

UCC: Why India Need a Uniform Civil Code?

Niharika

Law College Dehradun

Abstract

India is a secular country with a wide diversity of customs and beliefs which existed in India before the independence. After the independence 1947, it became a great task for the constitution framers to maintain equality and harmony among the masses. In India every religion has its own personal and civil law under which every religious matter is governed. But the idea of single civil law existed from the ancient time but it never implemented because of the existing personal laws as whenever there is a discussion for the implementation of the (UCC) it has been observed that there is a lot of debates and criticism to this law. It can be seen that how the implementation of the UCC will affect the personal law of Hindus, Muslims, Sikhs and Parsis. And what is the constitutional perspective in relation to UCC. These matters are discussed in this paper. It shows why there is need to implement UCC in the country as it will bring a single civil law for all irrespective of religion and gender. Along with this it will help in bringing the gender equality, unity in the nation. This will not only provide benefit to the individual but also play a vital role in nation's development. In the constitution of India the (UCC) uniform civil code is provided in Part IV, Article 44 of directive principle of state policy (DPSP) Inspite of the fact that these principle are not enforceable yet are crucial for the administration of the nation. As we further proceed to this reading we could see that how its implementation faced a criticism among the community , critics possessed a lot of criticism and threat to the society that it will result into disintegration of the nation and posses threat to the minority that they will not be able practice their religion freely and will be forced to practice customs according to Hindu code that was one of the biggest threat to the Minority community that it will be religion bias. That means it posses threat to the infringement of the Article 25. UCC have different relation with each personal law and have its impact in different ways. In the recent developments it was observed that how Uttarakhand legislature became a precedent to other states for enacting the state UCC which applies to all except scheduled tribes it is one of the historic moment under the Modi government as for implementing such a controversial law it requires a will and a strong government to take decisions like this. The need for UCC was understood back then also to avoid discrimination and hatred and now also it is again in the news because it is the realization that somewhere UCC is required to be implemented in a country like India as it is seen in the many Judgement and cases related to UCC mentioned in this paper.

1. Introduction

The uniform civil code is a introduction in India to formulate and implement uniform civil laws on the citizens equally irrespective of their religion, gender and sexual orientation. Uniform civil code (UCC) is also defined as “One Nation – One Law “Is defined in Indian constitution Part IV, under Article 44 of the Directive Principle of the state policy states that “The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. As India is a country with a wide range of diversity which existed form the ancient time and with the evolution of the time many personal laws came into existence which is governing their Particular religion in their own respective boundaries which was defined by their leaders. A uniform civil code means that all citizens irrespective of their religion and

Gender should be treated equally in matters pertaining to civil laws. Civil law covers areas like marriage, divorce, adoption, Inheritance and succession of property. Nowadays civil matters in India are governed by their respective personal law like Hindu marriage Act, Shariat law which governs Muslim throughout the country, so the main objective of the (UCC) is to have a single civil law for the whole country where people of every religion should also come under this code.

History of the Uniform Civil Code

The idea of the uniform civil code is started being in discussions even before the British rule period, under the east India company they tried to reform social and religious customs by imposing their ideologies on India. When the lex – loci report was submitted by the respective commission it was decided that the law of England will be applicable on those community which do not have their own law but it was not applicable on Hindu and Muslims. There was no step taken to code the personal laws of Hindus and Muslims as it was the fear of the Britishers that it will led to protest and agitation. But with the time many new reformists and progressive leaders of Hindu like Raja Ram Mohan Roy and others brings a change and abolishes many ill practices which were prevailing in Hindu religion at that time. Whereas in Muslims community there was no such progressive leader to led a reform movement. Under the chairmanship of B.N Rau, Draft was made to code the Hindu law which was further revised by the B.R Ambedkar.

UCC is not only concerned towards single civil law but its other objective was to bring gender equality that is prevalent in India from the ancient time which shows the reflection of male dominance in the country. Society is always biased towards the women and also in the personal law of Muslims and Hindu we could see the imprints of the inequality like in the earlier times in the Hindu Law women had limited right to inherent the property and in the Muslims the Shariat Law gives husband right to divorce by pronouncing talaq three times that is “triple talaq” without wives consent which gives men immoderate right. This shows patriarchal elements of the society and discrimination towards women which was later declared unconstitutional by the supreme court stating that it violated the fundamental rights of Muslim women.

The debate over UCC has been there since the inception of the Republic of India. The decision to place it in the directive principle of state policy, Article 44 in the constitution was based on assurance given by the Nehru and Gandhi to that enactment of UCC would be Postponed, although it would remain as an aspiration of the state. However it was obvious that religion based personal law will creates division in the country which would somewhere effect the unity and integrity of the independent India. Later on when Hindu code was also enacted it was enacted in the Installments and faced strong opposition from conservatives Hindus. It has enacted few more reforms also like dissolution of Muslim marriage Act 1939 for improving the condition of the women. In the subsequent years efforts are made to unify the nation under a common civil code includes enactments of:

- Special Marriage Act 1954
- The Hindu Code 1955-56
- Dowry Prohibition Act 1961

UCC: A Constitutional Perspective

Uniform Civil Code (UCC) is mentioned in the constitution of India in Part IV, Article 44 of the Indian constitution which states that the state shall endeavour to secure for the citizens a uniform civil code

throughout the territory of India. But we should keep this in mind that this provision is not enforceable by the court, as it's a (DPSP) Directive Principle of State Policy. Though Supreme Court of India at various instances stated about the need for the uniformity in the Civil Law and need for the enactment of the Uniform Civil Code as it brings the uniformity in religious aspect and as well as unity in the Nation and Secularism, Gender Equality and Justice.

There have been multiple cases related to the uniform civil code (UCC) like,

Case: Shah Bano Begum v. Union of India (1985)

Case: Sarla Mudgal v. Union of India (1995)

UCC in Relation with Personal Law

UCC i.e uniform civil code if applied to the country like India, a country with adverse diversity where every religion have their own religious or personal law will create a lot of disagreements and debates in the society. UCC is concerned to implement single Civil Law for all which covers every matters like marriage, divorce, succession and adoption. If UCC is enforced it would be able to fix the minimum age of marriage, abolish bigamy and resolve issues around interfaith marriages.

We can see how UCC will impact the different religious and their personal laws if it will be enforced.

HINDUISM

If the UCC is introduced in India the existing Hindu law like Hindu marriage act 1955 or the Hindu succession act 1956 would have to be amended.

ISLAM

According to the Muslim personal (Shariat) law Application Act 1937, states that Islamic law will guide the marriage, divorce and maintenance of the Muslim Women. If the UCC comes in all these provisions will be abolished.

SIKHS

Marriages under Sikh are covered under Anand Marriage Act 1909 however there is no provision for divorce. Then Sikh separation are governed under Hindu marriage Act, but if UCC is introduced, a common law will apply to all communities.

Critics

In concerned with the implication of the UCC, its implication shows a lot of criticism by many leaders. Critics argued that the implication of the UCC will infringe the fundamental right to freedom of Religion provided under Article 25 of the Constitution of India that a person cannot practice their religious custom and duties which is provided under their respective Personal Law which somewhere effecting the rights of the citizen to practice their religion. Not only this critics also shows their concern over this that it will lead to imposition of 'Hinduism' code which means UCC might impose a 'Hinduism' code on all Communities. For example, UCC could follow the Hindu Law in matter related to marriage, divorce and inheritance or wherever according to the fact of the matter and will legally force other Communities to follow the same.

So basically the implication of the UCC shows a great distress among the masses as it become a matter of concern that it will somewhere effect their religious laws and beliefs which led them to leave their customs and religion apart and specially among the Muslim masses. It is a great matter of concern because from the history also there were very less amendments to their personal laws and every matter of them is governed under their Islamic Law.

The implication of UCC faced a lot of criticism and that is the reason why it has not been implemented till date in India. In the constituent assembly also there was a lot of debates and discussions while imposing the UCC in the country because after the partition the minority community are in threat that they will be discriminated on the ground of religion and it was believed that India is not ready for such law which posses threat to the community. However this is the reason that it is still in the discussion that whether it should be implemented or not?

Recent Developments

Uniform civil code (UCC) has become the biggest talking point ever since when Bhartiya Janta Party (BJP) in its 2014 General Election manifesto promised to bring a Uniform Civil Code in the country if it is elected to power and then again in the 2019 General Election, the manifesto contained promises for bringing a Uniform Civil Code. Several (PIL) Public Interest Litigations were also filed in the Supreme Court demanding the union government to take necessary steps in bringing a civil code for the whole country. In the case of Jose Paulo Coutinho v. Maria Luiza Valentina Pereira where the court refers to Goa as a ‘shining example ‘ as it has the Uniform Civil Code applicable to all irrespective of their religion . After its liberation in 1961, Goa retained the Portuguese Civil Code, making it the only state to have a UCC for all.

The most recent case pertaining to the Uniform Civil Code is Ashwani Kumar Upadhyay v. Union of India, in this case the Union government asked Supreme Court to dismiss all PILs relating to UCC. The government argued that courts cannot direct the legislature to enact a bill or Law. Parliament has the sovereign power to enact the laws.

Recently, The Uttarakhand Assembly passed State’s Uniform Civil Code on Wednesday, despite the opposition demand that the bill should be handed over to the House’s select committee first. Turning it a “historic moment” Chief Minister Pushkar Singh Dhami said that assembly has become the first Legislature in the Independent India to pass a Bill that imposes common rules for all communities – except Scheduled Tribes – on marriage, divorce, inheritance and live-in relationships. Adding to this Dhami also added that it is also a medium to eliminate the discrimination against women and injustice against them. “it is time to stop the atrocities against the “Matrishakti” the discrimination against our sisters and daughters has to stop half of the population should now get equal rights,” the chief minister said. Apparently Uttarakhand is setting a precedent for BJP-ruled Assam and Gujarat which are currently trying to implement the UCC in their respective states.

Again critics accused that the Uttarakhand government of using the new law as targeting the Muslim community who follows customary rules on polygamy and divorce under Shariat Law which now stand banned. Jamiat Ulema-e-Hind, a leading Muslim body said: “we cannot accept any law that is against the Shariat Law”. These are the criticism faced after implementing the UCC by the Uttarakhand Legislature which now is a precedent for other states for implementing UCC in their respective states.¹

¹ Articles

Suggestion and Conclusion

It is important to understand that to implement UCC in a diverse country like India is a very sensitive issue with a plethora of religious and cultural identities. It is imperative to ensure that the implementation of UCC does not infringe the rights and beliefs of any community. It requires a thorough review of the existing personal law of different religious communities. It is essential to keep in mind that while implementing the UCC it must be in their boundaries in order to maintain justice, equality and non-discrimination. It requires a strong political will and a conducive environment which act in favour of the country and not use it as a tool for political gains. For its implementation government requires investments in terms of resources, including manpower, finances and infrastructure. The government must ensure that it has necessary resources to undertake this massive task without compromising the quality of execution. In conclusion, as we have evaluated different viewpoints for the implementation of the UCC in the country in all possible ways. As after so many criticism faced on its implementation it was realized by the constituent assembly, judges and legal scholars as they know the importance and need for it in a country like India.

It is important for the minority community to understand that it is not threatening their religious rights or duties inspite of this it is unifying the nation and preventing discrimination and promoting gender equality. It does not only help the citizens but overall the nation itself to became a progressive and a developed Nation. The main objective is to understand that it is not violating the Article 25. People will be allowed to follow any religion according to constitution without any kind of hindrance. This is the need that there must be the implementation of the UCC in all the state of the Nation taking Uttarakhand Legislature as its precedent.²

² Wikipedia