

A Study on Relevance of Indian Constitution and Uniform Civil Code

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Abstract

Uniform Civil Code remains a sensitive issue in the Indian society. The root cause of its dispute is to reject religious or personal law and create a unified law, which will be valid as a common law for all the people of the country. The Supreme Court and various High Courts have also clarified their view on this issue and have talked about implementing a Uniform Civil Code to make the justice system equal for all people. Apart from this, in the election manifesto of the present ruling party established at the center, the matter of implementing it has been vocally included. That is, if seen together, the opinion of the judiciary and the present government is almost the same on this issue. But despite all this, there are obstacles in its implementation. While on the one hand it seems to be a means of strengthening the concept of equal justice, on the other hand it also seems to be a means of curtailing the fundamental right of religious freedom. That is, if this issue is looked at carefully, then many issues like State Law vs Personal Law, Diversity vs Unity, Spirit of the Constitution vs Religious Beliefs of the People, Directive of Policy vs Fundamental Rights, Women Empowerment vs Male Supremacy etc. Is. That is why, there is a need for a rational discussion on this issue, how to meet the current challenges facing this national issue and what can be the provisions to implement it. In the present article, the meaning of Uniform Civil Code, its constitutional status, debates related to this issue as well as the obstacles in the way of its implementation have been highlighted. At the end of the article, the measures that are necessary for its solution have also been discussed.

Keywords: Constitution of India, Uniform Civil Code, Diversity, Courts

Uniform Civil Code

To know the meaning of Uniform Civil Code, it is necessary to know the meaning of Civil Code i.e., State Law and Code of Conduct i.e., Personal Law and their effect. The civil code is uniform for all the citizens of the country and it is related to the political system, whereas the code of conduct is personal in nature and it is related to self-interest. That is, the Civil Code clarifies the collective interest, while the Code of Conduct explains the personal intention. Since the Civil Code is related to the interest of the common man, therefore the demand for its implementation in our country of diversity keeps arising.

Constitutional Position

One of the most debated issues in the Constituent Assembly was the issue of Uniform Civil Code. The central point of this debate was whether to place it in the category of Fundamental Rights or Directive Principles of State Policy. Since, the Constitution guarantees the protection of fundamental rights and there is a court to protect it, whereas no one can dispute the directive principle and it is also outside the purview of the court. After much debate and deliberation on this issue, it was placed in Part-4 under Article 44 of the Directive Principles of State Policy. The basic spirit behind placing it in this part was that, respecting the diversity of the country, the Indian Union wants to lead it towards natural unity, and not by forcibly

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imposing the spirit of unity. Thus, under Article 44, it was mentioned that "the State shall endeavor to achieve a uniform civil code for the citizens throughout the territory of India."

Important debates related to Uniform Civil Code

In the process of becoming a complete nation, where religious diversities are present, secularism is an essential element, which works to unite all religions in the thread of unity. In this, the state cannot discriminate against any person on religious grounds. For the spirit of this unity, India has been declared a "secular nation" in the Preamble of the Indian Constitution. Seeing all this being described, it seems that despite the religious diversity in India, efforts have been made to keep the spirit of unity strong. But this is only one side of the coin and the other side is just the opposite. In this country with religious diversities, each religion has its own code, which the religious people of that religion apply to their religious activities according to their own. The laws relating to marriage, divorce, property and succession of Hindus in the country have been codified according to the Hindu Code Bill (1956). Whereas the laws of many religious communities like Muslims, Christians, Parsis etc. have been going on according to their own religious beliefs. Therefore, the dispute often arises that when the religious-personal law of the Hindus has been implemented as a national law, why was it not done for the rest of the religions? Will this strengthen the spirit of national unity and secularism? Will the concept of equal justice be applicable to all people? There are many other similar questions related to this issue which strengthen the justification for the implementation of Uniform Civil Code in the country. In this way, if observed, a uniform civil code appears necessary for the unity and integrity of the country. It has also had to intervene because the courts have to face difficulty in giving their decisions or in implementing the concept of equal justice. Therefore, the court has given its decision from time to time underlining the need of uniform civil code in various cases. Some important decisions related to this issue are as follows-

- The topic of Uniform Civil Code became a topic of public discussion at the national level in the 1980s, when the "Shahbano case" reached the Supreme Court. Mohammad Ahmed Khan, the husband of a 60-year-old woman named Shah Bano (Indore, Madhya Pradesh), evicted her from the house by uttering talaq thrice. The victim went to the Supreme Court in this regard and sought maintenance from her husband for herself and her children. In this regard, Ahmed Khan told the Supreme Court that he has fulfilled the conditions of triple talaq as per Islamic law, so he is not obliged to pay maintenance to the Shahbans. On this, the Supreme Court ordered Ahmed Khan to pay maintenance to the Shahbans under Section-125 of the Indian Penal Code (provisions relating to alimony for wife, children and parents). In its judgment on 23 April 1985, the Supreme Court also observed that "it is a matter of great regret that Article 44 of the Constitution has not been implemented yet." This decision of the Supreme Court was strongly opposed by many Muslim organizations and fundamentalists at that time, due to which the then Rajiv Gandhi government established at the center passed the "Muslim Women (Protection of Rights on Divorce) Act, 1986" to reverse this decision. done. Under this Act, the maintenance allowance after divorce was kept out of section 125 of the Indian Penal Code and in all these cases the Sharia law of the Muslim Personal Law Board was given preference. However, later the Supreme Court struck down the Muslim Women (Protection of Rights on Divorce) Act, 1986, citing the Shahbano case in the cases of Daniel Latifi and Shamima Farooqui.
- The second landmark judgment in this case came on May 10, 1995 in the case of "Sarla Mudgal v. Union of India". In this case, petitions were filed under Article-32 and in these petitions filed as Public Interest Litigation (CHPS), the victim filed a case in the Supreme Court against her husband who converted to Islam and had more than one marriage. On this, the Supreme Court made it clear that Article 44 does not violate the fundamental rights given in Article 25, 26 and 27 under any circumstances. Also, the Supreme Court ruled in this case that "marriage by a Hindu husband by converting to Islam without having divorced his first marriage is illegal under the Hindu Marriage Act, 1956 and the husband is liable to the offense of polygamy. punishable under section 494 of the Indian Penal Code." The Court made it clear that, as per Hindu Personal Law, a Hindu marriage continues to exist even after one of the spouses converts to another religion. Thus, this decision proved to be a deterrent to married people from converting

to other religions and remarrying. In this decision also, the Supreme Court emphasized the need to apply Article 44 of the Constitution for matters like marriage, divorce and succession etc.

- It is clear from these judgments given by the court that personal and religious laws obstruct the judicial process, thereby obstructing the concept of equal justice. Therefore, the question is bound to arise that what are such circumstances or what are the obstacles, due to which the issue of Uniform Civil Code is hanging in the base till date?

Obstacles in the way of Uniform Civil Code

It is not that easy to implement and implement the decision given by the court in favor of Uniform Civil Code as actively as it is. At its core, there are many religious, cultural, political, emotional, personal and diversity-related reasons, which hinders unanimity on an important issue like a Uniform Civil Code. Some of the main reasons are as follows-

- Opposing the Uniform Civil Code, the first and foremost argument is that, it is an attack on the fundamental rights of religious freedom of citizens, while such things have been rejected by the court in many of its decisions, but the advocates of religion They see it from their own point of view and mobilize their religious group on it. According to him, the right to religious freedom mentioned in Article 25 can be stopped only in three exceptions - public order, morality and health. Therefore, having different religions having their own laws does not weaken our secularism but only strengthens it. From all these things it is clear that, on this issue, there is a conflict between the constitutional spirit and the religious faith of the people, which is the biggest obstacle in the path of Uniform Civil Code.
- Another important reason for the non-implementation of Uniform Civil Code is the obstinate attitude of the Muslim Personal Law Board. After independence, when the Hindu Code Bill, 1956 (rules related to marriage, succession etc. for Hindus) was passed under the constitutional system in the country, the next step was the codification of Sharia law. In the 70s, when efforts were made for this, many Muslim Ulemas or religious leaders formed the "All India Muslim Personal Law Board", calling it unnecessary interference in their religious law. Since then till today, the one-point agenda of this board has been against the Uniform Civil Code, opposing the Uniform Civil Code by creating public opinion among the Muslim community. In fact, this attitude of the Muslim community is due to the excessive attachment to their religion and the fear of imposing majority (Hindu) identity on themselves, due to which they are opposing it unilaterally without listening to anything.
- The third major obstacle in the way of Uniform Civil Code is the excessive politicization of the issue. India is the largest democracy in the world, where elections are held every year in one or the other state. In order to win the election, political parties resort to those sensitive issues which pave the way for ensuring their victory. The most important element for this is to ensure "vote-bank". Almost all the parties contesting elections also use the issue of Uniform Civil Code as a weapon for their vote-bank. If our electoral system is analyzed on this issue, it emerges that apart from making the Uniform Civil Code a national law, it is used for vote-bank politics. Even after 72 years of independence, this vote bank politics is going on, which is a hindrance in the path of Uniform Civil Code.
- The lack of clarity on the nature of the Uniform Civil Code also creates a hindrance in its path. Even today it is not completely clear whether the Uniform Civil Code will be according to the Hindu Code Bill or will it be in a new form? This is a major ambiguity that creates doubts in the minds of Muslims, Christians and Zoroastrians. In this, the second crisis is also that, the various provisions of the Uniform Civil Code will be close to one or the other religion, so people of other religious groups will have objection to some or the other provision of it.

Appropriate solution to implement Uniform Civil Code

Even after 73 years of independence, our country has not been able to take any significant step towards Uniform Civil Code. Whatever may be the reasons behind this, but it is a harsh truth that even today the Uniform Civil Code remains a far cry. Some important solutions to implement this have been discussed further, which are as follows-

- In view of a sensitive issue like Uniform Civil Code, any attempt to impose it can have a negative impact on the society. In this regard, the government should adopt the path of comprehensive consultation and create a positive environment for Uniform Civil Code.
- One solution can also be that, instead of directly implementing a unified Uniform Civil Code, the government presents it as a piecemeal bill and eventually achieve this goal.
- Another important measure can also be that, the government should exercise restraint in this matter and pay special attention to public education and women's education and their empowerment, make the minority sections so aware that the demand for the implementation of Uniform Civil Code should be given to them. Started getting up from the middle.
- There is also a possibility that all the political parties unanimously discuss this national issue in depth and through its wide publicity, increase the knowledge of the public in this matter. If the political party thinks about the national interest by rising above vote-bank politics, then public opinion can be prepared in favor of Uniform Civil Code through public education and public support. Although, this is definitely an ideal situation, but with the effort, it also becomes a possibility.

Thus, overall, it can be said that Uniform Civil Code is helpful for the supremacy of justice, judicial equality, secularism, women empowerment and national integration. In fact, it is a great way to honor human dignity. Uniform Civil Code has been implemented in many democratic and non-democratic countries of the world, while our country is still backward in this matter. The Uniform Civil Code must be enforceable and it should naturally be consensual, not imposed on the country. The objections of the Muslim community should also be taken into account in this matter and the Muslim community itself also needs to think in this context, how essential it is for national integration. It should be noted that Uniform Civil Code is not only a need of any particular community, but it is a pan-India requirement which will further strengthen the national interest on the global stage.

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