

Uniform Civil Code Is National Civil Code Or Hindu Civil Code? Analysis.

Dr Ritendra Rathore.

Gujarat Maritime University
Gandhinagar Gujarat India.

Abstract- Uniform Civil Code (UCC) has a many aspects for studying and discuss. UCC which would be resonated with one country one rule and which would be applied to all religious communities. The term Uniform Civil Code is mentioned in part – 4 , under article 44 of the constitution of India.

In this paper we are studying the actuality of universal Civil Code and actual reason behind implementation of UCC and also how does this UCC Work in ancient Indian times especially we will study the evolution of the universal Civil Code.

We are also studying the positive and negative consequences of the UCC and we will determine whether universal or Uniform Civil Code is Hindu Civil Code or not.

Key Words – Uniform Civil Code , Hindu Codes , Indian Constitution Etc.

Introduction.

The Uniform Civil Code means that all sections of the society irrespective of their religion shkal be treated equally without any kinds of discriminations in the basis of caste , creed , religion , gender and also place of birth according to national civil code which will be applicable equally all uniformly.

The National Civil Code Which includes the following areas....

- A) Marriage.
- B) Divorce.
- C) Maintenance.
- D) Inheritance.
- E) Adoption.
- F) Succession Of The Property.

In this current scenario, UCC Or NCC which become a hot topic in the nation for discussion. The arguments why are raised actukalu based on both Hindu and Muslim Organisations. Many Hindu Organisations have supported UCC Or NCC just because it is anti-Muslim or anti-islam and will ban the practices like polygamy , and Nikah – Halal and on the other hand the Muslim organisations are raising their voice against UCC Or NCC because of they think it will hinder their customs and beliefs and also suppression of the one community over another one.

Historical Perspective.

UCC under Chola Dynasty.

In chola rule , there was a provision for the Repentance but not for retribution. The law was uniform for all the people , there had not been changed and not a discriminative law. Crime like rioting or bothering the common public invited the above mentioned punishments. The serious offences , the local court punished them both with a penalty of 1000 kasu. As they had no money , their properties were confiscated and sold to the temple at an estimated amount of 1060 kasu.

Common offences like cattle lifting and petty thefts were investigated, with the punishment ranging from penalty to be paid to confiscated of property. Endowments to burn perpetual lamps in temples seem to be most popular wa at if punishing culprits. As per standard chart , gaining 96 sheeps , 64 cows and/or 32 buffalos as donations to maintain one perpetual lamp.

In case of homicide , find guilty then punishment had given to the culprits to burn a 1000 lamps in the temple and ask to get a repentance from God.

During the period of cholas , the law and according to law the Punishment which one was given same to all kind of crime.

As per chola judicial administration and system , all people were treated equally without making any kinds of discriminations on the basis of religion and the code or law is uniform for all people in chola society.

UCC under Pallavas Dynasty.

The pallavs Dynasty ruled over the Thondaimandalam Region Of Tamilnadu and dynasty established around 250 AD.

The administrative system of this dynasty was well organised. The king was sovereign and kingship was hereditary. And king was accompanied by a council of ministers in various matters. The Government officials were appointed to preside over the judicial system and king was the supreme arbiter of justice. The law was uniform and equally applicable with all people. There was no discriminations on the basis of caste and religion however there was a superiority of Brahmin but at the same time all people were under the same umbrella.

UCC under Mughal Sultanate.

The two muslim codes were implemented which were 1) Fiqh - e – Firoz Shahi and 2) Fatwai – I – Alamgiri , both were governed the judicial procedure.

3 categorises.....

- 1) Absolute Corroboration
- 2) Single Person Testimony.
- 3) Admission Including confession. Criminal law classified crimes broadly into three types....
 - i) Crimes against Allah (God)
 - ii) Crime against Shahenshah (king) and
 - iii) Crime against individuals.

There were different kinds of penalties....**Hadd (fixed penalties).**

Fixed penalty for crimes such as stealing , rape , whoredom (zindagi) , apostasy (ijtidad) , slander and drunkenness as laid down in Sharia Law. It applied equally to Muslim and non Muslim botu.

Tazir (Discretionary Punishment).

Which meant prohibition and applied to all crimes not classified under Hadd. All offence against king or Shahenshah, the Tazir was fixed.

Qisas (Retaliation) Diya (Blood Money).

Qisas means life for life and limb for limb.

These above punishment which mentioned over here was equal for all sinners or culprits , there were not any kinds of discriminations.

UCC Under Vijaynagar Empire.

There were provisions for harsh punishments for those who were found guilty. In addition , those who broke the law were appropriately punished with fines levelled against them. The king was highest court of appeal , there was an officer called dandanayaka who heard important cases because it was not possible for king to appeal all cases. Pradhani was charged officer for administration of Justice and also called the chief justice.

The punishments were severe and even for a minor offences of theft , the hands or the feet of the culprits were chopped off. The traitors were impaled alive on a stock thrust through the belly and even for minor offences , the head of the guilty persons were cut off in the market place.

The law was equally applicable on all people who were living in vijaynagar empire.**UCC during the period of Mahabharata.**

During Mahabharata period , Lord Krishna talked about the principles of karma and result of karma is equal for all people. The karma and their results are equally applicable for all people without making any kinds of discriminations. The principle of karma is something like uniform civil code and in which all people have equal rights and opportunities on land , water and soil.

Lord Krishna stated there should be a law which one should be applied equally in all people. Lord Krishna stated that I am equal for all , I neither envy nor partial with anyone hence the universal law must be equal for all without making any kinds of discriminations.

The Concept Of Ramarajya (Rule Of Lord Rama) – UCC During The Period Of Ramayana.

Rama Rajya which does mean the land of Dharma and a realm of peace , harmony and happiness for young , and old , high and low , all creatures and the earth itself , in the recognition of a shared universal Conscientiousness.

The Rama Rajya which does mean the social harmony, economic justice and political freedom. Rama Rajya which represented good governance , prosperity, peace and growth for Hindu.

In Rama Rajyas , the law is applied to all and universally applicable on all the people.

Evolution Of Legal Process In India and the Hindu Code Bill.**Ancient India.**

In ancient times , the laws were mostly governed by Smritis and Vedas.

The two major smritis were....

- 1) Manusmriti By Siddharthananda Swami.
- 2) Yajnavalkya Smriti By Yajnavalka.

Medieval India.

It's a period when India rules by Muslim Invaders. In that time , the law was mostly governed by Sharia Law. And under Sharia Law , Qazi used to take judicial decision in the court of Nawabs , Qazi used to take advice from Mufti when new cases appeared before Qazi which having a substantial question of law. Qazi will ask advice from the Mufti only when Qazi feels that he needs advice from the Mufti as he feels that such kind of case appeared before him and has no precedence.

During Mughal Rule , Aurangzeb wrote "FATWA ALAMGIRI" was a compilation of scattered laws that existed under Mughal Rule. The criminal cases were being handled under Sharia Law and the Civil Matter were being handled By Qazi by applying basic logic depending on the case to case.

Modern India.

In 1765, when East India Company got a Diwani Rights, the most of the incidents took a place during this period.

The Diwani Rights Which were included...

- 1) Collecting Revenue of land.
- 2) Matters/ Disputes related to land revenue.

In 1772, Warren Hastings was asked to do something so that management of the Judicial System and in 1773, Lord Warren Hastings passed regulating act and under this act the Supreme Court was established. He also proposed a Judicial plan where there will be courts accessible to the people of all religions.

After this, there was a bifurcated the Muslim Laws and Hindu Laws.

Criminal Cases were tried bas on Sharia Law and Civil Matters of every religions were tried as per the respective religion.

By Regulating Act, In the Year Of 1781, the judicial reform was done by Britishers and Civil Related Matters of Hindus were being tried as per respective Hindu Personal Laws and Civil Matters of Muslim were tried as per "FATWA-ALAMGIR"

On another hand, the civil matters of other religions were being tried under British Or English Law.

William Bentinck was made Governor General By the 1833 Charter act and had a good understanding with Raja Rammohan Roy and brought up many issues faced by women due to unjust societal norms before William Bentinck.

Cases which were included...

- 1) More Than One Wives By Hindus.
- 2) Child Marriage.
- 3) Sati Practices.

William Bentinck banned Female Infanticide through the Female Infanticide Prevention Act Of 1870.

In 1834, the first law commission was established consisting of Lord Macaulay wrote and the draft the Indian Penal Code and also given a concept of Lex Loci (Law Of Land).

In the year 1853, 2nd law commission, Sir John Romilly was it's chairman who drafted CPC and CRPC bill and made certain amendments to IPC draft given by the 1st law commission.

Indian Independent Struggle.

Bal Gangadhar Tilak, against the age of consent act and he stated that we would not like that government should have anything to do with regulating our social customs or ways of living, even supposing that the act government will be very beneficial and suitable measure.

In 1929, Child marriage restraint act also launch as Sharda Act was passed. As per this act marriageable age for male is 18 while that of female is 14.

Note: The Amendment was done to Sharda Act (1978), the age was raised for marriage of male to 21 year and female to 18 years. The Hindu code Bill was drafted by the committee headed by Dr B R Ambedkar Sir. The Hindu Code Bill was divided into 4 parts which were....

- i) Part - 1 - The Hindu Marriage Act, 1955.
- ii) Part-2 The Hindu Succession Act, 1956.
- iii) Part -3 Hindu Minority and guardianship act, 1956.
- iv) Part -4 Hindu Adoption and maintenance act, 1956.

Under Hindu Marriage Act, 1955, defined Hindu, the people of Vir Shaiva (community in Karnataka) and lingayat community and follower of Arya Samaj, Brahma Samaj and also Parthana Samaj will come under the purview of the definition of "Hindu"

Case Study.**Shah Bano Case (1985).**

A 73 years old woman called Shah Bano, who divorced by her husband by using triple talaq (by saying " I divorce thee" three times) and was denied maintenance. She knocked the door of the district court and high court ruled in her favour. Court called her husband and asked him to fulfil all the obligations under Islamic law.

Supreme court of India ruled in her favour in 1985 under the maintenance of wives, children and parents (U/S 125 of criminal procedure code) which actually applied to all citizens irrespective of religion. This would recommend to set up "UNIFORM CIVIL CODE".

Facts About The Case.

- => Under Muslim Personal law, the maintenance had to be paid only till the period of iddat (three lunar months - roughly 90 days).
- => U/S 125 (CRPC) that applied to all citizens, provided for maintenance of the wife.

Sarla Mudgal Case.

The question was raised whether Hindu Husband married under the Hindu Law, by embracing Islam, and also can solemnise a second marriage.

The court specified that the Hindu Marriage can only be dissolved under the Hindu Marriage Act 1955. The conversion of Islam would be cause for the dissolution of the Hindu Marriage and second marriage solemnised after converting to Islam would be an offence under section 494 of Indian penal code (IPC).

The Constitution Of India on the Uniform Civil Code (UCC).

The directive principles of state policy under part -4, article -44 which is provisioned about the Uniform Civil Code Which stated the state shall endeavour to secure the citizen a uniform Civil code through out the territory of India.

Article 37 of Indian Constitution which provisioned about the DPSP which shall not be enforceable by any court of law. However DPSP are fundamental in governance of the country. This would be indicated that our constitution itself believes that a Uniform Civil Code should be implemented in some manner and not make this implement mandatory.

Other constitutional provisions relating to religious freedom and secularism are.....

- => Article 15 – No Discrimination On The Ground Of Religion, Race , Caste , Sex or Place Of Birth.
- => Article 25 – Freedom Of Conscience and freedom of profession , practice and propogation of religion , subject to reasonable restrictions on the ground of public order , health and mortality.
- => Article 25(2) – Provide for regulating secular activities associated with religious practices, social welfare and reform.
- => Article 26 – Right to establish and administer religious institutions.
- => Article 27 – Prohibits the state from levying a tax , proceeds of which are used for the benefits of a particular religions.
- => Article 28 – deal with the issues of religious institutions in education institutions

Note :- 42nd Constitutional Amendment Act included the secularism and considered as the basic features of the constitution of India.

Goa Civil Code.

Goa is only one stated of Indian territory which has uniform Civil Code in the form of common family law. The Goa Civil Code is only because of Portuguese Civil Code.

Characteristics Of Goa Civil Code (GCC).

- => GCC – progressive law – allow equal divisions of income and property between husband and wife and also children (regardless of gender).
- => Birth , Death and marriage’s registrations are mandatory and for the divorce there are several other provisions.
- => Muslim who have their marriage registered in Goa , can’t divorce through triple talaq and also perform polygamy practices.
- => During the course of marriage , spouse has held or acquired any property shall also commonly held by couple.
- => In case of divorce , half of the property divided in between both separated members.
- => In case of death , the property goes to survivor member.
- => Parents can’t disinherit their children. At least half of the property has to be passed on to the children.
- => Inherited property must have to share equally among the children.

There are also loophole in GCC which are.....

- A) Not Strictly Followed.
- B) Hindu men have a Right To Bigamy under the specific circumstances...
 - a) If the wife fails to deliver a child by the age of 25.
 - b) If the wife fails to deliver a male child by the age of 30.
 - c) For other communities, the law prohibits polygamy.

Arguments In Favour Of Uniform Civil Code (UCC).

- 1) Integrate The Nation.
- 2) Reduce the vote bank politics.
- 3) Remove the loophole of the personal law.
- 4) Sign of modern progressive nation.
- 5) Give more rights to women.
- 6) All Indian will be treated same.
- 7) Promote the real secularism.
- 8) Protect Human Rights.
- 9) Reduce the confusions which are raised because of personal law.

Arguments Against To UCC or NCC.

Negative Consequences which are notified by the honourable court of justice on society and undermine the principles of cultural diversity, religious freedom and gender equality.

The following challenges are.....

- 1) Harm Culture Diversities.
- 2) Lead Unrest Atmosphere In The Nation.
- 3) Suppression of another religion over others.
- 4) Promotion of Hindu religion over others.
- 5) Rights of minorities will be suppressed.
- 6) Tribal rights and cultural practices be harmed.
- 7) Impact on the languages like Urdu and Arabic.
- 8) Impact on the traditional practices of the particular religion.
- 9) Violate the basic tenets of religious freedom.

10) Violate the personal and family affairs and don't have to infringe upon the rights of the others or contradict the principle of justice and equality.

Few Suggestions While Implementing UCC.

The UCC must not in favour of one religion that is Hinduism.

The UCC must not harm to tradition and cultural diversities in india.

The UCC must be included all the best things of the personal laws.

The UCC must not suppress any religion and communities and must not give a priority to one religion which will be dominated in near future.

The UCC must be called Indian Civil Code Rather than Hindu Civil Code Or National Civil Code.

The UCC must be combined and must be without loopholes which are apparent in personal law. The UCC is combined of All Muslim Laws , Hindu Laws , Christian Laws and also other minorities laws , it must not harm religious unity and cultural diversity.

The UCC must be included the best practices of Muslim person laws like rules of inheritance, Mahr (total money or property that the husband is required to give the wife at the time of marriage (Nikah).

Two types of Mahr.

1) Soon after marriage.

2) At the time of end of marriage either due to death or by divorce.

The UCC must have to include another best feature of the Muslim person which would be The Will , in which a muslim can only give one third of his/her total property through a will (wasiyat).

As per rule of inheritance under Muslim Personal Laws...

A son and daughter both have a rights on the property of the parents , the son gets double the share of the daughter.

Wife gets 1/8th of the share if there are children and 1/4th if there are no children.

If the parents have more than one daughter , only 2/3rd of the property is divided equally among daughters.

The mother gets 1/6th of her dead child's property if there are grandchildren, and 1/3rd of the property if there are no grandchildren. Parents , children and wife all cases , get shares whatever may be the number of degree of their heirs.

Uniform Civil Code must have to include the following circumstances in which women can ask to get a divorce under Muslim person law or shariat law.

=> If whereabouts of the husband has not been known for four years.

=> If the husband has not provided for her maintenance for two years.

=> if the husband has been sentenced to imprisonment for seven years or more.

=> If the husband failed to fullfill marital obligation for three years.

=> If the husband is impotent at the time of marriage and remain impotent.

=> If the husband is insane.

=> If the husband treats the wife with cruelty and even if absent physical violence.

=> If the husband is forcing to live immoral life.

=> If the husband obstruct her in the religious ceremony and rites.

These above provision must have to include under the uniform Civil Code, it must not be in favour of Hindu community. Later on it will be converted into Hindu Civil Code Instead Of Uniform Civil Code. It must be equal and uniform for all the religion , castes , communities and not have to harm the tradition and cultural diversity.

Author Opinion.

The UCC is hot topic in current scenario and government is going to implement UCC in india in order to full fill their agenda and dominance on one communities over other. UCC is good concept but it has required with certain amendments and not biased and also not harm to any communities , tradition and cultural affairs as well as religious sentiments of the people.

The UCC should be progressive and broad minded outlook and encouraged among the people and understand the sprit of the UCC and it has been drafted to keep one thing in mind the best interest of all the religions. The committee of the eminent jurists should be constituted to maintain uniformity and care must be taken not to hurt the sentiments of particular communities.

Conclusion.

India has unique blend of codified personal laws of Hindus , Muslims , Christians , Parsis. There exists no uniform family related with law in a single statute book for all Indians which is acceptable to all religious communities.

The UCC must have to help to strengthen the religion unity and also fraternity among the civilians of the country.

There are many challenges to implement the universal or Uniform Civil Code which are among the political issues , the unrest atmosphere due to religious Conflicts.

So in above circumstances, the government must have to take care of the challenge and their consequences before implementing the uniform civil code.

The implementation of the UCC which will ensure the elimination of discrimination based on sex , creed , religion and caste. With an enactment of UCC , women's empowerment can be ensured. UCC will help in establishing a secular Indian society , with its enactment, the elimination of certain Discriminatory laws in every Personal law of every religion can be ensured.

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