



UNIFORM CIVIL CODE:- A LEGAL STUDY

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In present day Uniform Civil Code is not a latest phenomenon rather a highly debatable issue and a topic of controversy. Article 44 of The Indian Constitution¹ Clearly defines about Uniform Civil Code and according to Article 44² “The State shall endeavour to secure the citizens a uniform civil code throughout the Territory of India. The main purpose of Article 44 is to address the discrimination between different groups and harmonise the cultural groups all among the country. In simple words, Uniform Civil Code is one law for the whole nation and applicable to all religions in common issues like divorce, marriage, adoption and maintenance etc³. When Baba Saheb, Dr. Bhimrao Ambedkar formulate the Indian Constitution said that “uniform civil code is voluntary and desirable, it would be mandatory to implement when nation would ready to accept it or when it gained social acceptance”. In a speech Baba Saheb said it is wholly the state power to execute it or not⁴.

ORIGIN OF UNIFORM CIVIL CODE:-

Uniform Civil Code is a historic topic and highlighted from Colonial India. During this time in 1835 British government submitted its report regarding the uniformity in codification of Indian Law. Then in 1941 British rule compel the government to make B.N Rao Committee to codify Hindu law. Then after consider these recommendations in 1956 bill was adopted named as Hindu Succession Act⁵. The purpose of this code is to amend and codify the law among Hindu, Jain, Sikh and Buddhist. Hindu code bill also drafted by Dr B R Ambedkar. The main purpose of this code is to legalise inheritance to daughter, divorce, polygamy opposed. Despite of these bill four different laws was passed⁶:-

1 Hindu Marriage Act,1955.

2. Hindu Maintenance and Guardianship Act,1956.

3. Hindu Adoption and Maintenance Act,1956.

4.SpecialMarriageAct,1954.

CONSTITUTIONAL PERSPECTIVE IN REFERENCE TO UNIFORM CIVIL CODE

Our nation is fastest emerging global power but half of its population especially women live life with struggle from starting days. Women always to be a victim in the hands of society males, politics, families not only at economic level but moral level also. So many cases registered about the violation of right of females⁷. To secure the rights of these women our Indian Constitution provide strong safeguard under Part-3. According to this part⁸ “The state has duty not to make those laws which create discrimination on the grounds of religion, race caste, sex, creed and place of birth. Further Constitution of India also provides that every religion has power to make their own personal law. This power are clearly provided under Article 25 to 28⁹.

Article 37 of the Indian Constitution clears that ‘*Directive Principle of State policy shall not be enforceable in any court never the less they are fundamental in governance of the country*’.The 42nd constitutional amendment act also inserted in Preamble the word Secularism which later on further discuss during the case of *S.R. Bommai vs Union of India*¹⁰. In this case Hon’ble Supreme Court held that Secularism is a basic feature of the Constitution.

OTHER PROVISION OF UNIFORM CIVIL CODE

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¹ Act, 1950.

² The Indian Constitution Act, 1950.

³ <https://jcil.syndicate.com/wp.content/upload/2017:11:satyam-shobitabh.pdf>.

⁴ *Ibid*.

⁵ Act, 1956.

⁶ <https://www.drishtias.com:daily-updates/daily-news-analysis/uniform-civil-code-9>.

⁷ Hazarika, Raya. “Should India Have a uniform civil code? SSRN Electronic Journal 2010.

⁸ Part-4 of The Indian Constitution Act, 1950.

⁹ Supra note-2

¹⁰ (1994)3 SCC



Although Uniform Civil Code is clearly discussed under Article 14, 25 to 28, Article 37 and Article 44 of the Indian Constitution but there are some other provision also other than Constitution of India where uniform Civil code is provided¹¹ e.g.

The Indian contract act 1872,
The Partnership act 1932,
The Civil Procedure Code 1908,
The Evidence act 1872 Act
The Transfer of Property Act 1882.

JUDICIAL INTERPRETATION IN REFERENCE TO UNIFORM CIVIL CODE

Till now there is no special law which explains Uniform Civil Code. The reason is that Uniform Civil Code is a part of Directive Principle of State Policy. Only judicial decisions and personal laws which provide uniform civil code. Some important and relevant judgements discuss below clears the status and need of uniform civil code.

1). The first case in limelight was *Mohammed Ahmed Khan vs Shah Bano begam*¹² a 73 years old Lady demanded maintenance under Civil Procedure Code despite of under Muslim law. Her husband gave her divorce using Triple Talaq and denies to give her maintenance under Criminal Procedure Code¹³. Then she moves to Court and court gives decision in Shah Bano favour. To avoid this decision her husband moves to Supreme Court where Court held that section 125 Criminal Procedure Code applies to Wives, Children and Parents. Here wives mean all wives not only Hindu wife. Further Supreme Court recommended the house to amend the new code about uniform civil code. After this landmark judgement many criticism, agitation, debates were held and due to this government comes under pressure and finally passed a “The Muslim Women’s Right to Protection and Divorce Act 1986. This Act clearly denied to applicable of section 125 Criminal Procedure Code on Muslim wives¹⁴.

2). Thereafter again historic judgement passed in case of *Sarla Mudgal & others vs Union of India & others*¹⁵. During this case question arises as whether a Hindu Husband by embracing Islam can marry second marriage. Then *Justice Kuldeep Singh* held that if a marriage solemnised under Hindu law than that marriage can only be dissolved under any grounds provided under Hindu Marriage Act¹⁶. Conversion to Islam does not mean automatic dissolution of marriage and hence punishable under section 494 of IPC¹⁷. Court while delivering this judgement further directed the government to implement Article 44¹⁸. In this case Honble court requested to our Prime Minister of India to have a look on article 44 of the Indian constitution and to implement the Uniform Civil Code.

3). After above two judgements the other case also highlighted and gains attention was *Daniel Latifi and others versus Union of India*¹⁹. in this case protection of Muslim women was challenged on the ground that article 14,15 and 21 of the Indian Constitution was violated a five judges bench represented by Justice Rajendra Babu held that in interpretation of matrimonial relation we must consider social conditions prevalent in the society. Further court held ‘this law is constitutional and amount received under section 125 Criminal Procedure Code under a Iddat period must be enough to maintain her life and hence muslim women who get divorced is entitled to maintenance under Criminal Procedure Code, 1973’.

4). Thereafter *John Vallottam case*²⁰ in 2003 came in limelight. In this case a PIL²¹ was filled by a Christian Priest with others and challenge the validity of Indian Succession Act,1956. According to priest Indian Succession Act is applicable to non-Hindus of India only. But Section 118 of such Act²² is discriminatory against Christians on the ground that it imposes unreasonable restrictions regarding donation of property by will to charitable. A three judges bench held that this

¹¹ . <https://www.drishitias.com:daily-updates/daily-news-analysis/uniform-civil-code-9>

¹² (1985)2 SCC 556

¹³ Act, 1973

¹⁴ Supra note-10

¹⁵ AIR 1995 SC 1531

¹⁶ Act, 1955

¹⁷ The Indian Penal Code, 1860.

¹⁸ Supra note-1

¹⁹ 2001 7 SCC 740

²⁰ 2003(5) SCALE 384

²¹ Public Interest Litigation.

²² The Indian Succession Act,1956



section

is

unconstitutional.

5). The last and recent case is *Shyara bano vs Union of India*²³ comes in limelight. In this case Supreme Court join six petitions which invalidate the talaq-ul-biddat. This case was totally in favour of Muslim women in reference to their fundamental rights and human rights but still the concept of uniform civil code was not clear during this case.

PROS AND CONS Nation One Law'

In reality uniform civil code is the need of nation. The main purpose of codification of uniform civil code is to replace the personal law on basis of Customs and Scriptures. Although Goa is the first Indian state who implement the uniform civil code in form of common law²⁴. This code came during 19th century at the time of the Portuguese Civil Code. Now some other states for example Maharashtra, Uttarakhand, Himachal Pradesh, Rajasthan also in queue to implement the uniform civil code as soon as possible. Here if uniform civil code came then there would be some pros and cons of uniform civil code which are discussed below²⁵:-

Pros Cons:-

India is secular country and if uniform civil code came then it helps in integration of India as compare to since independence. Uniform Civil Code help in personal issues like divorce, maintenance, adoption, marriage etc. It provides equal status and gender equality to all citizens. Young population will aspire after uniform civil code implement. In nutshell, if uniform civil code came the dream of India 'One became true²⁶. Thus it will promote national integration also. On the one hand there are advantage of uniform civil code at the same time the other side of coin is cons or disadvantage of uniform civil code. India is a country where different religion people reside so it is not possible practically to came up with same or uniform laws as their religious practice disturbs by rules and majority of religious communities. Our Constitution is lenient in nature. It provides every citizen the right to freedom of religion and if uniform civil code came then it would violate this right making of uniform civil code means borrowing of personal law which leads to communal violence because there were already controversies amidst Ban of beef, hijab, love jihad etc. Hence uniform civil code makes these things worse and became Muslim more insecure and vulnerable²⁷.

CONCLUSION AND SUGGESTIONS-

After doing above study paper is concluded that if article 44 of the Indian Constitution stressed on implementation of uniform civil code. On the other side Article 37 provides that the principle of state policy shall not be enforceable in any court but further this article protected the state that never the less fundamental in governance. Hence in short Article 44 is not fundamental in governance. Preamble of our Constitution uses the words secularism which means every citizen has freedom of religion which is deeply explain in case of *S.R. Bommai vs Union of India*²⁸.

Thus from the both the above study researchers concluded that "every state should implement uniform civil code". only uniform civil code is the way to complete the dream one nation one law. Law commission of India also recommended the codification and amendment of all personal laws so that they could reach at certain uniform principal and facilitate equality.

The 22nd law commission²⁹ also looking on the framing of uniform civil code but the matter as per Supreme Court Judgements and also government. The framing of uniform civil code is totally the matter of policy of elected representative of people and only legislation have power to enact it or not³⁰.

²³ CNo. 118 of 2017

²⁴ <https://wap.business/standard.com/amp/about/what-is-uniform-civil-code>.

²⁵ <https://www.legalserviceindia.com/legal/article-4743-implementation-of-uniform-civil-code-in-india-html>

²⁶ <https://www.iasexpress.net/uniform-civil-code/>.

²⁷ Jain M.P. Indian Constitution law 904 (5th Ec. Wadhwa and company Nagpur New Delhi 2008]196

²⁸ (1994)3 SCC

²⁹ <http://www.thehindu.com/news/national/uniform-civil-code-neither-desirable-nor-neccessary-at-this-stage-says-law-commission/article61498390.ece/amp>.

³⁰ <https://www.legalserviceindia.com/legal/article-4743-implementation-of-uniform-civil-code-in-india-html>.