

UNIFORM CIVIL CODE: A CHALLENGE TO THE RIGHT TO RELIGION OR A STEP TOWARDS CIVIL EQUALITY?

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ABSTRACT

The Constitution in its order guarantees to carry out Uniform Civil Code and it is significant to advance gender equity for the sake of common fairness. To advance a common philosophy implementing a Uniform Common Code would be a fortifying instrument. The Constitution governs all religions and it tends to be found in its impartiality that it has no religion of its own. And Right to Religion which is enshrined in Set 25 to 28 in Major Fundamental Freedoms of Indian Constitution won't be encroached upon UCC's execution. As proviso (2) of Article 25 itself gives an exemption that State cannot be prevented to bring any changes which are associated with religious practices by its current or future actions. Indeed, it is a step towards common equity and the rise can be found in a progression of occasions, for example, Triple Talaq Act and legal executives and judiciary in a number of cases reminds lawmaking body about its capability to bring this thought of uniform common code into a presence. The Supreme Court in the Mohd. Ahmed Khan vs Shah Bano Begum and Ors. 1985 AIR 945, 1985 SCR (3) 844 referred to equity to everything is as a definitely more palatable method of administering equity than equity from one case to another.

PONDERED TAKE ON UNIFORM CIVIL CODE

The Uniform Civil Code is a law controlling the normal matters of the occupants in the country relating to issues like marriage, separation, gathering, heritage, legacy, movement to property, etc. The Uniform Civil Code, at whatever point approved, will deal with the singular laws of all severe organizations relating to the above issues which are through and through standard in the character of the Indian state, and to further develop a society of fortitude among

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inhabitants by providing them with singular law which will join the fundamental potential gains of humanism and civil equality in the whole country.²

Right off the bat, it would encroach opportunity and Right of Religion cherished in Article 25, assured proviso (2) of Article 25 gives a special case for the impact that any current or future social government assistance and change will not be influenced by the activity of this Article and State is competent body to do so.³

PROGRESSION OF THE THOUGHT

A progression of occasions occurred in India prior and then independence which cultivated the pertinence of the Uniform Civil Code. During British India, a series of acts were passed by them for the improvement of Hindu Women,⁴ for example, The Hindu Widow Remarriage Act, 1856⁵, Married Women's Property Act 1874⁶, Hindu Inheritance (Removal of disabilities) Act of 1928⁷ which was Hindu Legacy (expulsion of handicaps) demonstration, Hindu Women's right to Property Act, 1937⁸.

Thus, the tide being developed in private, personal laws and the passing of a few enactments in this setting required a powerful reaction from the public authority's side. In this way, thereafter a board of BN Rau was established in the time of 1941 which analyzed the need or significance of normal Hindu Laws to be created. The suggestions were to such an extent that it would give equivalent freedoms to women as per changing society and current patterns. The point was to change the individual arrangement of Hindu Laws.⁹

At that point, the Hindu Code Bill was resubmitted in 1952 after it was once passed. The arrangements of the Hindu Code Bill were passed in the isolated arrangement of parts, for example, Hindu Marriage Bill in May 1956, Hindu Progression Act, 1956, Hindu Minorities and Guardianship Charge of 1956, Adoption and Maintenance which were a supporting Bill of Dec 1956.¹⁰

² Shabbeer Ahmed and Shabbeer Ahmed, Uniform Civil Code (Article 44 of the Constitution) A Dead Letter, 67, No. 3 IJPS 545, 546-547 (2006).

³ S. P. Sathe, Uniform Civil Code: Implications of Supreme Court Intervention, 30, No. 35 EPW 2165, 2165-2166 (1995), *ibid* at 547.

⁴ G. R. Rajagopaul, The Story of The Hindu Code, 17, No. 4 JILI 537, 538-541, (1975).

⁵ The Hindu Widow Remarriage Act, 1856, Acts of Parliament, 1856 (India).

⁶ Married Women's Property Act, 1874, Acts of Parliament, 1874 (India).

⁷ Hindu Inheritance (Removal of disabilities) Act, 1928, Acts of Parliament, 1928 (India).

⁸ Hindu Women's right to Property Act, 1937, Acts of Parliament, 1937 (India).

⁹ John A. Banningan, the Hindu Code Bill, 21, No. 17 Far East. Surv.173, 174-175 (1952).

¹⁰ *Ibid* at 174.

Uniform Civil Code: A Challenge to the Right to Religion Or A Step Towards Civil Equality ?

Fundamentalists contended against the Hindu Code that it is only about community-based measure rather a Uniform Common Code ought to be executed to lead towards genuine mainstream of thoughts within the country.¹¹

As indicated by Nehru, Uniform Civil Code was an indispensable advance and assumed a significant part to ensure the actual secularism for the country yet he would not like to constrain any local area to prepare to embrace any such thought strongly. Yet, it was set up that the Parliament would be ready to carry out the Uniform Common Code in a later stage. Thus, they added this thought under article 44 of the constitution that "the state will attempt to authorize a Uniform Civil Code for residents all through the country."¹²

It provides that the State will endeavour to approve a Uniform Common Code for inhabitants all through the country but those contradictory thoughts were gone against by numerous individuals to the advisory group committees while preparing a draft for the constitution, for example, Rajkumari Amrit Kaur and Hansa Mehta.¹³

A short time after a lot of endeavors and measures were seen towards the fruitful execution of the Uniform Common Code. One can be a special marriage act under which any resident of India is secured to marry past their religion and it was a step towards the advancement of strict uniformity under the ambit of common equity.

Also, on account of Shah Bano, 1985¹⁴, Supreme Court prescribed to order the left ago rule of Uniform Common Code. It is stayed as a dead letter yet which is a pivotal difference to be viewed.¹⁵ Assuming Uniform Civil Code will be executed, strict struggles and a ton of incongruities will be settled.¹⁶

The state has the authoritative position to force it yet at the same time it isn't¹⁷. And even Nehru and other Board members during the outlining of the Constitution recommended putting the Uniform Civil Code in directive so that parliament would be ready to outline or uphold it any time in future when it appears to be ideal.¹⁸ And the word 'secular' was embedded in the Constitution by 42nd amendment act 1976 expressing that state is impartial and has no

¹¹ Id at 175.

¹² Supra note 1 at 547.

¹³ Reversing the Option: Civil Codes and Personal Laws, 31, No. 20 EPW 1180, 1180-1181, (1996).

¹⁴ Mohd. Ahmed Khan v Shah Bano Begum and Ors, AIR 1985 SCR (3) 844.

¹⁵ D. Sura Reddy, Article 44: A Dead Letter?, 38, No. 3 JILI 405, 405-409, (1996).

¹⁶ Ibid at 409.

¹⁷ S. P. Sathe, Uniform Civil Code: Implications of Supreme Court Intervention, 30, No. 35 EPW 2165, 2165-2166 (1995).

¹⁸ Supra note 1.

religion and to make India a really impressive and secular mainstream state. Parliament is able and competent to enforce this code and it can help stronger the principle that Constitution is over all religions.¹⁹ The mainstream suggests the supremacy of common laws and a system where religion, race, position, language, etc would be subjected to the character of citizenship.²⁰

Furthermore, it is about time to carry out this philosophy and the ideological principle of Constitution makers. In the Shah Bano Case, the critical perception of the apex court was- equity to everything is as an undeniably better method of apportioning equity than equity from one case to another and the start should be made to get various societies and religions at common ruling.

GENDER UNIFORMITY AND JUSTICE

Gender uniformity is the most significant for a nation's turn of events. It tends to be fixed aside and women's rights are of unique importance and ought to be dealt with similarly. A Uniform Civil Code is significant in raising gender orientation equity as personal laws appear to be ominous to women in numerous angles.²¹ And to eliminate these aberrations or segregation, UCC is imperative to be carried out in regard of article 44 and correspondence under the equality before the law and equivalent security of law in the Indian Constitution.²²

Suggestions for UCC are genuinely portrayed in the Shah Bano Case and the legal executive in *ABC v the state (NCT of Delhi)*²³ again reminded the issue of UCC and in the Court's decision, it said-our Directive Principles of State Policy has a dream for this code however it is yet an unaddressed assumption. Then, at that point in *Jose Paul Coutinho v Maria Luiza*²⁴ for this situation again, Supreme Court prescribed Indian parliament to take a choice with regards to uniform civil code that state should try to get it for the residents all through the domains yet till date, no move has been made in such manner.

¹⁹ Romila Thapar, *The Secular Mode for India*, 41, No. 11/12 *Social Scientist* 3, 4-5, (2013), Ranbir Singh and Karamvir Singh, *Secularism In India: Challenges And Its Future*, 69, No. 3 *IJPS* 597, 598-600, (2008).

²⁰ *Ibid* at 4.

²¹ Jyoti Rattan, *Uniform Civil Code In India: A Binding Obligation Under International And Domestic Law*, 46, No. 4 *JILI* 577, 584-587, (2004), Is Gender Justice Only a Legal Issue? *Political Stakes in UCC Debate*, 32, No. 9/10 *EPW* 453, 454-455, (1997).

²² *Is Gender Justice Only a Legal Issue? Political Stakes in UCC Debate*, 32, No. 9/10 *EPW* 453, 456-457, (1997).

²³ *Abc v State (Nct Of Delhi)*, 2015 SC 609.

²⁴ *Jose Paulo Coutinho v Maria Luiza Valentina Pereira*, Civil Appeal No. 7378 of 2010.

DRIVING TOWARDS EFFECTIVE EXECUTION

An administration with a solid greater part is needed with a solid inclination which can have impact and clearly numerous individual and personal law boards will go against it and won't be prepared to take on UCC.²⁵

Yet the new cases are the confirmations, for example, Triple Talaq which is as of now endorsed at last the Muslim Women (Protection of Rights on Marriage) Act, 2019 came to secure the privileges of the wedded Muslim women and forbid the Muslim male to separate by articulating Talaq. Indeed, even after specific fights too that can be evidence leading towards successful implementation of the code as well.

Citizen's freedoms and rights are of most significance in this developing and present-day world and to advance the common thoughts, UCC is required and gender equality balance advances gender equity also.²⁶

TO THE EXTENT OF SOCIAL MONOCULTURE

By enforcing the code, there will be one common law for all religions as currently formally dressed criminal laws and after it is enforced, every one of the individual matters identified with marriage, separate, legacy, marriage, inheritance, adoption will be administered by one uniform code. In 1835, the second law commission report's focus was on uniforming the laws identified with the contract, evidence, criminal law, however, didn't have any desire to extend it to the individual laws and during pre-autonomy period sovereign victoria guaranteed that there will be an outright strategic distance in personal issues as they were planned towards monetary gains and for the most part yet after freedom state is really skillful to the source to acquire a correction in strict inconsistencies and getting them all on normal and common front.

A STEP TOWARDS CIVIL EQUALITY

It is contended that the Hindu law too before somehow oppressed women by denying them legacy, inheritance, remarriage, and separation. The condition particularly of those widows and little girls was poor because of other oppressive traditions. So after the presentation of the Hindu code, the status of women improved and the situation with uniformity among

²⁵ Supra note 1 at 550.

²⁶ Supra note 20.

residents improved, and upholding UCC can be utilized to amend the mistakes of an inflexible prejudicial society and carry more sympathy and correspondence into the social circle since the constitution is over all religions and strict practices can't be utilized to deny principal privileges and opportunity to citizens at large.²⁷

Constitution creators put UCC in order so the future parliament could make an arrangement by authorizing it and making it appropriate to all. Execution of the Hindu code is an effective advance in this setting regardless of having some resistance. The objective of the UCC is tending to the segregation by fitting various societies in common front so that overlapping of various laws would be taken out. As per Dr. BR Ambedkar, Code will apply just to the individuals who make an affirmation that they are ready to be limited by it. In the underlying stage, the utilization of the code might be simply intentional.²⁸

So that individuals would have the option to know the advantages of the code and legal administration additionally in a number of cases is reminding state about its ability to bring this code into implementation. Many adversaries of the UCC contend that executing UCC would deny numerous networks of their own personal laws and right to religion yet the articles are entirely agreeably developed and harmoniously constructed, to the point that one isn't violative of another. Article 25 proviso 2 gives that nothing in this article will influence the activity of any current law or keep the State from making any law.²⁹ Thus, carrying out UCC would not be an infringement on the Right to Religion and even it would be an incredible advance to reinforce the Indian secularism and state's impartiality in strict and personal issues.

²⁷ Supra note 3 at 550.

²⁸ Krishnayan Sen, Uniform Civil Code, 39 No. 37 EPW 4196, 4196, (2004).

²⁹ Supra note 1 at 547.