



A STUDY ON UNIFORM CIVIL CODE & ARTICLE – 44

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The British government's 1835 report on colonial India, which accentuated the necessity of uniformity in the categorization of Indian law regarding crimes, evidence and contracts but recommended that codification should not extend to matters like the personal laws of the Hindus and Muslims which derived their authority from their respective religions, is where the UCC came to light. Uniform civil code is defined as a law in India which codifies and applies a set of uniform laws governing personal matters such as marriage, divorce, adoption, maintenance and inheritance.

According to Ambedkar, the country had for practical purposes a Civil Code, but as regards marriage and succession, the Civil Law was ineffective. He agreed with the view that Muslim personal law was immutable and uniform throughout the whole of India. He said that Shariat Law was not applicable to the North-West Frontier Province up to 1935. That region followed the Hindu Law in succession. In 1939, the Central Legislature applied the Shariat to N.W.F.P. The Legislature had to intervene in 1937 and to pass an enactment applying the Shariat law to the rest of the India. In North Malabar, Muslims followed Matriarchal Law, Ambedkar said, "... it would not be open to any Muslim to say that the farmers of Civil Code had done great violence to the sentiments of the Muslim community. The fear is nullified."

Ambedkar resigned from the Cabinet in 1951 following the stalling in Parliament of his draft of the Hindu Code Bill, which sought to expound gender equality in laws of inheritance, marriage and the economy. Although supported by Prime Minister Nehru, the Cabinet and many other Congress leaders, it received criticism from a large number of Parliaments.



UNIFORM CIVIL CODE:

The uniform civil code (UCC), a directive principle of state policy, described in article 44, is applicable to all citizens of India, irrespective of their religion shall be treated equally. In other words it stands for “ONE NATION – ONE LAW” irrespective of any religion. A uniform civil code was demand made during the constitution’s development by prominent personalities like Jawaharlal Nehru and DR.B.R.Ambedhkar.

The objective of Article 44 of the Directive Principles in the Indian Constitution was to address the discrimination against vulnerable groups and harmonies diverse cultural groups across the country. Dr. B R Ambedkar, while formulating the Constitution had said that a UCC is desirable but for the moment it should remain voluntary, and thus the Article 35 of the draft Constitution was added as a part of the Directive Principles of the State Policy in part IV of the Constitution of India as Article 44. It was incorporated in the Constitution as an aspect that would be fulfilled when the nation would be ready to accept it and the social acceptance to the UCC could be made.

Ambedkar in his speech in the Constituent Assembly had said, "No one need be apprehensive that if the State has the power, the State will immediately proceed to execute...that power in a manner may be found to be objectionable by the Muslims or by the Christians or by any other community. I think it would be a mad government if it did so."

The concept of UCC has been considered for many years in India, and its proponents contend that it will foster racial harmony, streamline the legal system, and guarantee gender justice. It vigorously debated topic that involves issues with respect to constitutional restrictions, cultural diversity and individual rights. In the article 44 of the Indian constitution it is described as “To secure a Uniform civil code applicable to entire country”.

Uniform Civil Code is the victim of certain misconceptions and realities and it is an irony that the interpretation as well as implementation of Article 44 of our Constitution is not being taken into account in its right perspective.



THE HINDU CODE BILL:

Participating in the debate on the Hindu Code Bill in Parliament in 1951, Ambedkar explained the concept of secularism as follows:

It (secular State) does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the Constitution recognises.

The significance of secularism as it relates to the State in India has been dealt with at length by India's first Vice-President Radhakrishnan, in the following words:

When India is said to be a secular State, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives. Though faith in the Supreme the basic principle of the Indian tradition, the Indian State will not identify itself with or be controlled by any particular religion.

We hold that no one religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and government. This view of religious impartiality of comprehension and forbearance has a prophetic role to play within the national and international life. No group of citizen shall arrogate to itself right and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life.

This is the basic principle involved in the separation of Church and State. The religious impartiality of the Indian State is not to be confused with secularism or atheism. Secularism as here defined is in accordance with the ancient religious tradition of India. It tries to build up a



fellowship of believers, not by subordinating individual qualities to the group-mind but by bringing them into harmony with each other.

Thus the distinguishing features of a secular democracy contemplated by the Constitution of India are: (i) that the State will not identify itself with or be controlled by any religion ; (ii) that while the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an agnostic or an atheist), it will not accord any preferential treatment to any of them; (iii) that no discrimination will be shown by the State against any person on account of his religion or faith, and (iv) that the right of every citizen, subject to any general condition, to enter any office under the State will be equal to that of his fellow-citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by the Constitution. It secures the conditions of creating a fraternity of the Indian people which assures both the dignity of the individual and the unity of the nation.

The Hindu Code introduced only four new points in the existing law. These were: (1) abolition of the doctrine of rights by birth; (2) absolute rights over property given to women; (3) a share was given to the daughter and (4) provisions for divorce. These provisions were new, but there was nothing anti-religious or anti-social in them. The Hindu Law was not uniform for all Hindus. In these circumstances codification was the only solution.

It aimed at the consolidation of Hindu society. Ambedkar contended that the enactment of the present code was a natural consequence of the adoption of the Constitution of India.

The Hindu Code was consistent with the Constitution of India. Article 15 stated, "The State shall not discriminate against any citizen on the ground of place of birth." Ambedkar contended that the present system of Hindu Law was inconsistent with the provisions of the Fundamental Rights in the Constitution. The Code aimed at making it consistent with the Constitution. Tracing the history of the Hindu Code Bill, we come across a Hindu Law Committee appointed by the Government of India in 1941 with Shri B. N. Rau as Chairman.



The Draft Bill was introduced in the Central Legislature in 1943 and 1947 but it had to face fierce opposition from orthodox Hindus. Ambedkar regarded the codification as a continuation of the Indian Constitution. Ambedkar and 16 others were members of the Select Committee.

The Report of the Committee to amend and codify certain branches of the Hindu Law was presented to the Constituent Assembly of India (Legislative) on August 12, 1948. The Report contained the following parts Preliminary, Marriage and Divorce, Adoption, Minority and Guardianship, Joint Family Property, Women's Property, Succession, Maintenance and Miscellaneous.

Ambedkar revised and submitted the Report to the Constituent Assembly (Legislative) in October 1948. The Bill was opposed by different sections of the Hindus. Nehru declared that he would resign if the Hindu Code Bill was not passed by Parliament. Sardar Patel declared his opposition to the Bill.

Amidst such an atmosphere Ambedkar introduced the Hindu Code Bill on February 5, 1951. He said that the Hindu Code would be uniform throughout India. On the point of secularism, he said that the idea of a Secular State in the Constitution did not mean that they could abolish religion. He rejected the suggestion for a referendum on the ground that Parliament was sovereign and competent to make and unmake laws. The debate continued for three days and the consideration of the Bill was postponed to the next session which was to meet in September 1951. Ambedkar desired to pilot the Hindu Code Bill through Parliament before the General Elections (1952).

Nehru suggested that the Divorce and Marriage part of the Bill should be treated as a separate Bill. The Bill was let down in a tragic manner and in the words of Ambedkar "it was killed and buried, unwept and unsung, after four clauses were passed."

Ambedkar was disappointed. This was one of the reasons for his resignation from the Nehru Cabinet.



Why UCC is a controversial topic in India?

The debate surrounding the Uniform Civil Code in India is multifaceted and often polarized. Here are some of the key arguments presented by proponents and opponents of a UCC:

Religious and Cultural Diversity: India is a country known for its rich religious and cultural diversity. It is home to multiple religions, each with its own set of customs, traditions, and personal laws. Critics say that the UCC poses a .

Political Considerations: The UCC has often become a subject of political maneuvering and posturing. Political parties and leaders have used the issue to consolidate their vote banks or appeal to their respective constituencies. The sensitive nature of religious identity and the potential impact on minority communities have made it a polarizing topic, with political calculations often taking precedence over a genuine discussion on the merits and drawbacks of a UCC.

Protection of Minority Rights: One of the main concerns raised by opponents of the UCC is the potential impact on minority communities. Personal laws are deeply intertwined with the religious identity and practices of these communities. They argue that imposing a common civil code may dilute the unique rights and protections enjoyed by minority groups and erode their cultural autonomy. Protecting minority rights and preserving their distinct practices is considered crucial in

Gender Equality and Women's Rights: Proponents of the UCC argue that implementing a uniform code would promote gender equality and women's rights by eliminating discriminatory practices present in some religious personal laws. They believe that a common code would ensure equal rights in matters such as marriage, divorce, inheritance, and maintenance. However, opponents contend that gender justice can be achieved within the framework of existing personal laws, and a UCC could ina ..



STATUS OF PERSONAL LAW IN INDIA

Personal law subjects like marriage, divorce, inheritance come under Concurrent list. Hindu personal laws have been by and large secularized and modernized by statutory enactments. The Hindu personal laws (that apply also to the Sikhs, Jains and Buddhists) have been codified by the Parliament in 1956 This Code Bill has been split into four parts:

- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956
- The Hindu Minority and Guardianship Act, 1956
- The Hindu Adoption and Maintenance Act, 1956

On the other hand, Muslim personal laws are still primarily unmodified and traditional in their content and approach.

The Shariat law of 1937 governs the personal matters of all Indian Muslims in India.

It clearly states that in matters of personal disputes, the State shall not interfere and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith.

Apart from it, Christians and Jews are also governed by different personal laws.

Merits of Uniform Civil Code

National Unification:

A unified code is essential, both for the protection of the vulnerable sections in Indian society (women and religious minorities) and for the advancement of national unity and solidarity.

Abridgment of Laws:

There exist so many personal laws like Hindu code bill, Shariat law, etc. Presence of so many laws creates confusion, complexity and inconsistencies in the adjudication of personal matters, at times leading to delayed justice or no justice. UCC will eliminate this overlapping of laws.



Abridgment of Indian Legal System:

India has a federal judicial system which legal system based on mixed law that is based on parliamentary legislature, court laws, customary on religious as well. UCC will lead to depletion in litigation emanating from multiple personal laws.

Establishing a Secular Society:

UCC will break the law from religion which is a very prudent objective to achieve in a secular and socialist pattern of society. Moreover, it fulfills constitutional mandates under Article 44 of Directive Principles of State Policy.

Gender Justice:

The rights of women are usually limited under the patriarchal discourse through religious laws. UCC will set free women from patriarchal domination and provide them with right to equality and liberty. In the long term, UCC would lead to the defeat of the communal and the aberration of forces.

Demerits of Uniform Civil Code:

Government's interference in Individual freedom:

It is often viewed by many that it is the twisted game of the government to interfere in personal freedom of individuals. But Uniform Civil Code is aiming only to protect and safeguard the rights of all citizens.

Inconvenience for Implementation:

The Muslim community is against to the implementation of the Uniform Civil Code and states that it is not the right time. Also, they are debating on the subject that should take into consideration along with other recent issues the silence of authorities in relation to the saffronization of schools, beef issues, etc are triggering them and further stating as the overruling of majorities over minorities.



Complexities Due To India's Diversity:

The implementation of the Uniform Civil Code is unmanageable task due to the vast diversity of our nation. Cultural differences from state to state and community to the community are yet other obstacles to a unified personal law.

A threat to Communal Harmony:

Possible misunderstandings regarding the Uniform Civil Code generated fear among various religions, especially minorities. It is often viewed by many religions that UCC is aimed against their religious customs and values. Before the enactment of UCC, authorities should earn the trust of minorities. Otherwise, it will tear down the communal harmony of the nation.

Perception of UCC as Encroachment on Religious Freedom

Many communities, particularly minority communities perceive Uniform Civil Code as an encroachment on their rights to religious freedom. They fear that a common code will neglect their traditions and impose rules which will be mainly dictated and influenced by the majority religious communities.

Conclusion:

No doubt the issue of the reform of personal Laws of different communities and the enactment of Uniform Civil Code is not an easy task. The Uniform Civil Code under Article 44 is just one of the several other directive principles of state policy, while Articles 25, 26 and 29 which deal with religious and cultural freedom are the fundamental rights and both conflict with each other. The deep rooted multiplicity of personal law, religion, language, culture and custom are the real hurdles of in the way of the implementation of Uniform Civil Code in India. The diversities of family law of different communities, the tribal's own laws and customs, the belief of the people that the source of law and religion is the same and that faith, law and religion are intermixed and interwoven, have prompted people to oppose the Uniform Civil Code from its very inception.



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