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ANALYSING THE IMPLICATIONS OF THE UNIFORM CIVIL CODE IN INDIA BILL, 2020

INTRODUCTION, MEANING AND ORIGIN

- In the month of December, 2022, a private member's Bill was introduced (by Hon'ble MP Mr. Kirodi Lal Meena) in the Upper House of the Parliament 'Rajya Sabha' namely the Uniform Civil Code in India Bill, 2020 ['the Bill'].
- Uniform Civil Code (UCC) means a common law governing personal matters like marriage, divorce, inheritance, succession, guardianship rights, minority rights, etc.
- In the past, the British India Government in its Report of 1835 had laid stress on a common set of laws governing matters relating to crime, evidence, contract. However, in its wisdom, it chose to leave the personal matters out of such common law codification.

CONSTITUTIONAL LOCUS PROVIDING UCC

In Part VI – Directive Principles of the State Policy (DPSPs) of the Constitution of India, Article 44 provides that the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India. The purpose behind this non-justiciable and non-enforceable provision was to address the discrimination and injustice against the vulnerable group and also to harmonize the diverse cultural groups in India.

The insertion of the provision for UCC in Part IV of the Constitution was a controversial one and seems to be a result of a compromise among the members of the Constituent Assembly for and against the UCC. The debate surrounding the UCC was whether to keep UCC as a justiciable provision or not. The provision for UCC at first found its place in the non-justiciable fundamental rights in the report submitted by the Sub-Committee to the Advisory Committee of the Constituent Assembly. Members in opposition of this decision, primarily argued that the existence of personal laws has kept India away from becoming a true nationhood. Whereas, the fraction of the opposing Members of the Assembly opposed UCC on the ground that it violated their freedom of religion and it tends to create a disharmony within the community. KM Munshi supporting the UCC provision inter alia argued that it is important for upholding the secular nature of the country. Alladi K Ayyar supported the UCC as it would infact create amity among various communities in India. Lastly, Dr. BR Ambedkar while participating in the Constituent Assembly debate told the members that the provision of UCC being non-justiciable is not mandatory for the government to enforce rather it is an enabling provision for the future legislation to bring UCC into life.



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CURRENT SITUATION

Post-Independence, the following laws govern the different aspects of personal matters of each religion separately:

| Religion | Law |
|-----------|--|
| Hindu | Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; and Hindu Adoption and Maintenance Act, 1956 |
| Islam | Muslim Personal Law (Shariat) Application Act, 1937; and Dissolution of Muslim Marriage Act, 1939 |
| Christian | India Christian Marriage Act, 1972 |
| Parsi | Parsi Marriage and Divorce Act, 1936 |
| Sikh | Anand Marriage Act, 1909 |

In addition, in India, there are religion-neutral laws as well, for ex. Indian Marriage Act, 1954; India Succession Act, 1925, etc.

JUDICIAL APPROACH

Since 1950 and until the judgment pronounced in the *Mohd. Ahmed Khan v. Shah Bano* [AIR 1985 SC 945], the debate on UCC remained mostly dormant. The Supreme Court of India [‘SCI’] in this case observed that the UCC will help “national integration by removing disparate loyalties to laws which have conflicting ideologies”. Same year, in the case of *Ms. Jorden Diengdeh v. S.S. Chopra* [(1985) 2 SCC 556], the SCI showed dissatisfaction on the lack of uniformity among various personal laws related to divorce in India. A decade later, in the case of *Sarla Mudgal v. Union of India* [(1995) 3 SCC 635], the SCI made some strong observation on the need of UCC in India. SCI in *Pannalal Bansilal Pitti & Others etc. v. State of Andhra Pradesh & Another* [1996 SCC (2) 498], a year later, cautioned against the bringing of UCC in one go. In the case of *John Vallamattom & Anr v. Union of India* [1995 (3) SCC 635] decided by the SCI in the year 2003, 3 | P a g e reiterated *Sarla Mudgal* observation on UCC dictating that it will help in removing ideological contradictions. Most recently, *Shayara Bano v. Union of India* [AIR 2017 9 SCC 1 (SC)] [commonly referred to as *triple talaq case*] reminded all of us on the debate of UCC and its desirability in India.

THE UCC BILL: IN A NUTSHELL

- As per the Bill, “Uniform Civil Code” has been defined as the common civil code or common law for every citizen residing in India irrespective of religion and caste.
- The Bill proposes for the constitution of a National Inspection and Investigation Committee [“Committee”] for the purpose of preparation of Uniform Civil Code and its implementation in the country. The Central Government has been empowered to constitute the Committee within a period of six months from the coming into force of this Act.

- The composition of the Committee:**
- retired Chief Justice of India to be nominated by the Central Government; the Union Minister of Home Affairs and the Union Minister of Law and Justice as the ex-officio members; two members who are retired Chief Justices of the High Courts, to be nominated by the

Central Government; one member, to be nominated by the Central Government from amongst persons of eminence having adequate knowledge and experience in law; one member, to be appointed by the Central Government from amongst officers of the Indian Administrative Service—ex-officio Secretary.

– **Term:** Three years.

Functions of the Committee: The Committee has been proposed to take appropriate steps for the codification and implementation on the Uniform Civil Code in the entire country; the applicability of the Uniform Civil Code for marriage, divorce, succession, adoption, guardianship and partition of land and assets on all citizens without any discrimination; right to equality before law as guaranteed under Article 14 and prohibition of discrimination of any citizen on grounds of religion, race caste, sex or place of birth provided under Article 15 of the Constitution; and substitution of the personal laws or laws based on religious texts and traditions by UCC.

ISSUES

The Bill rightly proposed to make the Committee responsible for the codification and implementation of the UCC. The following are the common issues that the Committee might face, if the Bill becomes an Act:

1. Ensuring equality:

Not only among different religions but also within a religion itself, there exists a lot of differences and lack of uniformity violating right to equality enshrined in the Constitution.

2. Uniform laws are not exactly uniform:

The uniform laws which have been given as an example by the proponent of UCC for eg. IPC, CrPC, etc. are not uniform throughout the territory of India. There are various state amendments which makes these uniform laws diverse and pluralistic.

3. Constitutional contradictions:

There are certain provisions in the Constitution itself which on the one hand provides for exceptions to the states of Assam and others with respect to law relating to family and on the other hand provision for UCC in Part IV.

4. Against right to freedom of religion:

Articles 25 and 26 of the Constitution provide for the freedom of conscience and free profession, practice and propagation of religion and freedom to manage religious affairs respectively. However, UCC goes against these provisions as per the opponents of the UCC.

5. Respecting diversity and plurality:

The Law Commission of India in its report in 2018 remarked that UCC is neither necessary nor desirable in India. It also remarked that secularism cannot be contradictory to plurality.

Besides various observations by the Judiciary on the need and desirability of UCC more prominently in the last 3-4 decades, it is the demography of our great Nation that has kept the UCC issue alive and vibrant. Right after the coming into force of the Indian Constitution, the codification of the Hindu Customary Practices took the centre stage because of the prevalence of discriminatory gender practices. However, the codification of the Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act in the years 1955-56 retained its majorly patriarchal bias. Whereas the Muslim personal laws were kept untouched keeping in mind the recent tragedy of partition on the basis of religion. Then, *Shah Bano* case in 1985 led to the politicization of the UCC issue where the Government of India overturned the decision of the SCI. However, it is hoped that in very near future there shall be one uniform code for all citizens irrespective of their religion.

CONCLUSION

This is not the first time that any MP has presented a Bill on UCC. A similar attempt has been made before the Lok Sabha by Ld. Shri Chandrakant Khaire in the year 2018 and by Ld. Shri Krupal Tumanain in 2019. Whereas, a similar Bill was presented by Ld. Shri Sushil Kumar Singh in the year 2020 before the Lok Sabha. The whole point is that the issue surrounding UCC is a serious one and therefore requires a careful examination. Even after more than 7 decades of the Indian Constitution coming into force, is it the right time to implement DPSP provision on UCC in India, remains a burning issue. On the one hand, UCC can be seen as the realization of some basic rights for women like equality and elimination of any form of discrimination. On the other hand, the UCC issue is tested on the altar of secularism. Be that as it may, the state of Goa acts as a shining example for having a common family law applicable to all uniformly. Further, the fear and concerns of the State can be addressed by first implementing the UCC at the state level and then scaling up at the national level. This way the regional concerns of the residents of the state can be taken care of first before implementing UCC at the national level. The steps taken by the states of Uttarakhand, Gujarat and Madhya Pradesh are some of the examples in this direction, which are not only commendable but also elaborately points towards our great nation being truly democratic.

Bill No. II of 2020

THE UNIFORM CIVIL CODE IN INDIA BILL, 2020

A

BILL

to provide for the constitution of the National Inspection and Investigation Committee for preparation of Uniform Civil Code and its implementation throughout the territory of India and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Uniform Civil Code in India Act, 2020.

Short title,
extent and
commencement

(2) It extends to the whole of India.

5 (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Uniform Civil Code" means the common civil code or common law for every citizen residing in India irrespective of religion and caste;

(b) "Committee" means the National Inspection and Investigation Committee constituted under section 3; and

(c) "prescribed" means prescribed by rules made under this Act.

Constitution
of the
National
Inspection and
Investigation
Committee

3. (1) The Central Government shall, within a period of six months from the coming into force of this Act, constitute a Committee to be known as the National Inspection and Investigation Committee for the purpose of preparation of Uniform Civil Code and its implementation in the country.

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(2) The Committee shall consist of—

(a) a Chairperson, who shall be a retired Chief Justice of India to be nominated by the Central Government in such manner, as may be prescribed;

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(b) the Union Minister of Home Affairs— *ex-officio* member;

(c) the Union Minister of Law and Justice— *ex-officio* member;

(d) two members who are retired Chief Justices of the High Courts, to be nominated by the Central Government in such manner, as may be prescribed;

(e) one member, to be nominated by the Central Government in such manner, as may be prescribed, from amongst persons of eminence having adequate knowledge and experience in law;

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(f) one member, to be appointed by the Central Government in such manner, as may be prescribed, from amongst officers of the Indian Administrative Service— *ex-officio* Secretary;

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(3) The Chairperson and the member of the Committee shall hold office for a period of three years.

(4) The Salary and allowances payable to and other terms and conditions of the Chairperson and other members shall be such as may be prescribed.

(5) The Central Government shall provide such number of Officers and staff to the Committee, as may be necessary, for its efficient functioning.

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(6) The Committee shall have the power to regulate its own procedure.

Functions of
the
Committee

4. (1) It shall be the duty of the Committee to take such steps, as it may deem appropriate, for the codification and implementation on the Uniform Civil Code in the country.

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(2) Without prejudice to the generality of the foregoing provision, the Committee shall ensure:—

(a) the implementation of Uniform Civil Code in entire geographical territory of India;

(b) the applicability of the Uniform Civil Code for marriage, divorce, succession, adoption, guardianship and partition of land and assets on all citizens without any discrimination;

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(c) right to equality before law as guaranteed under article 14 and prohibition of discrimination of any citizen on grounds of religion, race caste, sex or place of birth provided under article 15 of the Constitution;

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(d) gender equality in implementation of the Uniform Civil Code; and

(e) substitution of the personal laws or laws based on religious texts and traditions by Uniform Civil Code.

5. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds to the Committee for carrying out the purposes of this Act.

Central Government to provide adequate funds to the Committee

5 6. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order or give such direction, not inconsistent with the provision of this Act, as may appear to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

10 7. The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Act to have overriding effect.

8. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

15 (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, While it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such
20 modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

In 1840, on the basis of *Lex Loci* Report, Uniform Law was framed for crimes, evidences and contract but some personal laws of the Hindus and the Muslims were left out. On the other hand, the British Indian Judiciary had facilitated uniform application by the British Judges under the English Laws. Besides, in those days many social reformers were voicing to make laws to do away with the discrimination against women done under the Sati and other religious customs.

In the Constituent Assembly, while on the one hand there were people like Dr. B.R. Ambedkar who desired reform in the society and wanted to accept the Uniform Civil Code, there were also Muslim representatives who took side to retaining the Personal Laws based on religious enshrines. As a result, regarding the Uniform Civil Code, only one line could be added as article 44 under Part IV as Directive Principles of State Policy in the Constitution. In this article it is stated that the State shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India. Since the Uniform Civil Code has been included in the Directive Principles of State Policy of the State, hence this cannot be enforced.

Besides, no Government showed proper will power to implement these constitutional provisions, because the minorities, especially the Muslims believed that the Uniform Civil Code will lead to the violation of their personal laws. Hence, only to compile the Hindu Laws, the Acts like the Hindu Marriage Act, 1955, the Hindu Succession Act 1956, the Hindu Minority and guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 were enacted. In these Acts along with the Buddhist, Sikh, Jain, laws related to different religious communities of the Hindus are included *vide* which women have been given right to divorce and succession and caste has been termed irrelevant for marriage. Also, polygamy has been done away with.

In the present context, it seems our country is divided into three classes on Uniform Civil Code, namely political, social and religious. In the *Shah Bano Case*, the Supreme Court decided that section 125 of the Code of Criminal Procedure 1973 is applicable to all irrespective of religion, caste or community. The court directed that *Shah Bano* must be provided with living expenses. The then Chief Justice Y.V. Chandrachud said that Uniform Civil Code would end the dissimilarities in the Indian law which would help in establishing national unity. Hence, the Supreme Court had observed that the Parliament may make law related to the Uniform Civil Code.

Sarla Mudgal Case vs. the Union of India is the second example *vide* which the Supreme Court under article 44 had again directed the Government. The Supreme Court said that adopting Islam for marriage is a misuse of the personal laws. It said that a Hindu marriage can be dissolved only under the Hindu Marriage Act, 1955 which means after adopting Islam the marriage done thereafter cannot be dissolved under the Hindu Marriage Act and it is a crime under section 494(5) of the Indian Penal Code.

In *John Vellamettam vs. Union of India*, the Supreme Court declared the section 118 of the Indian Succession Act, 1925 as unconstitutional. The then Chief Justice of India Justice Khare observed that "it is mentioned in article 44 that the State will strive to provide Uniform Civil Code to all citizens in its entire territory, but it is a matter of regret that article 44 has not been given affect to. He also opined that a Uniform Civil Code would help the cause of national integration by removing the contradictions on the grounds of ideologies.

The decision to implement the Juvenile Justice (Care and Protection of Children) Act seems to be a step towards Uniform Civil Code since this Act permits the people of muslim community to adopt children whereas Muslims are not permitted or allowed to adopt children under their personal laws. Recently, the Supreme Court has again asked the Government to

implement the Uniform Civil Code so as to end gender inequality and wrong traditions prevalent under the personal laws.

Under the Uniform Civil Code a collection of laws will be prepared which will protect the personal rights of all citizens without considering the religion, which seems to be the need of the hour. In reality this is the foundation stone of secularism. Such progressive reforms will not only help to end discrimination against women but also help in strengthening the secular structure and encourage integrity. In fact our social system is replete with injustice, discrimination and corruption which is in conflict with our fundamental rights, hence it needs to be reformed. Already there is Penal Code in our country which is equally applicable to all without considering the religion, caste and domicile. But there is no uniform law in our country with regard to divorce and succession and these subjects are controlled by the personal laws. Hence the Uniform Civil Code should be ensured to all citizens residing in areas where the population of entire geographical area resides.

Hence, this Bill .

KIRODI LAL MEE NA.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of the National Inspection and Investigation Committee. It also provides for the salary and allowances of the Chairperson, members, officers and staff of the Committee. Clause 5 provides that the Central Government shall provide adequate funds to the Committee. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees five hundred crore would be involved from the Consolidated Fund of India per annum.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.