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Discourse of uniform civil code in India

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Abstract

India is a secular (Panthnirpeksha) democratic republic Rashtra. The Constitution of India guarantees equality to all the citizens irrespective of religions, gender, caste, and class differences. In this article I discuss about Article 44 of the Indian Constitution, which ensures the Uniform Civil Code. The government of India has done many efforts to implement the essence of the Uniform Civil Code in India. This code is related with the notion of equality. For example Hindu marriage Act 1955, Hindu Succession Act 1956 and the recently triple Talaq Bill were passed in parliament to ensure gender equality and democratic liberal principles. In this article, I will discuss why the Uniform Civil Code is necessary in India.

Keywords: Uniform Civil Code, India

Introduction

After the successful passage of the Citizenship Amendment Bill in Parliament, there is a strong demand from Indian masses to implement the Uniform Civil Code in India and to replace all existing personal laws with (UCC). They want proper debates on this important issue because in the name of Personal laws the rights of women are being suppressed so to uphold their fundamental rights we need (UCC). However, the Orthodox and so-called Intellectual people and pseudo-secular politicians do not want a constructive discussion on this topic. The Political Parties are fearful that if law relating to Article 44 is passed in parliament their smear campaign of politics around appeasement will end because their politics is based on the futile issue. What today we are witnessing is the result of flawed policies of the previous government. However, India also witnessed two-years successive debates on UCC in the Constitution assembly. Many leaders like Ambedkar supported the UCC in Constituent Assembly Debates.

India is a Secular Democratic, Republic country, which is based on the ideas of justice, liberty, equality, and fraternity. After Independence, the govt of India has framed many laws to make India a modern secular republic state. For example, the Special Marriage Act was passed in 1954 aims any citizen to have a civil marriage outside the realm of any specific religious personal law. The Hindu personal laws were codified in the year 1956 and recently parliament passed the bill to criminalize the triple talaq to secure Muslim women's rights in India and many more efforts are being done. But till now there is no uniform law in India despite many court directions. Article 44 has always been very contentious in India. There is very misinformation about Article 44 in India. Article 44 of the Indian Constitution states "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India".

What Court said on UCC?

In Shah Bano case (1985) The Supreme court had ruled in her favor under the "maintenance of wives, children and parents" provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion and also directed the Parliament to make a provision for a UCC. A large section of Indian Muslims campaigned for complete autonomy in their laws later under pressure of orthodox Muslim, the Rajiv government passed The Muslim Women's (Protection of Rights on Divorce) Act in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women. it was an injustice to millions of women who were fighting for their rights and zander equality supporters.

This blunder was done by govt just for their pity politics of appeasement Supreme Court in many historical Cases questioned the orthodoxy of personal laws.

In Sarla Mudgal (1995) case, The Court held that the first marriage would have to be dissolved under the Hindu Marriage Act, 1955. The man's first marriage would, therefore, still be valid and under Hindu law, his second marriage, solemnized after his conversion, would be illegal under Section 494 of the Indian Penal Code, 1860. The court also stressed the need for a UCC in India. In Daniel Latifi Case (2001) In this case, Muslim Women's Act (MWA) was challenged because it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21. The Supreme Court of India holds that there should be harmony between the Muslim Women Act and section 125 of CrPC. In John Vallamattom Case (2003), a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act (1925). This applies to all religion except Christians in India. Mr. Vallamattom contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The court later struck down the section as unconstitutional.

There has been a long tussle between the judiciary and govt over Fundamental rights and (Directive Principle of State Policy) DPSP. There is no doubt that fundamental rights are more important than DPSP. Court also asked the govt to make a balance between the FR and DPSP. Supreme Court in various judgments like Champakam Dorairajan Case (1952), GolakNath Case (1967), Kesavanath Bharathi Case (1973), Minerva Mill Case (1980), etc. have helped to resolve the conflict between DPSP and F.R

In Champakam Dorairajan Case (1952) Court said that All Fundamental Rights are superior to DPSP. In reaction, parliament passed and modified various FRs that were coming in conflict with DPSPs. In GolakNath Case (1967), the Court said that Fundamental Rights cannot be abridged or diluted. In response, parliament passed the 25th Amendment Act of the constitution which inserted Article 31C in Part III. Article 31 C contained two provisions: Kesavanath Bharathi Case (1973), Court said Parliament can amend any part of the Constitution, but could not destroy the Basic Structure of the Constitution The second condition of Article 31C was as pronounced as illegal and void as it was against the Basic Structure of the Constitution. The court also held that the power of judicial review cannot be taken out by Parliament. In reaction parliament brought the 42nd amendment act, giving more importance to DPSP. The Supreme Court held in Minerva Mills (1980): "Indian Constitution is founded on the bedrock of the balance between Parts III (Fundamental Rights) and IV (Directive Principles). To give absolute primacy to one over the other is to disturb the harmony of the Constitution". Article 31C embedded by the 42nd Amendment in 1976, however, lays down that if a law is made to implement any directive principle, it cannot be challenged on the ground of being violative of the fundamental rights under Articles 14 and 19 of Constitution.

Article 39(b) states that The State shall, in particular, direct its policy towards securing: that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. And Article 39(c) says that The State shall, in particular, direct

its policy towards securing: that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Therefore, this implies DPSP 39B and 39C has been given priority over Fundamental Right.

Discourse around UCC

In constitutional assembly debates, too there was a hot debate on UCC the debate was carried on under Article 35 of Drafting Committee report. Dr. Ambedkar favored the interferences in personal laws. Many Antagonist leaders in CA opposed the UCC. Mohammad Ismail from Madras, Nazir Ahmed, M, A Ayengar made statements in against of (UCC). However, some protagonists supported UCC like K, K Munshi, A, K Iyer. Dr. Ambedkar. They defended the right of the state to interfere in the personal laws of different communities. Ambedkar once in Constitution Assembly said, "I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? "We are having this liberty in order to reform our social system, which is so full of inequities, discriminations, and other things, which conflict with our fundamental rights." It also recommended the codifications of all personal laws. The whole discussion on the UCC is centered on the argument to replace individual personal customs and practices of marriage, separation, adoption, and successions with a common code. Those in favor of one code argue that it will end discrimination in religions.

However some critique says It is practical difficult to come up with a uniform civil code rules for personal issues like marriage because of large cultural in India across the religions, groups, sects and so on. Detractors also contend that it will ransack the nation of its religious diversity and violate the fundamental right to practice religion cherished in Article 25 of the Constitution. With the Uniform Civil Code, the freedom to profess the religion will be diminished. In fact, they hold that a state action to introduce the UCC is against the idea of democracy. The secular state is, after all, an enabler of rights rather than an inhibitor in sensitive issues of religion and individual laws. The Law Commission has suggested clearly that the UCC is "neither necessary nor desirable at this stage in the country". It said a unified nation does not necessarily need to have "uniformity".

Why do we need UCC?

Uniform Civil Code aims to replace personal laws based on the scriptures and customs of the religious community in India with a common set of rules governing every citizen. Therefore, it denotes the meaning of uniform laws that apply to all citizens of India irrespective of their caste, religion, birth, sex. The following three areas are covered by uniform civil code first, Personal status of a person, second, Rights relate to acquisition and administration of property, third Marriage, divorce, and adoption of a child.

First, we should ask a basic question, why there should be law in society? The answer is simple to protect our rights and to live a dignified life. For proper implementation of laws, we need people's consent or state intervention. Consent is the best way to follow the law until consent is not there, we need a state to follow the law, and people will follow laws only when there are no ambiguities in the law.

If people interpret the law according to their will, it causes variations and complexities of laws, thus there should be clarity in-laws and for clarity, and uniformity is inevitable. If people do not know what is right or wrong how would we make a strong nation? For proper rule of law, uniformity is necessary and people understand the things best only when there is clarity. In short, the Clarity and Uniformity of laws will develop the most developed political culture which would be much better than existing ones, this will strengthen the integrity and unity of the country.

Second, the domination in religions is more oppressive, it is better to have one law than multiple laws. One time State intervention is better than regular intervention. Further, these personal laws also violate the fundamental rights of an array of people. Fundamental rights are the basic structure of the Indian Constitution and mentioned in part three (article 12-35) of the Indian constitution.

Third, Partiality in the name of religion is justified by the orthodox section of religion. For women, this is the matter of right equality and security not of politicization or special privileged as mentioned in article 29, 30. In fact, article 44 is complementary of article 25,26,29,30 of Indian constitution. The following Article of the Indian Constitution guarantees religious and cultural freedom to every citizen of India. Article 25 states Freedom of conscience and free profession, practice and propagation of religion. Article 26 states the Freedom to manage religious affairs. Article 29 says the Protection of interests of minorities. Article 30 says the Right of minorities to establish and administer educational institutions.

Fourth, Most of the European countries has uniform laws which applied even to minorities; even some Muslims countries, for example, Turkey and Egypt personal laws of religious minorities were not protected;

However, there are some concerns around UCC, which we need to address swiftly, we need a balance between the plurality, and the secularism some critique says UCC is harmful to religious, cultural and lingual diversities. And some fear UCC would be led to majority rule over minority Also law commission in its report had said that a UCC is "neither necessary nor desirable at this stage".

Lesson from Goan model of UCC

Goa is the shining example of UCC in India. Goa is the only state in India, which has a uniform civil code. The Goa Family Law, originally the Portuguese Civil Code, continued to be implemented in Goa. The Uniform Civil Code in Goa allows equal division of income and property regardless of gender between husband and wife and also between children," In Goa Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession. When the Goa became the part of union territory in 1961 by the virtue of the Goa Daman and Diu administration act 1962, the parliament authorized the Portuguese civil code of 1867 to Goa.

The Supreme Court of India also hailed the State of Goa as a "shining example" where "uniform civil code" applies to all, regardless of religion except while protecting certain limited rights.

Conclusion

There is No doubt, Constitution of India under Article 44 empowers Parliament of India to enact Uniform Civil Code in India. After the enactment of the Hindu Code Bill, the

demand for reforms in Muslim Personal Laws and the Uniform Civil Code gained momentum. Constitutionally all laws including personal laws can be changed or amended. We have waited for Seventy years, now its need of the hour to have the Common Civil Code for all citizens, irrespective of religion, ensuring that their fundamental and Constitutional rights are not violated.

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