

WHY UNIFORM CIVIL CODE IS AN CONFLICTING ISSUE:

:ABSTRACT:

The implementation of UCC came with the idea to provide benefits to all individuals. But it does have some character in it to violate fundamental rights . The particular chapter will be dealing with respect to the constitutional approach . It means , it will describe where it strengthens constitutional rights and where it is violating constitutional rights .Majorly, it will be talking about important articles under fundamental rights , which will be violated because of UCC. it will even deal with the articles and cases , where it leads to infringement of rights. It may be because of implementation of UCC in positive or negative ways. It will deal with why it is not part of fundamental right , is it constitutionally justified by keeping the articles of fundamental rights in mind ,how it violates the rights , how it provides overall benefit to our nation and at the end concluding with famous case law shayara bano vs. union of India and sarla mudgal vs. union of india

:KEYWORDS:

- ARTICLE 44 (UCC)
- DIRECTIVE PRINCIPLE OF STATE POLICIES
- GENDER EQUALITY
- RELIGIOUS PERSONAL LAWS CONFLICT
- WOMEN RIGHTS
- SHAYARA BANO AND SARLA MUDGAL CASE ANALYSIS

:BACKGROUND:

Uniform civil code is a controversial topic and pending topic of discussion for a long time. The discussion was much in need after independence. But everytime this results in nothing after a long topic of discourse. After the arrival of the Bharatiya janata party in power, the topic started to come into light. The Bharatiya Janata party had incorporated the uniform civil code in their party manifesto. So it was very likely to be anytime come to discussion in parliament if the

bharatiya janata party is again form its government in India as it was part of their manifesto. There was huge support for this topic from all right wing political parties and now eventually time has arrived where it is about to come into existence in India. This topic of UCC implementation has been used by many BJP'S political leaders during their election campaign. Recently Prime minister mr. NARENDRA MODI talked about the issue while addressing party workers in bhopal and moreover the law commission of India even working to collect the report regarding it in order to implement it efficiently.

BJP MP sunil kumar singh presented a private membership bill for UCC in parliament on 28 july 2023. Since then it has been in controversy as the opposition party, religious leaders , state parties and some NDA allies are not even happy with the decision of adopting UCC.

: BRIEFING ABOUT UNIFORM CIVIL CODE :

Uniform civil code refers to a set of laws which is common for all citizens, irrespective of their religion,class, sex, region, ethnicity etc. It majorly deals with personal law, which is even civil law. The main objective of this law is to replace diverse personal law existing in the country , especially to tackle unnecessary differences and discriminatory personal law existing in all religions and communities.

The uniform civil code aim is to give a common legal framework and platform in all aspects of law. It establishes equality, justice and uniformity among people belonging to different religions and ethnicities. It ensures equal rights to all , which create harmony in society . Personal law includes law regarding marriage, adoption ,divorce,inheritance, and adoption, which UCC basically talks about unifying it.

If we see this law with respect to India, it has a very diverse understanding as the law is also discriminatory to the region , where it is uniform along with the places , where it is not uniform. For instance: the state of Goa follows uniform law, but still the law is discriminatory and patriarchal in nature. The law in Goa gives rights to men to practice bigamy , it allows hindu men to have two wives with certain fulfillment of the condition. It doesn't directly legalize bigamy but allows it with certain conditions. Like, if women could not conceive any child at the age of 21 or could not give birth to male child at the age of 30. Then the hindu men in goa have a right to marry second women. It is being said that the concern of the first wife is mandatory to marry the 2nd wife even after the above condition. It has been often observed that the 1st wife is often compelled by society to give her consent.

Whereas in other parts of India, where the hindu family law is applicable and practiced, it does not allow any hindu men to marry a second wife when the first wife is alive and not divorced yet. It means no bigamy is being practiced.

It is more diverse in the sense that it allows muslim men to practice polygamy , where they can keep four wives with them. Earlier it even allowed husbands to enjoy divorce right over undermining their wife or wives right. They had the privilege of triple talaq , which used to allow muslim men to give divorce to their spouse anytime and anywhere. Their issue and concern are often being dealt with by a personal law committee , which is often biased and patriarchal in nature.

That's why the implementation of the UCC is a contentious issue as it includes religious freedom, cultural practices , and rights of the individuals with the idea of harmonizing personal law and promoting social cohesion. The adoption or enforcement of uniform civil code can differ from one nation to another as it depends upon the existing legal system of the particular country, political scenario , societal consideration and many more things.

Here , the personal law often deals with the cases related to marriage, adoption, inheritance, divorce and succession. It's many times found to be discriminatory and unjust with the people. So in order to remove such unjust personal law , it is necessary to implement UCC in our country. But it does not mean that it comes with no cost, there are certain sections of society who are not at all willing to support this law.

For India UCC is the one of the most controversial topics since independence as there is ongoing debate between religious organizations with the framers of law. The conservative religious organizations and many regions are not voluntarily supporting it.

Though the constitution under article 44 allows the state to implement UCC in their state under directive principle of state policy. Article 44 states “the state shall endeavor to secure the citizen a uniform civil code throughout the territory of india”. But due to the political resistance and religious groups it remained a dream. No political party took the initiative to implement it. Every political party was doubtful about its implementation as in the end, it can impact their voting bank.

Why was UCC inserted in DPSP not in fundamental rights?

Article 44 define uniform civil code for citizens

The article 44 was kept under directive principle of state policy, which states “ states shall endeavor to secure for citizens a uniform civil code throughout the territory of India” .

It means it allows for the formation of the uniform civil code , but it does not include it in fundamental rights. The reason behind such insertion is the lack of comfortability by communities to accept it. During framing of the constitution , it was a contentious topic. Majority of the people showed their disagreement to implement it uniformly. Especially, minority section of the country was especially unhappy with the idea of implementation of UCC over their personal law. They never UCC to be forcefully imposed on their personal law. They believed that imposing such a law can infringe on their sacred system of family law. Even the majority religion like hindu were unhappy with the law , for example law related to women succession. Whereas muslim personal law was not ready to approve the interference in the law like marriage , maintenance , inheritance etc . All religious personnel wanted to regulate such law as per their custom and belief.

The time when the constitution maker had to decide over it. They did not include UCC in fundamental rights, they knew that inclusion of such civil code can lead to huge disruption in society , people will protest against it on a large scale. And at the end they left UCC for future generations to implement it uniformly , when people become well versed about it. The society during independence was not having such a developed mind to understand its importance , even though they were not ready to accept it anymore because their scamental beliefs were being questioned .

Though the framers of the constitution left for future leaders to appropriately and effectively implement it, when people are ready to accept it willingly after a certain year. Almost 73 years have gone by, but still there has been no step taken by any government to make it uniform. The current government has introduced the bill in the parliament but still there are a lot of challenges which they need to tackle before proceeding .

The problem of not including it in fundamental rights is that it infringes the right of individuals but at the same time because of being part of personal law , it is often forced by the individual to accept the law which is not wrong according to their personal law.

For example- the practice of triple talaq and nikah halala was valid according to muslim personal law . The personal law allowed its practice even after knowing it was against the individual right and infringe the fundamental rights of individuals like it was against the right to equality , where certain genders of the society were given more privilege over others. It was completely discriminatory against women , but was being forced by society and the personal law committee to accept it.

:How UCC give benefits to india as whole:

There are a number of benefits that India can gain after effectively implementing UCC in India. The following benefits are as follow:

1. Gender equality - one of the main and major points of benefit is the promotion of gender equality and elimination of gender disparity. It would be able to remove all discriminatory gender inequality existing in all religious communities and will give equal rights to both genders. As the personal laws are somewhere and at some point of time are being discriminative toward women. Women are given secondary positions in cases like divorce, marriage, maintenance, inheritance etc.

Such law will work as a solution for tackling such issues. It will give equal rights to both genders. The rights of men will never be overmine the rights of women. Women will have the same rights and authority like men in the family matter issue , which was being governed by personnel law.

2. Social cohesion : It will lead to social coherence in society. Many advocates believe that it will promote social coherence as it will foster a sense of equality among all citizens along with that it will also strengthen the nation's integrity.

It is being believed that the implementation of UCC, and replacing communities law ,which is specific to the personal law , will create a sense of unity among the citizens as the division on the basis of religion, region, gender will automatically be reduced . it will in this sense lead to integration of the nation.

3. Simplification and clarity: the Indian legal system is very much complex and lengthy. Law related to family law has more complexity because of the coexistence of multiple personal law within one nation itself. Implication of such laws are very difficult because of their diversity in their rules and laws.

Implementation of civil law will simplify the rules and will streamline the legal framework. It will later transform it in clear and simpler form. It would not just help citizens but also make it easy for the judiciary system to apply and interpret the law. It would ultimately lead to improve the access of justice by people and reduce legal disputes , which were being created because of multiple personal law existence . It will make it easy to understand the law as there will be uniformity in law and common law will be followed by all for any issue regarding family dispute.

4. Secularism and equality: The step toward UCC is toward true secularism. In this it clearly demonstrates that state laws are not influenced by religious consideration. State put forward its unbiased law of secularism rather than following the footsteps of religious norms .

The UCC's main focus is toward making the law equal for all, rather than listening to the concern and excuse of any religion to impose it. It allows all citizens to follow law in general. It allows everyone to follow common law.

Uniform civil code will uphold the principle of equality before law, here citizen will be treated equally regardless of their religion, class, region and other factors.

5. Modernization and progress : The personal laws are often being criticized for their outdated norms and they do not show any new changes as per the change in society. It does follow the same old and outdated norm which now does not reflect Indian society. With time, Indian society got developed but the personal laws were not updated with the change.

For example; many muslim laws banned triple talaq in their respective nation laws before India. Indian society was well developed but the declaration of triple talaq was declared unconstitutional in 2019. Even in hindus, equal shares in property was declared in 2005. There are many more laws, which were outdated even after change in society.

:How UCC can violate fundamental rights of individuals :

It is a debatable topic as UCC has both the side positive as well as negative. Positive side provides benefits to each and every individual, whereas the negative side does have drawbacks. The drawback is somewhere impacting over the fundamental rights of individuals.

There are certain points, which are critics to the UCC which state that it infringes fundamental rights. The other hand, it is necessary for ensuring equality and social justice in society. With keeping all these pointers in mind, we can come to the conclusion that it does have the capacity to infringe fundamental rights.

There are some arguments which prove that certain fundamental rights have been infringed at a certain level. They are as follow

1. Right of religious freedom : The right to religious freedom comes under article 25 of the Indian constitution. It is guaranteed under fundamental rights.

Article 25 clearly states “ the freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens”.

Critics say that the right provided to all individuals for religious freedom under article 24 will be violated, if the uniform civil code becomes law and gets approval. It is further said that personal laws are made on the basis of religious sculpture and customs. The personal laws are rooted in it. which will violate the religious right of the respective people, if the government imposes this common set of law in it. It may impinge upon the religious practice and belief of various communities living in india.

2. Cultural pluralism and diversity : criticism about UCC is that it will undermine cultural diversity and pluralism. Opponents argue that cultural diversity and pluralism will be suppressed if uniform civil code get approved in law.

They say that the personal laws reflect the distinctive identity and cultural diversity of all religious communities .Personal law gives the traditions of different communities . looking at all the features of personal laws , it is clear that UCC will lead to a bad impact on it. The cultural pluralism and diversity will be in question.

Cultural autonomy should be protected and preserved . The implementation of UCC is causing fear of losing cultural autonomy, which can cause emotional and religious loss to all who have faith in the personal law because of their culture.

3. Impact on minority rights :

Article 29 – Protection of Interests of Minorities

This article is intended to protect the interests of minority groups.

Article 29(1): This provides any section of the citizens residing in India having a distinct culture, language, or script, the right to conserve their culture, language and script.

It is argued that if the current government will impose UCC forcefully on minorities , then it will raise the concern for minority rights. It means that the rights of minorities are being compromised because of the rule that the majority want to implement. Some critics even say that current circumstances have already shown vulnerability and marginalization of minority religion , and now the UCC would work in addition to their problem or in simple words make it more exacerbate .

To be more specific to the point , let it be discussed in a very exact manner, how it is related to it. In India , muslim personal law has been always in question since the right wing political party came into government. It started with abolition of triple talaq and now moving further with complete ending of personal law . though it is not wrong as it establishes equality in society along with preventing the gender discrimination found in muslim personal law. But at the same time, forcefully imposing laws just after having the majority support depicts arbitrary behavior on minority and infringement of minority rights.

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4. Right to equality : ARTICLE 14 of Indian constitution - "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 14 of the Indian constitution ensures equality before law. It makes sure that everyone will be treated equally in the eyes of law. Even UCC protects the right to establish equality in society. But at the same time some critics say that it could potentially violate fundamental rights . It can be done in the way of not accounting for diverse cultures and customs. It means UCC

can impose unnecessary rules and customs for all religions and along with that it might contain certain religious norms at the cost of violating someone else's religious norms and customs .

5.Right to privacy :

Right to Privacy – Article 21

According to this article, every person – citizens and non-citizens have the right to live and the right to have personal liberty. The state can't deprive any person of these two rights except under procedure as prescribed by the Indian Penal Code.

Personal laws of all religions contain laws related to marriage, divorce, adoption, inheritance, maintenance and all, which are considered private matters of people. The making of UCC will lead to infringement of individual rights. As UCC imposes a uniform set of rules in these matters , which ultimately lead to intrusion in individual right to privacy.

The matters related to all above are considered to be sacred and no religion wants it to be interfered with by others . it wants its law to be in its own ambit rather than being out of their personal law. It somewhat infringes their right to privacy by taking over their matter in the court , where UCC is implemented in order to provide justice to all, which can even be done through their respective personal law.

The above points show the chance of violating fundamental rights . But it does not say that it completely violates fundamental rights , it does have some characteristics too , which strengthen the fundamental rights as well.

:Is UCC constitutionally justified :

UCC can be constitutionally justified as it carries the following element and features to comply with it.

1. Equality and non discrimination: article 14 of the Indian constitution deals with equality before law . UCC ensures equal law for all regardless of religion, region and all. It guarantees that all citizens follow the same set of laws and do not face any discrimination .
2. Secularism : Indian preamble carries the concept of secularism in it. It has enshrined secularism in its preamble . The coming of UCC will be a step toward secularism. UCC reflects that the law does not get influenced by religious belief , it upholds its own secular character of state above all.

There are other elements too like national integration, modernization, gender equality and many more things, which proves that UCC is constitutionally justified and verified.

:FAMOUS CASE LAW WITH CITATION:

There were certain case laws, where the need of UCC was felt.

1. Shayara Bano vs. Union of India

Citation - Shayara Bano vs. Union of India [(2017) 9 SCC 1]

better known as the 'Triple Talaq Case', gave India a historical judgment that declared the practice of Triple Talaq to be unconstitutional. The Triple Talaq judgment is widely regarded throughout the jurisdictions as a safeguard against social evils. Because of the astute and justified reasoning provided by the majority bench of the Supreme Court, India finally abolished the regressive and immoral practice of instantaneous Triple Talaq. This case is confined to the topic called "Triple Talaq".

Though later because of some political and religious reason, the judgment could not be applied in India. But later in 2019, it was again declared to be unconstitutional through legislation.

2. Sarla Mudgal vs. Union of India (1995):

Citation - Sarla Mudgal, President, Kalyani v/s Union of India, 1995 AIR 1531

This case is considered as a landmark judgment by the Supreme Court. The Practice of changing one's religion to have a 2nd marriage without dissolving the first marriage was held to be invalid. As it was against justice, equity and good conscience. Conversion from one faith to another doesn't dissolve the marriage of an individual. The marriage can only be dissolved by decree of divorce obtained by the competent court on any of the grounds under Section 13 of the Hindu Marriage Act, 1955. The court also declared that if a person is found guilty then he will be charged under Section 494 of the Indian Penal Code, 1860 for bigamy.

The above two cases shown the necessity of UCC to avoid such complex situations and provide justice to all regardless of their religious background.

:CONCLUSION :

After analyzing and studying UCC in depth, it is clear that it does have both positive and negative sides. The only way of its implementation should be done in such a way that it reduces the chance of conflict and problem in future. The law, no doubt has more inclination

toward positive change in society but it should deal with positive and modern techniques of precaution to deal with it further.

The UCC was in need for a long time but it could not come to existence because of a lot of hindrance by religious groups. Now , new India requires modernization in personal law, by replacing it with UCC .

