

An Analytical Study on Uniform Civil Code

Dr. Shraddha P. Patel

Assistant Professor, Motilal Nehru Law College

ABSTRACT

The UCC refers to a common set of laws on marriage, divorce and inheritance that would be applicable to all Indian citizens irrespective of religion, tribe or other local customs. The paper briefly discusses the personal laws of every religion including tribal laws. Article 44 of the Constitution calls upon the State to endeavour towards securing a uniform civil code throughout the territory of India. This paper commences with the introduction to the Uniform Civil Code in which it defines the concept of the Uniform Civil Code and also discusses about its origin

Key words- Uniform Civil Code, Constituion, Personal laws

INTRODUCTION

Uniform Civil Code means Secular personal laws of citizens which apply on all the citizens equally regardless of their religion for common Marriage, Divorce, Maintenance, Adoption etc. Uniform Civil Code mainly aims to replace personal laws dependent on the scriptures and customs of each significant religious community in India with typical arrangements of rules governing every citizen, Personal laws are distinguished from public law and its basically covers Marriage, Divorce, Inheritance, Adoption and Maintenance. This paper aims to approach the concept of Uniform Civil Code in a more practical.

RESEARCH METHODOLOGY

The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this paper, so as to discern a trend in the judicial pronouncements.

Objectives:

1. To understand the practical problems in the implementation of uniform civil code.
2. To study if the uniform civil code is violative of Article 25 of the Indian Constitution.

Hypothesis:

The Uniform Civil Code is not violative of Article 25 of the Constitution of India.

Uniform Civil Code and the Personal Laws:

The women are considered inferior in most of the personal matters as compared to men, especially when it comes to the discussion of the topic of the matrimony or the succession, adoption or even the inheritance. Under the Hindu Law specifically, in the year 1955 and 1996, the Hindu women did not enjoy equal rights along with the Hindu men be it anything or any matter. Before 1955 polygamy was prevalent among the Hindus. The Hindu women could not hold any property as its absolute owner except in the case of Stridhan. She had only limited estate which was passed onto the legal last full heirs of the male owner called revisionary on her death. She owned a limited interest, in the sense that whenever an issue came up for the desertion of the property and mortgaging or selling the property, she could not do it on her own.

When it came to the matter of adoption a Hindu women did not have the right to adopt a child on her own. She could not be natural guardian of her children during the life of her husband. These examples are illustrative enough to show the patriarchal nature of the Indian society. Even though the Hindu law has been codified, certain discriminatory provisions still exist even today. For example a Hindu woman is not a coparcener in Hindu coparceners except in a few states like Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu. Consequently she is not entitled to the share in the coparcenary. Thus it is oblivion to the fact that the codification of personal laws of Hindus has not succeeded completely in eradicating the gender inequality. When it comes to discussing about the Muslim Law, in the Pre Islamic Arabia, the women enjoyed a secondary status because since then it has been a patriarchy since then. The women since then were considered secondary to men. The advent of Islam has contributed much when it comes to the deterioration of the Muslim women and the escalation of their problems.

The Holy Quran gives equal rights to men and women and places women in a respectable position. However, there are certain aspects in Islam that render the position of Muslim women especially the wives insecure and inferior. In Islam, a man is allowed to marry four times whereas the women cannot and if they do they are treated as unchaste and impure. Women are not even given the right to divorce their husbands, when particularly the method of divorcing the wife by the husband by pronouncing triple Talaq is highly discriminatory. This is in spite of the message given in the Holy Quran.

This has been held void and unlawful, recently in the Allahabad High court judgement. Even in the matter of succession, a Muslim woman is discriminated against the assertion of certain Muslim scholars that the Islam in this regard is more progressive and liberal. The legal position is that when two scholars or residuary of opposite sex but of the same degree inherit the property of the deceased, the Muslim male gets twice the share of the female. Even in the matter of maintenance, the Muslim wife is not required to be maintained beyond the Iddat period. The Criminal Procedure Code which imposes an obligation on the husband to maintain his wife including divorced wife until she maintains herself is a secular law and is applicable to all, however there is a controversy regarding the Muslim men following this provision. Shayara Bano vs. Union of India And others, W.P. (C) No. 118 of 2016.

Uniform Civil Code in Goa:

Goa is the only state in India that has uniform civil code regardless of religion, gender, caste. Goa has a common family law. Thus Goa is the only Indian state that has a uniform civil code. In Goa Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession. When the Goa became the part of union territory in 1961 by the virtue of the Goa Daman and Diu administration act 1962 the parliament authorized the Portuguese civil code of 1867 to Goa and shall be amended and repealed by the competent legislature.

In Goa marriages is a contract between two people of different sex with the purpose of living together and constitute the legitimate family which is register before the office of civil registrar. And the particular rules and regulation has to be followed by the parties after that they can live together and start their life but there are certain restrictions according to which these categories of person are prohibited to perform marriage for example: any spouse convicted of committing or abetting the murder of other spouse shall not marry.

CONCLUSION & SUGGESTIONS:

The Uniform Civil Code is not just a matter of gender justice, it is also a question of how a nation accommodates its own diversity. In India, and freedom of religion exists with other rights like equality and non-discrimination. Instead of reaching in indiscriminately or leaving cultures entirely to themselves, India's liberal multiculturalism strikes a balance. It has been more ready to reform majority practices, while offering protections to vulnerable individuals within minority groups. Is there a better way for India to negotiate this? The common view is that the Western democracies are a template for liberalism. But how do the US and France conceptualise law and religious freedom, the balance between majority and minority group rights? What do Canada and the UK do? But the problem is that India cannot have the Western Countries as a model because the conditions are not similar. Most of the western countries, despite claiming to be secular, tend to show a bias towards Christianity and the Middle East Countries clearly follow Islamic Law. Even as we push for a Uniform Civil Code, we should know that law cannot exist too far apart from social norms. Without social support, or state capacities to implement our own principles, we risk pushing people into seeking alternative community justice, like sharia courts or khap panchayats. A common civil code will have to be careful in its choices.

Then there remains the question of whether it should be obligatory, erasing all personal law, or whether it should allow Indians the option of choosing to live under their own religious umbrellas, if they prefer. Either way, it is time that we outline our ideals and disagreements, in the pursuit of a dream common civil code. In the seven decades since the Constitution was enacted, there has been no sincere effort to even start such a dialogue. It is also clear that Uniform Civil Code is not violative of Article 25 and 26 of the Constitution. It should rather be a new law and not the blend of personal laws. The problem in blending personal laws is that there is every chance for a bias to arise. The Parliament should introduce a new code similar to the Special Marriage Act of 1954 which does not extend any favours or bias towards any religion. What the people must understand is that religion and laws are two different concepts. This is because the Constitution allows the people to follow their religion which will continue despite the enactment of a uniform code. The uniform code will nowhere curb their right to follow or profess their religion. For example, the religious scriptures prescribe punishments for crimes but the Indian Penal Code, 1860 is the only penal laws that are followed in India. Thus, it is high time that people start viewing religion and law as two different concepts and focus on the empowerment of all class of people. There is an urgent need to bring in uniform laws in India.

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