuge forces may cause disruption in the society and may result into disharmony and loss of fraternity in society. It is here then the concept of secularism works.

Secularism would remove those centrifugal forces and will make society cohesive, will promote fraternity and binds the society as one integral whole. The state has to play a proactive or an activist role in encouraging and promoting secularism.

In west in the dark ages there was an excessive religious control on day-to-day life of individuals and upon the governance and there was an urge to get rid of excessive religious control in day-to-day life activities the day that goal was achieved" the goal of secularism was achieved because the western" society was at that time a unreligious society. In India on the other hand, it was always a multi-religious society and since it was a multireligious society the need for getting from religious clutches was not felt as in India we never had the phenomenon of dark ages. It was more of a requirement of balancing between the interest of various religious communities. The urge was to develop mutual respect for a mutual, peaceful and harmonious coexistence between various religious communities. Secularism therefore will always be relevant in Indian society. The State has to always make efforts to train and educate people towards secularism.

S.R Bommai case⁵.

Secularism is a feeling of mutual respect towards people of various religions. It means one can follow own religion and at the same time one shall respect other's religion. Secularism is a complete personal freedom to practice their religion. It is not anti-God or anti-religion rather it's a complete freedom to an individual. The above sentence means that when we talk about secularism, we do not intend to get rid of religion or God rather Indian Constitution realises that every individual has his/her right to follow one's

religious pursuits and get closer to God. Thus the Constitution clearly lays down that every individual has equal right and full freedom to follow his/her also full freedom to follow one's religious pursuits.

Indian Judiciary's take on the need for Uniform Civil Code

Over the time, there have been numerous judgements ruled by the Supreme court of India where it directly or indirectly recommended for the Uniform Civil Code .

Shah Bano case⁶

The Supreme Court's decision in this case is regarded as a major milestone in highlighting the importance of UCC. The case concerned women seeking maintenance after being divorced under triple talaq. The women won in all lower courts, So the husband filed an appeal to the Supreme Court, which was dismissed because the Supreme Court ruled in favour of the wife as per the All-India Criminal Code's "maintenance of wives, children, and parents" provision (Section 125). In- addition, the court recommended that a uniform civil code be established. However, widespread agitation was carried out due to religious sentiments attached to the law, and as an outcome, the then-government, under pressure, passed the Muslim Women's (Right to Protection on Divorce) Act (MWA) in 1986, rendering Section 125 of the Criminal Procedure Code inapplicable to Muslim women. As a result, the court was correct in emphasising the importance of UCC for having a common basis for jurisdiction.

Sarla Mudgal Case⁷

This case is related to the issue for solemnizing of a second marriage by a Hindu spouse after converting to Islam. The court determined that a Hindu marriage solemnised in accordance with Hindu law may be dissolved only on one of the reasons listed in- the Hindu Marriage Act 1955 and therefore, a second marriage solemnised after conversion to Islam and subsequent marriage will not automatically be dissolve the Hindu marriage under the act, and therefore, a second marriage solemnised after conversion to Islam would constitute an offence under section of the Bhartiya Nyaya Sanhita. This made a need of UCC as it creates an ambiguous policy of marriage due to discrepancies between religious laws.

John Vallamattom Case⁸

The case in which Section 118 of the Indian Succession Act was declared unconstitutional after John Vallamattom challenged it on the grounds that it discriminated against Christians by imposing unreasonable restrictions on their willed gifts for religious or charitable purposes. This demonstrated the inconsistencies under religious laws.

Daniel Latifi Case⁹

This case demonstrates how universally applicable law should prevail over unjust religious laws. In this case, Muslim Women's Act (MWA) was challenged for violation of Articles 14,15 & 21 of the Constitution. The primary point of contention was the amount paid throughout the iddat period. The Supreme Court upheld the act's constitutionality but interpreted it in accordance with Section 125 of the CrPC/ of Bhartiya Nagrik Suraksha Sanhita holding that the amount received by a wife during the iddat period should be sufficient to support her during the iddat period as well as for the remainder of her life or until she remarries.

UCC: Goa and Uttarakhand¹⁰

In the year 1961 Goa became part of the Indian Union through the Goa, Daman and Diu (Administration) after 450 years of Portuguese rule. The Goa Daman Div and Act 1962n allowed the state of Goa to use the Portuguese civil code 1867 as their primary law. So, Goa became the first State to enforce Uniform Civil Code in the country. The State of Goa is only in the country that ensures equal property rights in both marital and parental property. But yet the reality is far from this as males are prioritized in the rights of management and administration unless there is an impediment. This shows the patriarchal structure in Goa with respect to the marital property right. Prenuptial agreements are valid in marriage.

The Draft Bill named as “The Uniform Civil code of Uttarakhand 2024” was passed by the Legislative Assembly of Uttarakhand and the assent of the President was given on march 13, 2025. The code applies to all residents of the State irrespective of their religion, caste, or creed with the exception of Scheduled Tribe members as whose customary rights are protected under part XXI of the Constitution of India.

The code serves well to the purpose of providing uniformity as it has prohibited any kind of polygamy, child marriage, triple talaq, practices of Nikah halala, iddat, gender inequality etc among all the people of Uttarakhand. The code provides for the conditions of marriage and the ground for divorce with those as same in Special Marriage Act 1954. It mandates the compulsory registration

of all marriages solemnized or contracted within the state as well as those performed outside by the state residents. It also mandates the registration of live-in relationships while ensuring that women in such relationships are granted rights as per with those of married women also by providing legal legitimacy to children born out of such relationships. It has balanced traditions with modern legal systems by recognizing mehr and dower as valid but supplementary to maintenance. The code does not touch upon the point on guardianship as it fails to apply Law Commission's 2018 recommendation to ensure equal treatment for both parents as it continues to prioritize fathers as primary guardians.

Thus it can be said that the model codes of these two states could be reviewed to make a pan India legislation on uniform civil code but they can be adopted with certain modifications to serve the aspiration of all people of country with diverse interests by upholding the constitutional interest at priority.

Protection of minority rights

The term minority in general parlance refers to a group or community which is socially, politically and economically non dominant. The Constitution of India does not define the term minority anywhere. Rights are the common claims of people which every cultured society recognizes as essential claims for their development and which are therefore enforced by the State. Minority rights are inherent part of human rights. They help to promote tolerance and diversity. The Articles 29 and 30 are related to cultural and educational rights to minorities. The Legislature has to consider the various aspects of cultural differences of different communities while framing UCC as in there should be purposive interpretation of legal provisions which conforms to the constitutional norms. The Constitution is supreme document. It lays down the goals, aspirations of society and also the rules and governance of society.

The approach should be to protect their rights but not at the cost of deviation from constitutional principles.

Recommendations

It is highly suggested that India's governance is rooted in the constitution, and not in any religious book. The UCC seeks to harmonise personal laws and ensure equal treatment and protection of fundamental rights for all citizens, irrespective of their religious affiliations. The UCC is not an attempt to undermine or marginalise any specific religious community, but a means to create a just and unified legal framework that upholds the principles enshrined in the constitution.

An apex court judge had once observed: The desirability of UCC can hardly be doubted. But it can materialise only when the social climate is properly built up by the elite of society and statesman, instead of gaining personal mileage, rise above and awaken the masses to accept the change. (Justice RM Sahai of Sarla Mudgal bench, 1995)

Conclusion

As India being a diverse nation, diversity is essence of India, but diversity in law is not just. The UCC is definitely cornerstone of genuine secularism. This will not only assist in ending the gender based oppression but would also strengthen the nation's mainstream fabric and advance unity. India being a socialist, secular, democratic, republic nation so there is a need to alter our social framework, which is rife with inequalities, divisions, and other factors that conflict with our fundamental rights.

With the passage of time, the necessity for a UCC for all citizens, regardless of religion, has arisen ensuring the protection of their critical and constitutional rights. Finally the lack of a standard civil code is damaging to the aim of achieving true democracy, and this must change.

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