



Uniform Civil Code and the Indian Constitution

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ABSTRACT

This paper primarily discusses about the concept of UCC and also the scope and importance of UCC. It further discusses the legal dimensions of UCC. The prime focus of this paper is to qualify the UCC from three major aspects i.e. 'The Constitution of India', 'the judgments passed by the apex court of India' and 'the constituent assembly debates'. The major concern of paper is to qualify UCC from above mentioned three major aspects, so that UCC could be said Intra-Verse to the Constitution of India So that no question of constitutionality of UCC could arise. And reaches to the result that UCC in no way violates any provision of the constitution of India. However, it tries to conclude that UCC is the constitutional provision mentioned under directive Principles of State Policy. Also discusses the constituent Assembly debates to show that members of Assembly have always been in favor of UCC and put this liability to the future governments. This paper also discusses the judgments by the apex court wherein court suggests that it is right time to apply UCC in the nation and there is strong need of UCC due to the availability of present favoring conditions.

Introduction:-

In India various religions are followed by its citizens like Hindu , Islam , Buddhism, Jainism , Christianity , Sikhism etc. to name a few. In constitution India is constituted a secular state. It was not enshrined in its original draft but later by the 42nd amendment of 1976. The word 'secular' means that state shall not have its own religion and its citizens will not be discriminated only on the basis of religion. Which means citizens can freely follow any religion whatever they wish? In our constitution this freedom is enshrined under Article 25¹ and 26². The term religion becomes more important in the context of India because the partition of India and Pakistan happened only on the basis of religion. Political Institutions have used religion as a weapon since ages and have been a source of conflict. A number of cases of conflict between countries are only due to religion. In India a number of laws are enacted to govern the religion. These laws are in the category of personal laws. Hindu laws are to govern the Hindus, Sikhs, Jains & Buddhists. Muslims by Muslim laws, Christianity by Christian laws. Even after enactment of lot of personal laws the question which remains unanswered is of uniformity. However, enactments are there to govern the religions but in those enactments discrepancies are there in a large number. In some cases discrimination is on the basis of gender. In some cases it is on the basis of religion and sects. To overcome these defects it is necessary to have a uniform civil code, which means a common civil code for all citizens irrespective of their religion, gender, sects. The UCC will take place of personal laws enacted to govern the religion. UCC is also discussed

¹ Article 25

² Article 26, *Research Scholar, ** Research Supervisor

under Article 44 of Directive Principles of State Policy. But it is denied that constitution does not permit the application of UCC. The present research paper aims to discuss the provisions which signals the application of UCC green for eg. The constitutional provisions, case laws and constituent assembly debates.

Research Methodology:-

This is a doctrinal study researcher have used case laws, laws books and have made extensive study of constituent assembly debates to make a holistic view.

Objectives:-

- 1) To understand the need of Uniform of code for present India.
- 2) To study if the uniform civil code violates the provisions of Indian Constitution.

Hypothesis:- UCC does not violates the provision of Indian Constitution.

Indian Constitution and Uniform Civil Code:-

Part IV of the constitution contains certain principles called directive principles, which are fundamental in the governance of the country and state is under duty to apply these principles in making laws, although they are not enforceable by the court³. They lay down the objective or goals which the state should try to achieve.

In this way Article 44 is there which directs the state to secure a UCC for the citizens. It makes it directory for the govt. that state shall take positive steps towards the enactment of UCC irrespective of religion of the parties.

The preamble of Indian constitution declares India a secular state meaning there by that state shall not have its own religion and treats all religions equally.

Also there is a fundamental right under Article 15 which provides that citizens shall not be discriminated only on the ground of religion, race, caste, sex and place of birth.

But with that there is also a provision which guarantees the freedom of religion under Article 25&26 of Indian Constitution. This provision is considered as a shield by the opponents. It is true that this article provides freedom of religion. The term religion is not defined under the constitution. A religion is only concerned with relation of man with God. In a case of SR Bommai v. UOI(1994/1918). SC held that religion is the matter of individual faith.

Also the provision of freedom of religion are not absolute, there are also under some restrictions of public order, morality and Health, regulation of economic, financial, political and secular activities.

The provision of Article 25 shall not affect the operation of existing law or prevent the state from making any law regulating or restricting any economic, financial, political or other secular activities which may be associated with the religious practice⁴. An activity will be treated as religious if it is regarded as essential and integral part of religion and it will be secular if it is not regarded as an essential and integral part of the religion.

³ State of Tamilnadu v/s Abu Kavur Bai. AIR 1984 SC 626.

⁴ Article 25(2)(9)

Supreme court also in the case of Sarla Mudgal v/s Union of India⁵ through Justice Kuldeep have observed that marriage, successions and like matters of a secular character can not be brought within the guarantee under article 25, 26 & 27.

Thus the provision of freedom of religion does not create any impediments in the way of unification of civil laws to regulate the people uniformly belonging to any religion.

Apex Court Judgment UCC:-

Supreme court at the number of times have stressed the need of UCC for India. In the case of Mohd. Ahmed Khan v/s Shah Bano Begum⁶ & Org Supreme court have observed "Article 44 of our constitution has remained a dead litter. There is no evidence of any official activity for framing a common civil code for the country. A common civil code will help the cause of national integration by removing desperate loyalties to laws which have conflicting ideologies. It is the state which is charged with the duty of securing a uniform civil code for the citizens of country and unquestionably, it has legislative competence to do so". Another celebrated case of Supreme court is Sarla Mudgal v/s Union of India⁷ where SC observed "The state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India is an unequivocal mandate under Article 44 of the constitution of India which seeks to introduce a uniform personal law a decisive step towards national consolidation. It appears that even 41 years thereafter the rules of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The governments which have come and gone have so far failed to make any effort towards unified personal law for all Indians. When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of uniform civil code for all citizens in the territory of India."

In recent Supreme court case on Triple Talaq where supreme court denied to hear Triple Talaq and UCC simultaneously here observed "This leads to the clear understanding that the constitution requires the state to provide for uniform civil code, to remedy and assuage maladies".

Therefore the Apex court in a number of cases have asserted the need of a UCC. However, it is true that there are obiter dicta and are not a binding judgments. Nevertheless the need for the UCC is timely repeated by the Apex court from the last 3-4 decades Supreme Court through its judgments trying to shake the legislative minds that it is a ripe time and UCC should be enacted for the whole of India.

UCC and The Constituent Assembly :-

The members who advocated the UCC in constituent assembly were KM Munshee, Krishnaswamy Ayyar and Dr. Ambedkar.

Mr. K.M Munshi submitted the following considerations:-

- a) He said "The ground that is put forward against it is firstly that it infringes the FRs mentioned in Article 19(A-25) and secondly it is tyrannous to the minority".⁸

⁵ 1995 AIR 1531, 1995 SCC (3) 635

⁶ AIR 1985 SC 945

⁷ 1995(3)SCC 635

⁸ CAB- Dated 23rd November 1948

- b) "As regards Article 19(A-25) the house has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this fundamental right of minority".⁹
- c) It must also be remembered that if this clause is not put in, it does not mean that the parliament in future would have no right to enact a civil code. The whole object of this article is that as and when the parliament think proper or rather majority in the parliament thinks proper an attempt may be made to unify the personal law of the country".¹⁰
- d) Mr Munshi argued further on the point of tyrannizing and said "A further argument has been advanced that the enactment of a civil code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced muslim countries personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a civil code. Take for instance Turkey and Egypt. No minority in these countries is permitted to have such rights. But I go further, when the Shariat was passed or when certain laws were passed in the central legislature in the old regime, the Khajas and Kutchi memons were highly dissatisfied. Then they followed certain Hindu customs, for generations since they became converts they had done so. They did not want to conform to the Shariat and yet by a legislation of the central legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khajas and Kutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? When you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a civil code, everyone who goes there from any part of the world and every minority, has to submit to the civil code. It is not felt to be tyrannical to the minority."

Next speaker Mr. Alladi Krishnaswami Ayyer made the following observation. He said :-

- a) "A civil code as has been pointed out runs into every dept of civil relations to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters How can there be any objection to the general statement that the states shall Endeavour to secure a uniform civil code throughout the territory of India?"
- b) "The second objection was that the religion was in danger that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely we want the whole of India to be welded and united together as a single nation."
- c) "When the Britishers occupied this country, they said we are going to introduce one criminal law in this country which will be applicable to all of citizens, be they Englishmen be they Hindus, be they Muslims. Did the Muslim stake exception and did they revolt against the British for introducing a single system of criminal law? Similarly we have the law of contracts governing transactions between Muslims and Hindus between Muslims and Muslims. They are governed not by the law of Kuran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence."
- d) "Therefore when there is impact between two civilization or b/w two cultures, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong

⁹ Ibid

¹⁰ Ibid

opposition by any section of the community, it would be unwise on the part of legislators of this county to attempt to ignore it. Today, even without Article 35 there is nothing to prevent future parliament of India from passing such laws. Therefore, idea is to have a uniform civil code.

The next speaker Dr. Ambedkar made the following observation and he said, “ My friend Mr Hussain Imam is rising to support the amendments, asked whether it was possible and desirable to have a uniform code of laws for a country so vast as this is now I must confess that I was much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country which is contained in the penal code and CrPC. We have the law of transfer of property, which deals with property relations and which is operative throughout the country. Then there are the NI Acts and I can sits innumerable enactments which would prove that this country has practically a civil code, uniform in its contents and applicable to the whole of the country. The only province the civil law has not been able to invade so far is Marriage and succession. It is this little corner which we have not been able to invade so far and it is the intention of those who have desire to have article 35 as part of the constitution to bring about that change. Therefore argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact covered the whole lot of the field which is covered by a uniform civil code in this country. It is therefore too late now to ask the question whether we could do it. As I say we have already done it.

Conclusion & Suggestions:-

The uniform civil code is not constitutional obligation but is a weapon for creation of amity among the citizens. It is tool against gender injustice. It is a way to apply constitutionalism in the real sense of the world. India is a vast country having multi religions and cultures and efforts have always been made to strike a balance among these. In India freedom of religion is a fundamental right with others rights of equality and non-discrimination. There have always been efforts to make reforms of practices followed by majority and to offer protections to minority. Discussion on UCC is not now but it is a dream of our ancients which they could not fulfilled due to ripped time for it.

In Western countries the balance b/w minority and majority is striked by following different practices . But those practices can not be a role model for us because our conditions are not same. In most countries claims are made to be a secular country but reality is always towards a particular religion. Such practices is also not suitable for Indian conditions.

India is a secular country so it is obvious that state interfere in religions matters should be upto the extent it is for the upliftment of humanity. The application of UCC should also be carefully. It should be seen that whether it would be optional or mandatory in its application . Whether is should take place of the prevailing personal laws or should be a blend of the personal laws or should be a purely new legislation.

It is also clear that UCC is not violation of any provision of the Indian constitution, but rather it is an assertion of the constitution.

It is also necessary that parliament should pass a new legislation of UCC and it should not be a blend of existing personal laws like special Marriage Act. People of India should also make an understanding that religion and personal laws are two different spheres. Despite the application of UCC people would have a fundamental right to freedom of religion. It is ripped time to take an effective step towards the passing of UCC. Because the Law commission in its report submitted in 2017 observed “ When the law commission put forth its questionnaire in public domain in Nov 2016 for the people to respond, it received over 75375 responses suggesting various ways in which reform could be executed. This indicated that public now deserves a reform of the law.”

Dr. Tahir Muhmad has said in his book 'Muslim & Personal law(1977 edition) " In passuaner of the goal of secularism, the state must stop administering religion based personal laws."

Thus, there is an urgent need to bring in uniform civil code in India.

