

Uniform Civil Code In India: Constitutional Debate, Its Merits and Demerits

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At given point of time, a debate on Uniform Civil Code has become an issue at centre stage in Indian polity, religious organisations and other civil society groups. Those opposed to the existing system of personal laws advocate replacing it with a constitutionally directed uniform civil code so as rectify perceived gender related shortcomings of the current system as well as its supposed tendency to promote religious communalism and undermine national unity. Those who oppose the enactment of the UCC and depend the personal law system cite religious freedom and minority group autonomy and anticipate the danger that a UCC will amount to forced and oppressive assimilation.

It is a flawed perception that we have different personal laws because of religious diversity. As a matter of fact, law may differ from state to state. It appears that the framers of the Constitution did not intend total uniformity in the sense of one law for the whole country, because the power to legislate in respect of personal laws has been given to both Parliament as well as state assemblies. Thus, personal laws can differ at least within 29 states and the Union. The preservation of legal diversity seems to be the reason that personal laws were included in the Concurrent List. Thus, one nation, one law' is not what our Constitution really envisages. States have made more than a hundred amendments to even the Criminal Procedure Code and the Indian Penal Code. It is also a myth that we have uniform criminal law. Under this backdrop this paper tries to analyse the debate on UCC, its need as well as merits and demerits.

Constitutional Debate and Uniform Civil Code -

The debate for a Uniform Civil Code dates back to the colonial period in India. In pre independence era the Lex Loci Report of 1840 stressed the necessity of uniformity in codification of Indian law relating crime, evidences etc. but also recommended that personal laws of Hindu and Muslims should be kept outside such codification. (Along with Queen's proclamation of 1859). So personal laws continue to be governed by separate codes of different communities. In the post colonial era from 1947 prominent leaders like Nehru, Ambedkar pushed for a Uniform Civil Code. However they ended up proposing the UCC in to Directive Principles of State Policy (article 44). Mainly due to pressure from fundamentalists, lack of awareness among masses and time for its imposition was not proper on the eve of partition of country.

Debate on Uniform Civil code in the Constitutional Assembly experience different views particularly Muslim members of the assembly oppose the inclusion of Uniform Civil code in the constitution. Constituent assembly met to discuss the matter of Article 35, which reads thus, "The state shall endeavour to secure for citizens a uniform civil code throughout the territory of India". A member, Mr. Mohammed Ismail Sahib, member from Madras, wanted to add provision which provide any group, section or community of the people shall be obliged to give up its own personal law in case it has such a law. He said, "The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justifiable fundamental rights. It is for this reason that I along with other friends have given amendments "¹. Continuing his arguments he further said that, now

the right to follow personal law is part of the way of life of those people who are following such Laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything interfere with the way of life and religion of the people. Every section of the people, being free to follow its own personal law will not really come in conflict with others.

One more move was made by Mr. Naziruddin Ahmed to add the provision to article 35, "provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community in such manner as the Union Legislature may determine by law". In moving this, "I do not wish to confine my remarks to the inconvenience felt by the Muslim alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the draft constitution which mentioned that "all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion"². This was duly endorsed by B. Pokker Sahib Bahadur (Madras: Muslim) as it is a very moderate and reasonable amendment to article 35.

To the questions and apprehensions raised by the members belonging to the Muslim community, detailed replies were given by the other members like Mr. K.M. Munshi (Bombay), Mr. Alladi Krishnaswami Ayyar (Madras) and Dr. B.R. Ambedkar. Mr. K.M. Munshi replied that regarding article 19 it is quite clear that, "Nothing in this article shall affect the operation of any existing law or preclude the state from making any law (a) regulating or restricting". I am omitting the unnecessary words "or other secular activity which may be associated with religious practices: (b) for social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Rights of a minority. Mr. Alladi Krishnasamy said that a civil code, as has been pointed out, runs into every department 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. The second objection was that 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. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. And, he opined further that the future legislatures may attempt a uniform civil code or they may not. The inferences arrived from the discussions of Mr. K.M. Munshi and Mr. Alladi Krishnasamy clearly states that making such a uniform civil code rests with the Parliament.

Dr. B.R. Ambedkar clarified the matters with clarity of thought and vision that we have in this country a uniform code of laws covering almost every aspect of human relationship throughout the country such as uniform complete criminal code, penal code, the law of transfer of property and the negotiable Instruments Acts et al. Finally Dr. B.R. Ambedkar summarized and concluded with the following remarks: "I quite realise their feelings in the matter, but I think they have read rather too much into article 35 which merely proposes that the 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 merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary....so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there are no substances in these amendments and I oppose them"³. Ambedkar suggested to Muslim members "not to read too much into Article 44" and declared that uniform civil code will be applicable only with their consent.

Need of Uniform Civil Code -

A secular republic needs a common law for all citizens rather than differentiated rules based on religious practices. This was a key issue debated during the writing of the Constitution, with passionate arguments on both sides. The Indian Constitution was eventually stuck with a compromise solution, a directive principle that says: "The state shall endeavour to secure for citizens a uniform civil code throughout the territory of India." "One of the factors that have kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life." The UCC would, in concept, provide equal status to all citizens irrespective of the community they belong. Our Constitution provides the right to equality for all. India's cultural traditions and scriptures prescribe many values on equality among men and women. While we move forward towards development, we also must not forget to look back to take lessons from history.

The present personal laws are largely discriminatory towards women. For example, women do not have equal rights to inheritance, and in some cases, no right to inheritance. Post-Independence, attempts to protect these rights have been made through piecemeal legislations like the Hindu Succession (Amendment) Act, 2005. Personal laws have clashed with fundamental rights in various cases over the years and a handful of these instances have made it to court, often reigniting the debate on Uniform Civil Code. Presently, personal laws for each community are wildly different on how issues like marriage, inheritance, etc., are treated. This is in contravention with Article 14 of the Constitution, which guarantees equality before the law. According to the Committee on the Status of Women in India, "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens "equality of status, and is against the spirit of natural integration". The Committee recommended expeditious implementation of the constitutional directive in Article 44 by adopting a Uniform Civil Code.⁴ Goa has shown the way and there is absolutely no reason for delay. A secular India needs a uniform civil code.

Merits of Uniform Civil Code -

1. Gender equality-

By the implementation of a uniform civil code across the nation will enable to abolish gender discrimination from the nation. For example, according to various religious practices inheritance, succession, marriages etc are male dominated. After seven decades of independence women are battling for equality. Modern, liberal and gender-sensitive civil code is the need of the hour.

2. To bypass the contentious issue of reform of existing personal laws

Existing personal laws are mainly based on the upper-class patriarchal notions of the society in all religions. The demand of UCC is normally made by aggrieved women as a substitute for existing personal laws as patriarchal orthodox people still deem the reforms in personal laws will destroy their sanctity and oppose it profusely.

3. Cornerstone of secularism

The preamble of our constitution clearly states that India is a sovereign, socialist, secular state. But it is high time to think that whether the citizens of India will enjoy real secularism without the implementation of UCC. Even after decades of independence also different personal laws are in existence for different religions.

4. To support the national integration

All Indian citizens are already equal before the court of law as the criminal laws and other civil laws (except personal laws) are same for all. With the implementation of Uniform Civil Code, all citizen will share

the same set of personal laws. There will be no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.

5. Social reforms

Once the UCC is formulated across the nation, India will undergo another social reform in this century. For instance, in Indian context, Muslim women are denied with personal laws in relation to marriage, divorce etc. So after the implementation of UCC Indian women [especially Muslims, Christians etc] will also enjoy a codified personal law. Therefore, there will be a stepping stone towards another social reform across the country.

6. To accommodate the aspirations of the young population

A contemporary India is a totally new society with more than 50% of its population is below 25 years of age. Their social attitudes and aspirations are shaped by universal and global principles of equality, humanity, and modernity. Their view of shedding identity on the basis of any religion has to be given a serious consideration so as to utilize their full potential towards nation building.

Demerits of Uniform Civil Code-

1. Perception of UCC as encroachment on religious freedom

Many communities, particularly minority communities perceive Uniform Civil Code as an encroachment on their rights to religious freedom. They fear that a common code will neglect their traditions and impose rules which will be mainly dictated and influenced by the majority religious communities.

2. Government's interference into personal freedom

It is often viewed by many that it is the crooked game of the government to interfere in personal freedom of individuals. Constitution provides for right to freedom of religion of one's choice. They feared that UCC will reduce this freedom. But Uniform Civil Code is aiming only to protect and safeguard the rights of all citizens.

3. Difficulties due to India's diversity

The implementation of Uniform Civil Code is a cumbersome task due to wide diversity of our nation. Cultural differences from state to state and community to community is yet another hindrance for a unified personal law. Change in laws infavour of women like Hindu Act has neither brought about any change in the percentage of property held by women nor in their status. The customary practices among various communities vary a lot. It is also a myth that Hindus are governed by one uniform law. Marriage among close relatives is prohibited in the north but considered auspicious in the south. Lack of uniformity in personal laws is true of Muslims and Christians. The Constitution itself protects local customs of Nagaland, Meghalaya and Mizoram.

4. A threat to communal harmony

Potential misunderstandings regarding Uniform Civil Code created a fear among various religions especially minorities. It is often viewed by many religions that UCC is aimed against their religious customs and values. Before the implementation of UCC, authorities should win the trust of minorities. Otherwise, it will destroy the communal harmony of the nation.

5. Sensitive and tough task

Uniform civil code, in its true spirit, must be brought about by borrowing freely from different personal laws, making gradual changes in each, issuing judicial pronouncements assuring gender equality, and adopting expansive interpretations on marriage, maintenance, adoption, and succession by acknowledging the benefits that one community secures from the others. The government should be sensitive and unbiased at each step while dealing with the majority and minority communities. Otherwise, it might turn out to be more disastrous than beneficial.

Conclusion -

The goal of Uniform Civil Code should be achieved in a piecemeal manner, and with a commitment to justice and a respect for diversity. Legal pluralism is widely respected. We should remember that mere normative changes are not likely to bring social reforms. Hindu law has not been fully reformed after nearly 70 years of independence and despite several amendments. If this reform in Hindu law could not be achieved in one go, despite Hindus being a majority community, then taking up reforms in the minority communities in the absence of a conducive environment would be unwise. UCC can only emerge through an evolutionary process, which preserves India's rich legal heritage, of which all the personal laws are equal constituents.

The codification and implementation of UCC may not necessarily usher in the expected equality among genders and religions. Efforts should be made to reform personal laws which should first be initiated by the communities themselves. Ambedkar's ideas would be better adopted to implement the Uniform Civil Code. During the discussion in the Constituent Assembly, while replying to the objections of some members on the Uniform Civil Code, he had said that it would be implemented taking all the communities into confidence.

References -

1. Constitution Assemble Volume 8, Debate on Dt. 23.11.1948.
2. Debate in the Constituent Assembly of India, Volume 7.
3. Constitution Assembly Debates, Vol.7. pp. 546-554.
4. Towards equality: Report of the Committee on the status of Women in India(New Delhi: Government of India, Ministry of Social and Educational Welfare, Department of Social Welfare, 1974)