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Union Civil Code in India - A history

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Union Civil Code in India is a widely debated topic lately since the first petition was filed in 2019 to seek for framing of UCC to promote National Integration and Gender Justice, equality, and dignity of women.

Uniform Civil Code resonates with one country one rule to be applied to all religious communities.

The term "Uniform Civil Code." Is explicitly mentioned in part 4 article 44 of Constitution. Article 44 says, "the state shall endeavour to secure for citizens a Uniform Civil Code throughout territory of India" (1) Currently personal laws of various communities are governed by their religious scriptures.

Implementation of Uniform Civil Code across the nation is one of the demands pursued by India's ruling Bhartiya Janta party. Many religious communities are governed by their respective personal laws, and their personal laws are different from public Law, they cover area like marriage, divorce, maintenance, inheritance, adoption, and succession of property. Meanwhile, Article 25-28 of Indian Constitution guarantees of religious freedom to India Citizens and allows religious groups to maintain their own affairs, Article 44 of the Constitution expects the India state to apply directive principles and common law for all Indian Citizens while formulating National Policies. (2,3)

The issue has been at the center of political narrative and debate for over a century and a priority agenda for the Bhartiya Janta Party (BJP) which has been pushing for Legislative in Parliament. The party was the first to promise the implementation of UCC if comes to power and the issue was part of its 2019 Lok Sabha manifesto. (4)

Article 44 correspondence with directive principles of state policy stating that state shall endeavour to provide for its citizen a Uniform throughout territory of India.

To know the historical perspective, let's investigate its origin during Colonial Period In India.

- Pre-Independence (Colonial Era)- The Lex Loci Report of October 1840 – it stressed the importance and necessity of uniformity in the codification of India Law, relating to crimes, evidence, and contract but, it also recommended the personal law of Hindu and Muslims should be kept outside such codification.(5)

  The Queens 1859 Proclamation – it promised absolute non-interference in religious matters.

- So, while criminal law was codified and became common for whole county, personal laws continue to be governed by separate codes for different communities.
- During the drafting of Constitution, prominent leaders like Jawahar Lal Nehru and Dr. B.R. Ambedkar pushed for Uniform Civil Code.

(6) However, they included the UCC in the directive principles of state policy CDPSP (Article 44) mainly due to opposition from religious fundamentalists and a lack of awareness among the masses during the time.

India State of Goa was separated from British India due to colonial rule erstwhile Portuguese Goa and Daman,

retained a common family law knows as Goa Civil Code and thus being date following India's independence, Hindu Code Bills were introduced which largely codified and reformed personal laws in various sects among Indian Religions, like Buddhists, Hindus, Jains, and Sikh while exempted Christians, Yews, Muslims, and Parsis being identified as district communities from Hindus.

Some of the reforms of this period were:-

- The Hindu Code Bill – The Bill was drafted by Dr. B.R. Ambedkar to reform Hindu Laws, which legalized divorce, opposed polygamy, gave right of inheritance to daughters. Amidst intense opposition of the Code, A diluted version was passed via four different laws.
- The Hindu Succession Act, 1956 originally did not give daughters inheritance rights to sustenance from joint Hindu Family. But this despairing was removed by an amendment on Sept.9, 2005.
- The Hindu Marriage Act.
- Minority and Guardianship Act.
- Adoption and Maintenance Act.
- Special Marriage Act – It was enacted in 1954, which provided for Civil Marriage outside of any religious personal Law.

Judicial Interventions:-

UCC emerged as a crucial topic of interest in Indian Policies following the Shah Bano Case in 1985 (7). The debate arose when question of making certain laws applicable to a citizen without abridging the judgemental right of right to practice religious functions. The above then focused on Muslim Personal Law, which is partially based on Sharia Law, permitting unilateral divorce, polygamy and putting it among the legally applying the Sharia Law.

UCC was opposed twice, in November 2019 and March 2020, but was withdrawn soon, both times without introduction in parliament.(8)

There are some cases which made Uniform Civil Code to implement essentially.

- Shah Bano Case (1985) – A73 yesr's old women called Shah Bano was divorced by her husband using Triple Talaq (saying I divorce that three times) and was denied maintenance. She approached the Courts and District Court and High Court Ruled favours. This Led to her husband appearing to Supreme Court saying that she had fulfilled all his obligations under Islamic Law.
- The Supreme Court ruled in her favour in 1985 under the maintenance of wives, children, and parents' provision (Section 125) of all India Criminal Code, which applied to all citizens irrespective of religion. Further it commanded that Uniform Civil Code could be set up.
- After this historic decision, nationwide discussion, meeting, and agitation were held. The then Government under pressure passed the Muslim Women's (Right to Protection on Divorce) Act (MNA) in 1986, which made Section 125 of Criminal Procedure Code inapplicable to Muslim Women (9).
- Saria Mudgal Case – in this case the question was whether a Hindu Husband married under Hindu Law, by embracing Islam, can solemnize a Second Marriage under Hindu Law can only be dissolved on any of the grounds. Specified under Hindu Marriage Act, 1955, conversion to Islam marrying again would not itself dissolve the Hindu marriage under the Act and thus a Second marriage solemnized after converting to Islam would be an offence under Section 494 to Indian Penal Code (10).
- In one of another case, Shayara Bano, a 35-year-old woman challenged the practice after getting divorced under Triple Talaq Custom. In 2017, the Supreme Court in a landmark 3-2 verdict, had struck down instant Triple Talaq, Three of Five judges on the Constitution Bench had called the practice un-Islamic & arbitrary and disagreed with the view that triple talaq was integral part of religious practice (11).
- The ruling of SC is truly a watershed moment in women empowerment movement in India. The Court has given progressive thoughts enshrined in Constitution Precedence over Personal Law in society.
- These are some of the cases which highlighted that uniformity in laws for all religious groups is mandatory and necessity of Uniform Civil Code.

Let's look back into history to know much about it.

- The devote for Uniform Civil Code dates to Colonial Period in India, prior to British Rule, under East India Company (1757 – 1858) they tried to reform local social and religious customs by imposing women ideologies on India.
- Through-out the country, there was variation in preference for scriptural or customary laws, because in many Hindu and Muslim Communities, they were sometimes at conflict, such instance was present in communities like Kats and Deavidians. The Shudras, for instance allowed widow remarriage – completely, which is contrary to scriptural Hindu Law (12).
- The Hindu Laws got preference because of their relative ease in implementation, preference for such a Brahminical System by both British and Indian Judge, and their fear of opposition from High Caste Hindus.
- The Difficulty in investigating each specific practice of any community case-by –case, made customary laws harder to implement.
- The Muslim Personal Law based (on Sharia Law) was enforced in different part of India. There Personal Laws were discriminatory against women.

Due to Pressure from Muslim elites, the Shariat Law of 1937 was passed which stipulated that all Indian Muslim would be governed by Islamic Laws on marriage, divorce, maintenance, adoption, succession, and inheritance.(13)

- The Sharia Law in Islam had provisions that were discriminatory of women their status and rights. (14)
- Certain Hindu Customs prevalent at the time discriminated against women by depriving them of inheritance, remarriage, and divorce.(15)
- The British and Social Reformers like Ishwar Chandra Vidhyasagar were instrumental in outlawing such custom by getting reforms passed through Legislative process (16).

Since the British found opposition from orthodox community leaders only the Indian sucession Act 1865, which was also one of the first law to ensure women's economic Security.

- The case for equal rights for women was only at its initial stages in India at that time and the reluctant of British Government further dithered the passing of such reforms. The all India Women's Conference (AIWC) expressed its disappointment with the male dominated legislature and Lakshmi Menon said in a AIWC Conference In 1933.(17) If we are to seek divorce in Court, we are to state that we are not Hindus, and are not guided by Hindu Law. The All-India Women's conference demanded a Uniform Civil Code to replace the existing Personal Law, basing it on the Karachi Congress Resolution, which guaranteed gender equality.
- After Independence the First Prime Minister of Indian Republic, J.L. Nehru his supporter and women members wanted a Uniform Civil Code to be implemented (18) but is was one of most debated task in the Constituent Assembly as it set about the Draft of drafting a new constitution for recently – Independent sovereign nation of India. The Constituent Assembly saw a division along communal lines among members and clause was adopted only after B.R.Ambedkar, Chairman of the Constitution Drafting Committee assured the minorities that article would not thrust upon them.
- On November 23,1948, when the article was being discussed, Mohammad Ismail a member of the member of Constituent Assembly from Madras. He was elected to Constituent Assembly from Muslim League, and he had been part of Government of Fagulul Haque. In that he proposed that a provision, be added to Article 35, which if adopted, would have allowed any group. Section Dr. Community of people to decide against giving up its own personal laws in case it had such a law.
- Ismail asserted that the right of a group Dr. Community to follow its own Personal Law was among the fundamental rights, since any tinkering with it would be "tantamount to inheritance with the way of life of those people who have been observing these laws for generation ages". He was followed by Naziruddin Ahmad of West Bengal, who agreed that it was not just Muslim – Each Religious community has certain Religious Laws, certain Civil Laws inseparably connected with religious beings and practices.
- When Mahmood Ali Baig Sahib Bahadur of Madras asserted that as for as Muslim were

concerned; "their Laws of Succession, inheritance, Marriage and Divorce are completely dependent upon their religion". M Ananthasayanam Ayyangar, who went on to become Second Speaker of Lok Sabha, said "marriage among Muslim are matter of contract".

- To this Baig responded that this contract "is enjoyed on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all". Backing the motion moved by Mohammad Ismail, B. Pocker Sahib Bahadur (Madras) referred to the questions being raised by some Hindu Member to the Proposed Article.
- I know there are great differences in the law of inheritance and various other matters between the various Section of Hindu Community. Is this assembly going to set aside all these differences and make them Uniform? By Uniform, I ask, what do you mean and which particular law of which community as you going to take as the standard? He asked "what have you got in your mind in enacting a clause like this? There are the Mitakshara and Dayabhaga Systems: there are so many other systems followed by various other communities, what is it that you are making the basis?

What have you got in your mind in enacting a clause lie this?

- There are Mitakshara and Dayabhagya systems: there are so many other systems followed by various other communities. The Lawyer – Educationist Km Manshi (Bombay) opposed any more to amend the Aticle, saying the law would affect members of all religions.
- He received support from several other Hindu Members . Are we going to permit this? Piecemeal legislation on the ground that it affects the Personal Law of the Country. It is therefore, not merely a question for minorities but it also affects the majority. I know there are many among Hindus who do not like a Uniform civil Code because they take the same view as Honourable Muslim Members who spoke the best. They fact that the Personal Law of inheritance, succession etc. is really part of their religion. Mulim said, Ambedkar too opposed the amendment pointing out that in North Malabar (Kerala) "The Marumakkathayam Law applied to all – not only to Hindus, but also to Muslim, and it is to be remembered that the Marumakkathayam Law is matriarchal from of law and not patriarchal form of Law.
- Ambedkar too opposed the amendment pointing out that North Baba Saheb then went on to Research Mulim, saying that, " they have read rather too much into article 35, which merely proposed that state shall endeavour to secure a Civil Code for the Citizens of the Country.

It does not say that after the code is framed the state shall enforce it upon all citizens. It is perfectly possible that future Parliament may make a provisions by way of making a beginning that Code shall apply only to those who make a declaration that they are prepared to be found by it, so that in the initial stage, the application of the Code may be purely voluntary. Parliament may feel the ground by some such method.

On this Ambedkar said, "it is not a noble method. It was adopted in the Shariat Act of 1937. When it was applied to Mussalmans who wanted that he should be bound by Shariat Act, should go to an officer of the State, make a declaration that he is a willing to be bound by it, and after he has made that declaration, the Law will bind him and his successors. It would be perfectly possible for Parliament to introduce "Provision of that sort, so that the fear which my friends have expressed here will be altogether nullified. I therefore, submit that there is no substance in these amendments and I oppose them Ambedkar said. Finally, no consensus emerging on implementing Uniform Civil Code.

- The debate for Uniform Civil Code with its diverse implications and concerning secularism in the country is one of the most controversial issues in Twenty First Century Indian Policies. The major problems for implementing it are the country's Diversity and Religious Laws which not only differ sec-wise, but also by community, cases and religion women's rights group have said, that this issue is only based on their rights

and security, irrespective of its politization, the arguement for it are: its mention in Article 44 of the Constitution, need for strengthening the Unity and integrity of the Country, rejection of different law for different communities, importance for gender equality and reforming the Archaic Personal Laws of Muslims – which allows unilateral divorce and polygamy. According to Qutub Kidwai, the Muslim Personal Laws are Anglo – Mohammadan rather than solely Islamic. The Hindu Nationalista view this issue in concept of their law, which they say secular and equal to both sexes. In the country demanding a Uniform Civil Code is seen negatively by religious authorities and secular sections of society because of identified politics.

- The Sangh Parivar and Bhartiya Janta Party one of two major political parties which has taken up the issue. In September 2003, in an interactive session in PGI, Chandigarh then President A.P.J. Abdul Kalam supported the need of Uniform Civil Code keeping in view the population of the Country.(17)

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