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Uniform Civil Code & Its Analysis

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Uniform Civil Code is a proposal in the Republic of India to formulate and implement personal laws of voters that apply to all voters equally despite their faith. The Republic of India has been debating having a similar civil code since the days of colonialism. East India Company attempted to modify the Republic of India's social and religious practices. British Empire's Divide and Control strategy included the legal separation of Hindus and Muslims. India may be a "secular" country, which suggests a division between religious and secular issues. Secularism refers to the equality of all religions and their adherents before the law. The highlighting part of the Journal talks about the meaning of the uniform civil code. Its historical background along with legislative reforms. It also deals with the case of Shab Bano case which highlights the maintenance proceedings in a country like India the conclusive part of this journal deals with policy and framework along with its challenges and finally, the journal ends with the legal status quo and international scenario.

Keywords: UCC, code, law, constitution.

INTRODUCTION

Uniform Civil Code is a proposal in the Republic of India to formulate and implement laic personal laws of voters that apply to all voters equally despite their faith. Personal laws square

measure distinguished from law and canopy wedding, divorce, inheritance, adoption, and maintenance.¹

HISTORICAL BACKGROUND

British Republic of India (1858–1947)

The Republic of India has been debating having a similar civil code since the days of colonialism. Before the British took over, the East India Company (1757–1858) attempted to modify the Republic of India's social and religious practices by imposing Western beliefs. The Lex Loci Report, published in October 1840, emphasized the significance and necessity of uniformity in the codification of Indian law about crimes, evidence, and contracts but advised that Hindu and Muslim private law should remain unbroken outside of any codification.

The British Empire's Divide and Control strategy, which allowed them to sever relations between vastly diverse communities and rule over the then-Republic of India, included the legal separation of Hindus and Muslims. British people divided this area, which could be governed by spiritual scriptures and the customs of the many communities, in accordance with their view of spiritual divisions in the Republic of India (Hindus, Muslims, Christians, and later Parsis). Numerous Hindu and Muslim communities were frequently at odds with one another throughout the country; such incidents were common among communities like the Jats and Dravidians. As an illustration, the Shudras permitted widow remarriage—completely against the letter of Hindu law.

Hindu rules were prioritized because they were very simple to administer, every British and Indian court preferred a patrician system, and high caste Hindus were a potential source of opposition. The problem in examining each unique application of any society, item by item, produced customary laws that were more resilient to implementation. The acceptance of particular rituals and traditions increased toward the end of the nineteenth century, favouring local opinion.

¹ Utkarsh Anand, 'Has The Supreme Court Set the Ball Rolling For A Uniform Civil Code?' (*Hindustan Times*, 15 March 2021) < <https://www.hindustantimes.com/india-news/has-the-supreme-court-set-the-ball-rolling-for-a-uniform-civil-code-101615802810671.html> > accessed 23 July 2022

Due to the diversity of Muslim native cultures throughout the Republic of India, the Muslim Personal Law (based on law) was upheld in different regions. Even though certain groups converted to Islam again, the dominant indigenous autochthonous culture persisted in their practice of Islam, hence the application of shariah law wasn't consistent throughout the nation. This allowed the traditional legislation, which frequently discriminated against girls, to be imposed on top of it. Women were typically barred from property inheritance and dowry settlements, both of which are permitted by law, particularly in the northern and western regions of the Republic of India. The Shariat law of 1937, which mandated that each Indian Muslim would be subject to Islamic laws on marriage, divorce, maintenance, adoption, succession, and inheritance, was passed as a result of pressure from the Muslim elite.

LEGISLATIVE REFORMS

Girls were not subject to discrimination under shariah law. They gave them marriage, divorce, and inheritance. Due to practices like marriage, which were encouraged by Muslim clerics and backed by shariah law in order to increase the number of Muslims worldwide, their situation was terrible, especially that of Muslim girls and daughters. By securing reforms that went via legislative processes, British citizens and social reformers like Ishwar Chandra Vidyasagar played a crucial role in the prohibition of such practices. Only the Indian Succession Act 1865, which was also one of the first laws to affirm women's economic security, attempted to relocate the privacy regulations to the realm of civil law because the British people were afraid of criticism from orthodox community leaders. The Indian Wedding Act of 1864 included rules and amendments specifically for Christian unions.

The Hindu Widow Marriage Act of 1856, the Married Women's Property Act of 1923, and therefore the Hindu Inheritance (Removal of Disabilities) Act of 1928, which was a crucial step, made it legal for Hindu women to own property. These legal changes were beneficial to Hindu females. However, due to opposition from conservative Muslim groups that desired to adhere to shariah law, such protection was not extended to Muslim girls. The Republic of India was only just beginning to advocate for women's equality at the time, and the British people's government's resistance further prevented the passage of such reforms. The All Republic of

India Women's Conference (AIWC) voiced their displeasure with the assembly associate's male predominance decried Lakshmi Menon aforementioned in an AIWC conference in 1933,

“The passing of the Hindu Women's Right to Property Act of 1937, conjointly called the Deshmukh bill, diode to the formation of the B. N. Rau committee, which was created to work out the need for common Hindu laws. The committee completed that it was time for an identical civil code, which might provide equal rights to girls in keeping with the fashion trends of society however their focus was totally on reforming the Hindu law. The committee reviewed the 1937 Act and counselled a civil code of wedding and succession; it was created once more in 1944 and sent its report back to the Indian Parliament in 1947. The Special wedding Act, which gave Indian voters the associate degree choice of a wedding, was initially enacted in 1872. It had a restricted application as a result it needed those concerned to renounce their faith and applied principally to non-Hindus. The later Special wedding (Amendment) Act, 1923 permissible Hindus, Buddhists, Sikhs, and Jains to marry either underneath their law or underneath the act while not renouncing their faith in addition to holding their succession rights.”²

Post-colonial (1947-1985)

Hindu Code Bill and addition to the DPSP Further information: Hindu code bills Jawaharlal Nehru, although he supported an identical civil code, he had to face opposition from senior leaders.

The Indian Parliament mentioned the report of the Hindu law committee throughout the 1948-1951 and 1951-1954 sessions. The primary Prime Minister of the Indian republic, Nehru, his supporters, and girl's members wished for an identical civil code to be enforced. As Law Minister, B. R. Ambedkar was guilty of presenting the small print of this bill. This bill found that the orthodox Hindu laws were confirmatory of women's rights since marriage, and divorce, and therefore the widow's right to inherit property were gifts within the Shastras. Ambedkar counselled the adoption of an identical civil code. Ambedkar's frequent attack on

²Anubhuti Rastogi, 'Uniform Civil Code' (*Law Times Journal*, 24 January 2019)
<<https://lawtimesjournal.in/uniform-civil-code/>> accessed 25 July 2022

the class structure and dislike for the higher castes created him less travelled within the parliament. He had analyzed the spiritual texts and regarded the class structure in Hindu society to be blemished in line with him, solely the Uniform Civil Code bill was this chance to reform Hindu society, in addition, to confirm protection to Muslim girls UN agency have very little protection underneath shariah law. He so baby-faced severe criticism from the opposition however national leaders later supported Ambedkar's reforms and demanded an identical Civil Code, though an identical Civil Code wasn't introduced at the time, a Hindu Bill was introduced to confirm the fashionable reformation of Hindu Society. The Hindu bill itself received abundant criticism and therefore the main provisions opposed were those regarding marriage, divorce, ending of coparcenary (women inheritable a shared title), and inheritance to daughters. The lady members of the parliament and UN agency antecedent supported this.

Thus, the version of this bill was glided by the parliament in 1956, within the sort of four separate acts, the Hindu wedding Act, the Succession Act, the Minority and Guardianship Act, and the Adoptions and Maintenance Act. These diluted versions supported by Nehru were in contraction to the implementation of an identical civil code in Article forty-four of the Directive Principles of the Constitution specifying, "The State shall endeavour to secure for voters an identical civil code throughout the territory of Republic of India." This was opposed by girls members like Rajkumari Amrit Kaur and Hansa Mehta. in line with tutorial Paula Banerjee, this move was to form certain it'd ne'er be self-addressed.

CASE ANALYSIS

*Mohd. Ahmed Khan v Shah Bano lady*³

Quorum: Y. V. Chandrachud (Chief Justice), RangnathMisra, D A Desai, O Chinnappa Reddy, E S Venkataraman

“Usually observed because the Shah Bano case was a controversial maintenance proceeding in an Asian nation, within which the Supreme Court delivered a judgment favouring maintenance given to associate aggrieved single Muslim lady. Then the Congress government enacted a law with its most controversial facet being the correct maintenance for the amount of iddat when the

³ *Mohd. Ahmed Khan v Shah Bano Begum* (1985) AIR 945

divorce, and shifting the worry of maintaining her to her relatives or the Waqf Board. it was seen as discriminatory because it denied the right to basic maintenance out there to Muslim ladies underneath profane law."

Judgment

On three Gregorian calendar month 1981, the 2 choose bench composed of Justice Murtaza Fazal Ali and A. Varadarajan WHO initial detected the matter, in light-weight of the sooner choices of the court that had a control that section one hundred twenty-five of the Code applies to Muslims additionally, referred Khan's charm to a bigger Bench. Supreme Court finished that "there is not any conflict between the provisions of section one hundred twenty-five and people of the Muslim Personal Law on the question of the Muslim husband's obligation to produce maintenance for a single married woman WHO is unable to take care of herself." The Supreme Court invoked Section one hundred twenty-five of the Code of Criminal Procedure, which applies to everybody despite caste, creed, or faith. It dominated that Shah Bano runs maintenance cash, the same as support payment. The Court additionally regretted that article forty-four of the Constitution of India regarding the transfer of the Uniform Civil Code in India remained a dead letter and control that a standard civil code can facilitate the reason for national integration.

POLICY AND FRAMEWORK

UCC is supposed to interchange presently applicable varied laws applicable to numerous individual communities that square measure inconsistent with one another. These laws embrace the Hindu wedding Act, Hindu Succession Act, Indian Christian Marriages Act, Indian Divorce Act, religious person wedding, and Divorce Act, in the meantime sure ones like shariah law (Islamic laws) aren't statutes and only based mostly upon their spiritual scriptures. The proposals in UCC embrace marriage, equal rights for son and female offspring over the inheritance of paternal property, and gender & faith neutral laws with regard to can charity, divinity, guardianship, and sharing of custody. The laws might not result in a lot of distinction to the standing of Hindu society as they need already been applied to Hindus through Hindu code bills for many years.

CHALLENGES TO THE POLICY

India may be a "secular" country, which suggests a division between religious and secular issues. Additionally, "secularism" in the Asian nation refers to the equality of all religions and their adherents before the law. Currently, different voters are treated differently based on their religion because of a combination of different civil regulations. Hindu women's rights are far more progressive than Muslim women whose rights are governed by Muslim Personal Law-based jurisprudence. Women's rights organizations have stated that despite sensationalism by religious conservatives, this topic seldom supports their security and rights. The Constitution's reference to it in Article 44⁴, the desire to strengthen the nation's unity and integrity, the rejection of different communities, the importance of gender equality, and reforming the archaic personal laws of Muslims – which permit spousal relationships and unilateral divorce. India is thus one of the countries that legitimately use jurisprudence. According to Qutub Kidwai, Muslim personal laws are "Anglo-Mohammadan" rather than just Islamic." Hindu nationalists interpret this problem in terms of their law, which they claim is profane and applicable to all sexes. Due to identity politics, the country's strict civil code is seen adversely by religious, spiritual, and non-profane authorities and secular elements of society. To ensure that all citizens of the nation are treated equally before the law, the Sangh Parivar and subsequently the Bharatiya Janata Party (BJP), one of the two major political parties in an Asian nation, have been fascinated with this topic.

The only state in the Asian country with a unified civil code is Goa. When it was annexed in 1961, the Portuguese Civil Code, a set of civil laws, was still in effect and is now known as state family law. Sikhs and Buddhists objected to the way that Article 25⁵ defined them as Hindus who were subject to Hindu personal law. However, a consistent article also ensures that the right Sikhs are represented in a sticker. Thanks to its Uniform Civil Code, the state may now serve as a model for how different religious groups, including Catholics, Protestants, Hindus, and Muslims, can coexist peacefully.

⁴ Constitution of India 1950, art 44

⁵ Constitution of India 1950, art 25

In Oct 2015, the Supreme Court of Asian nations declared the requirement of the same civil code and aforementioned that, "This cannot be accepted, otherwise each faith can say it's a right to determine varied problems as a matter of its law. We tend to don't believe this to the slightest degree. It's to be done through a decree of a court." On thirty Gregorian calendar month of 2016, British Indian intellectual Tufail Ahmad disclosed a 12-point document draft of it, citing no effort by the govt. since 1950. The Law Commission of Asian nation explicit on August thirty-one, 2018 that the same civil code is "neither necessary nor fascinating at this stage" in a very 185-page consultation paper, adding that philosophy cannot contradict plurality prevailing within the country."⁶

Indian society in the pre-independence era had several alternative thoughts like socio-economic standing, caste, gotra, etc. just in case of marriages, whereas the Hindu code bills tired all such practices in Hindu, Jains, Sikh, Buddhist, Parsi, and Christian communities, some conservative sections of that society had stern amendments to their wedding Acts. Critics of UCC still oppose it as a threat to non-secular freedom. They contemplate the conclusion of spiritual laws to be against philosophy and UCC as a means for BJP to focus on Muslims whereas looking progressive at a constant time in the meantime BJP continues to market UCC as means of achieving spiritual equality and equal rights for girls by heading off religious laws.

CONCLUSION

Legal status and prospects

UCC was included in the BJP's pronouncement for both the 1998 and 2019 elections, and Narayan Lal Panchariya even planned to introduce it to parliament for the first time in 2019 during that year's Gregorian calendar month. While under fire from opposition MPs, the bill was eventually withdrawn in order to make certain changes. Kirodi Lal Meena introduced the measure a second time in March 2020, however, it was not reintroduced. According to

⁶ 'Call To Implement Goan Model Of Civil Code' (*The New Indian Express*, 12 October 2009) <<https://www.newindianexpress.com/cities/chennai/2009/oct/12/call-to-implement-goan-model-of-civil-code-91950.html>> accessed 23 July 2022

rumours from 2020, the BJP is considering the bill due to differences with the RSS. A petition asking for the establishment of a judicial commission or high-level skilled group to order the central government to organize a draught of UCC in three months was submitted to the city-state supreme court. A letter of invitation was submitted in April 2021 to transfer a plea to the Supreme Court so that the filing of numerous such pleas in numerous high courts wouldn't cause inconsistency throughout the Asian country. Additionally, the draught would be made available online for sixty days to allow for thorough deliberation and criticism.

International situation

Israel, Japan, France, and Russia are strong today because of their sense of identity, which we still need to cultivate and spread. Most nations have a uniform civil code, or for that matter, a uniform body of criminal or civil law. The ECU countries and America have a lay law that is equally and consistently applied to all or any voters, regardless of their religious beliefs. Sharia law, which is endorsed by the monotheistic nations, is the same for everyone or anybody, regardless of their religion. Notable nations who adhere to UCC Given the proximity of NAFTA and the country's adoption of the Private Property Protection Act; Canada may be a popular destination for American borrowers (PPSA). The PPSA's foundation is the on the ideals of the UCC and has been adopted altogether provinces except Quebec. In Asian countries too, the province is the sole state in Asian countries that includes a uniform civil code. The province's Family Law is the set of civil laws, originally the Portuguese Civil Code, which continued to be enforced when its annexation was in 1961.