



An analysis of the unified civil code mandated by the constitution: why it's in the news

Gohel Krishna Pravinbhai, Research Scholar, Gokul Global University, Sidhhpur, Gujarat,

Dr. Rekhaben Patel, Assistant Professor, Gokul Global University, Sidhhpur, Gujarat

Abstract

The present study is an attempt to bring into focus aspects governing the constitutional mandate of Uniform civil code why in the news in 21st century. This paper discusses the overview of Uniform Civil Code and addresses its need in certain level of society. In this paper I have talks about the constitutional provision for equality and Uniform civil code. It also covers the views regarding arguments in favors and against for Uniform Civil Code in India. This article focused on the concepts of Uniform Civil Code with some issues and challenges. This paper is an attempt to correlate the question of gender justice and equality issues of the adoption of Uniform Civil Code throughout the territory of India. This paper also highlights the judicial opinion in the context of Uniform Civil Code. The research methodology in this paper is in descriptive style and doctrinal. The author will be relying on secondary sources. At last paper conclude with some suggestions related to it.

Statement of Problem:

We the people of India know that there are two sides of coin like heads and tails. Sometimes the certain things will be also apply as positive way and negative way. That means if ones side if positive then on the others hand same thing that can be negative. So the problem is that whether implementation of Uniform Civil Code is in right way in the 21st century.

Objective of the Study:

The main objective behind this study is Constitutional mandate of Uniform Civil Code and why in the news 21st century.

Research Questions:

- I) Why the Uniform Civil Code in the news of 21st century?
- II) Should the Uniform Civil Code be a combination of all the individual laws or a law that complies with the constitutional mandate?
- III) Does Indian need a Uniform Civil Code for its entire citizen?

Key words: Uniform Civil Code, Constitutional Provision, Gender equality and justice.

Introduction

Dr. Bhimrao Ambedkar is known as the father of Indian Constitution. His contribution to the Indian Constitution is undoubtedly on the top of order. The Constitutional law of India is the construction of preamble, structure, fundamental rights, powers, and procedures of the government and Directive Principle of State Policy etc. The Indian Constitution was adopted and passed by the assembly on the date of 26th November 1949 and on the other side it came into force on 26th January 1950. Part – IV of the Indian Constitution mainly deals with Directive Principle of State Policy under article – 36 to 51. The concept of Directive Principle of State Policy is taken from the Constitution of Ireland.

For a modern and welfare state it plays a very important and comprehensive role in a social, economic and political programme. Directive Principle of State Policy includes Uniform Civil Code in article -44 of the Indian Constitution for the citizens a common civil code. In other words it also to be considered as one country one rule. The Uniform Civil Code probably requires a set of laws to govern the personal affairs of all citizens irrespective of religion, and to ensure that their fundamental and constitutional rights are protected. The purpose of the same civil is necessary to promote the unity of the worship and national harmony.

Research Focus

The researcher focuses the following point for paper study :

Nowadays Uniform Civil Code is the ongoing point of debate regarding the Indian constitution's mandate to replace personal laws based on the scriptures and customs of each major religion communities in India with a common set of rules governing every citizen. In India the state of Goa have a Uniform Civil Code in the form of common family law. The Uniform Civil Code is an important topic in the Constitution of India which has given rise to a long running debate on various aspects such as secularism, fundamental duties. Uniform Civil Code will provide women with the right to equality and justice in courts of law irrespective of their religion in matters pertaining to marriage, divorce and maintenance, custody of children, inheritance rights and adoption. It's also means that all sections of the society irrespective of their shall be treated uniformly.

Need for Uniform Civil Code :-

- a) For women empowerment & Gender Justice
- b) To establish the right to equality and equal rights to men and women place in a respectful position
- c) To bring consistency in laws & promulgating justice in real sense.
- d) To provide equal status in the modern era & to provide justice and equality to the people of all religions
- e) Remove uncertainty concerning the rights and duties & Reform of existing personal laws.
- f) Purpose of becoming a modern progressive nation & Simplification of legal matters governed by personal laws.
- g) For reforms in uniform age of marriage for both girls and boys.
- h) For Secular republic and religions tradition.

Uniform Civil Code : Arguments for and Against:

Arguments in favors of the Uniform Civil Code :

India is one of the secular countries with many customs religions, practices and usages are there. A same civil code will help in bringing each and every citizen of India put in one national civil code of country. It will help in reducing vote bank policies during election. It will help to remove certain loopholes from personal laws. It will also helps to women in Indian society.

The Uniform Civil Code also to promote real secularism that means a person or citizen who belongs to any religion will be treated same and all citizen of India have to follow the same laws. Article – 25 and 26 of the Constitution deals with the guarantee for the freedom of religion, but in other side Uniform Civil Code is not opposed to secularism. It will help to reduce different types of confusion in administrative of justice.

Arguments in against of the Implementation of Uniform Civil Code:

Infringement of personal religions laws and some communities are not in favors of Uniform Civil Code. Interference of state in personal matters. The time is not suitable for this kind of reforms and on these controversies; there need to be required sufficient time for installing confidence in the community.

Different practical difficulties arise due to diversity in India. Perception of Uniform Civil Code as encroachment on religious freedom and some communities like minorities fears that Uniform Civil Code will neglect their traditions and culture. The constitution of India provides for India provides for right to freedom in religion of owns choice, but with the codification of

Uniform Civil Code the scope of freedom of religion will be reduced. In this matter government should be sensitive and it will be tough task for dealing with majority and minority communities.

Uniform Civil Code and gender Justice.

The enforcement of UCC and gender justice issues is closely linked to each other in the Indian Social legal perspective. Gender issues need to be taken very seriously in this regard. Now days the basic issues of ensuring justice and equality for women is getting involved in many other contemporary issues like religions, secularism and independent. Women empowerment is an urgent need in key areas such as social status, gender bias health safety and security ets. It is a humble opinion that a same civil code is only possible when the government considers gender as the ultimate goal.

Personal laws and Discrimination against women

On clear analysis of different personal law relating with Hindu, Muslim and others it becomes obvious that the women have been conferred on inferior status in most personal matters compared to men.

Constitutional Provision

Articles – 14 to 18 of the Indian Constitution are of right to equality. Right to freedom of religion related with article – 25 to 28. Articles – 32 and 226 of right to constitutional remedies. And last but not least some directive principle explanation is shown in the articles of 36 to 51 of Indian Constitution.

Judicial opinion and Uniform Civil Code :

The Indian judiciary has noted the done to women in religion to many personal laws. It is expressing its concern through a number of ruling that all citizens need to have uniformity in their personal matters. Mohd. Ahmed Khan Vs. Shah bano begum, this case judgement in security the rights of Muslim women on the maintenance field. A provision was applied in terms of UCC. This case is pertaining to the liability of Muslim husband to maintain his divorced wife beyond iddat period, who is not able to maintain herself. The supreme court also held that the section- 125 of Cr.P.C. Imposes such a duty on all the husband is truly secular in character and it is applicable to all religion. Again in Sarala mudagal Vs. Union of India, Case the individual laws of Hindus Muslims and the UCC were touched upon and the ruling favoured to the enforcement of UCC.

The Judgment discusses for the issue of marriage, the conflict between the existing personal laws on marriage matters and article – 44 of Indian Constitution. It is considered a land mark decision that highlights the need for a UCC. In the next case of Lily Thomas Vs. Union of Inida and others, the contention also raised for the court was urged to apply the UCC to deal with a wide range of Socio-Legal issues due to various religious personal laws.

Uniform Civil Code why in the news

UCC cannot be forced upon people it has to be optional & not compulsory. Time is ripe for bringing in UCC in the country, as there was demand for equality and gender justice from across broad now. The UCC is debated in Indian law. Problems regarding introduce the UCC bill and its implementation in 21st century. Role of UCC in the PIL further claimed that the right to equality which guaranteed under article-14 rights against discrimination under article – 15 and right to life and personal liberty under article – 21 cannot be proper without implementing such code.

Controversial issues of Triple Talaq verdict and implementation or bringing about a UCC in a country. Uniform Civil Code is a sensitive issue back on the political centre stage and still now days no steps taken, said by the supreme court. In recently Sabrimala may lead to Uniform Civil Code but will we accept it?

Conclusive Suggestion

The Uniform Civil Code to govern personal matters of all citizens irrespective of religion is the need of the hour, but care must be taken the sentiments of any particular community whether it is Hindu or Muslim or any other religion. The government must prepare a good environment for Uniform Civil Code without any kind of communal violence by explaining the contents and significance of Article – 44 in right manner.

Reference :

Books

Dr.Manisha Shukla, Gender Justice (Acts to eliminate injustice against women with important Cases & Question Bank),Edition 2017 Hemdip agencies Vadodara.

Dr. J. N. Pandey Constitutional Law of India 52nd Edition, 2015, Central Law Agency, Allahabad-2

Webpage /website

<https://www.lawteacher.net/free-law-essays/constitutional-law/article-44-of-the-constitution-of-India-constitutional-law-essay.php>

<https://bujus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>

<https://lawtimesjournal.in/uniform-civil-code/>

<https://www.lawaudience.com/unifrm-civil-code-towards-gender-justice/>

<https://www.legalservicesindia.com/article/1832/Unifom-civil-code-Towards-Gender-Justice.html>

<https://www.lawnn.com/mohd-ahmed-khan-vs-shahbano-begum/mohd.Ahmeda>

<http://lawtimesjournsl.im/lily-thomas-vs-union-of-India-ors/>

<https://timesofindia.indiatimes.com/india/no-steps-taken-in-63years-on-uniform-civil-code-says-sc/articleshow/71120334.cms>