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- - Note - -

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Publisher Details -

Bishikh Mohanty

E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,

Khorda, Odisha, Pin - 751021

Telephone: +91 8106743973

Email: editor@ijcons.com

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SCOPE OF INTRODUCTION OF UNIFORM CIVIL CODE IN INDIA

THE PROBLEMS FACED IN IMPLEMENTATION OF UNIFORM CIVIL CODE IN INDIA**THE AUTHOR**

Saurabh Raj, Sayan Banarjee, students, College of Legal Studies, UPES, Dehradun

CONTENTS

- i. Introduction
 - ii. Understanding the Uniform Civil Code (Article 44)
 - iii. Problems faced in implementation of Uniform Civil Code in India
 - iv. Uniform Civil Code as a Vote Bank Policy
 - v. Conclusion
-

I. INTRODUCTION

“My religion is very simple my religion is kindness”-Dalai Lama

India had been a place of several religions of some which are founded in this country only and some came from outside, it is said that with every thousand metres language changes in India, India is known to be a diversified country where several other religions exists , and hence different beliefs exists which leads us to the foundation of the personal Laws that we are having now for different religions basically we different personal Laws namely:- The Hindu Marriage Act of 1955, Muslim Personal Law (Shariat) Application Act (uncodified), 1937, Christian Marriage Act 1872, The Parsee Marriage Act and Divorce Act 1936, and several others, but the origin of these personal laws can be traced much earlier during the period of 1840 when the Britishers passed the Lex Loci Report of October 1840 by which the Britishers made emphasis on the importance of codifying the Indian laws but it was also recommended to keeo the personal laws of Hindus and Muslims to be kept out of this period 1937, with introduction of Act of 1937 by which the britishers introduced The Shariat Act of 1937 whereby it repealed all those legislations that permitted to override the Mahomedan Law in cases where Muslims Were Parties but Britishers didn't impose the said act on all the Muslims but it was left to Muslim's consent.

But with the introduction of these personal laws there came some problems which actually brought some problems along with it like there were increase in the number of violation of rights against the women, like more incidents of polygamy, a report according to the census of 2011 6.6 milion women who are currently married than men¹ cases of domestic violences against women, family law problems and other problems like problems faced by the Hindu parents in case of adaptations under Hindu Adoption and Maintenance Act (HAMA) were also seemed to emerge due to this personal laws hence emerge the idea of The UNIFORM CIVIL CODE.

¹ATUL THAKUR,29.3CR WIVES,28.7CR HUSBANDS CENSUS BARES POLYGAMY TRUTH,MARCH 3 4:15 A.M.([HTTP://TIMESOFINDIA.INDIATIMES.COM/INDIA/29-3CR-WIVES-28-7CR-HUSBANDS-CENSUS-BARES-POLYGAMY-TRUTH/ARTICLESHOW/46437481.CMS](http://timesofindia.indiatimes.com/INDIA/29-3CR-WIVES-28-7CR-HUSBANDS-CENSUS-BARES-POLYGAMY-TRUTH/ARTICLESHOW/46437481.cms)).

II. UNDERSTANDING THE UNIFORM CIVIL CODE(ARTICLE 44)

The Article 44 of the Indian Constitution states that “the state shall endeavour to secure for the citizen a Uniform Civil Code throughout the territory of India”. Now what is this Uniform Civil Code we are talking about? This is a kind proposal which was proposed by our constitution makers that to have same kind judicial administrative rules for different religions in India whether it is Hindu, Muslim, Sikh or Christian people from every sect of the society will follow the same law in regarding to Marriage, Adaptations, Inheritance or regarding Successions, it is actually a proposal to replace all the personal laws existing in India by a common set of instruction for all the communities in India. Uniform Civil for the first time introduced by Jawaharlal Nehru the first prime minister of Indian Republic and then law minister Dr. B.R Ambedkar , but Ambedkar’s frequent attack on Hindu laws and on the higher societies made him highly unpopular and thus their try to implement the proposed Uniform Civil Code gone in vain due to high protests that they have to face in the parliament, but the following proposal was adopted in part IV of Indian Constitution as the Directive Principle of the State policy under article 44. But what were the problems which previous governments or present government have to face in implementation of the following proposal regardless of the Indian judiciary’s pin pointing towards this urgent need of the hour??

III. PROBLEMS FACED IN IMPLEMENTATION OF UNIFORM CIVIL CODE IN INDIA

“There is no bad religion there are only bad people”-Morgan Freeman

RELIGION AS A HINDRANCE

In India we people follow several kinds of religion as said earlier in my introduction part with every every thousand metres language changes in India and thus the thought also changes due to which there is thousands of different views and opinions in India regarding one topic like some are supporters of the said plan and with that friends there come foes and some kind of similar situation we can find regarding the implementation of Uniform Civil Code in India. Let’s understand this problem first from the prospect of the famous Shah Bano² this case is regarded as the landmark case questioning the patriarchy nature of the Muslim law the main question that was put into the context is that whether a Muslim Women has a right to get her maintenance for the period of iddat (is the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man)the court held that C.r.P.C is common for all and she could get maintenance under s.125 of C.r.P.C but this decision was considered by the Muslims as an direct attack to their religion and their personal laws and started huge agitations against the said decision, this decision was also argued by some people that this decision may lead to the loss of cultural identity of India whereby article 25 of the constitution was cited in defence of not having a uniform civil code in our country , and its major cause is religious sentiments of the people which compels them to oppose to this proposed idea of uniform civil code ,actually the whole problem is regarding the wrong interpretation article 25of the Indian

²MOHD. AHMED KHAN VS SHAH BANO BEGUM AND ORS,945AIR(1985).

constitution whereby the people feel that the religion is immune from state's any action but this whole concept is wrong this concept is followed in U.S.A whereby their model of secularism says as follows the government is forbidden to pass a law "respecting an establishment of religion" as well as a law "prohibiting the free exercise of religion"³ but this U.S.A concept of Secularism separation of the Church and The state cannot be followed in India because of its diversity in religion and also the threat that diversity possess to the state, hence this particular power can be used by the state to end this prejudice going in the name of religion. The principle of secularism is not precise in India hence it is sometimes interpreted as anti-religion by the people of India like several muslims members who apprehended that their personal law might be abrogated by pointing out five points which were:

1. That India had already achieved a uniformity of law over a vast area.
2. That though there was diversity in personal laws , there was nothing sacrosanct about them
3. The secular activities such as inheritance, covered by personal laws should be separated from religion
4. That a uniform law applicable to all would promote national unity and
5. That no legislature would forcibly amend any personal law in future if people were opposed to it.⁴

The point stated by the muslims of our country clearly states that there is a feeling deeply entrenched in their hearts that they will lose their individual religion identity if this proposed plan of Uniform Civil Code passes. Hence there is a need of stabilising the situation by providing them some of the securities in the Uniform Civil Code draft if we want their consensus on the same. There is a urgent need to make people understand that a secular state does not means a anti religion state and which is responsibility of the state

SOLUTIONS TO THIS PROBLEM

Right to Religion protect only integral and essential part of religion

The first possible solution to this problem can be clearly understanding the concept of Article 25 of the Indian Constitution whereby it says that right to religious freedom is subjected to public order, morality and health which includes the power of the state to make laws⁵ The rights guaranteed by the article 25 of the Indian Constitution is subjected to some restrictions as directed by the Supreme court of India in the celebrated case of State of Bombay v. Narasu Appa Mali⁶ where the supreme court stated it clearly that the state can interfere into the matters if it is for social and welfare reforms. So it becomes the duty of the state to take the step of interfering into this matter and make a change which will be for the welfare of the society and for its mankind.

Another possible solution to this problem would be creating social awareness of the misguidance which are being pertaining to them in the name of religion like introduction of study of religious books and texts can be introduced in elementary level to children of the schools so as to make

³ HARRY E. GROVES, RELIGIOUS FREEDOM, 4 JILI, 191(1962).

⁴ M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 1386-1387(2ND ED. 2009).

⁵ SHARDA, UNIFORM CIVIL CODE AND ADOPTION LAWS IN INDIA(MARCH 3RD , 2017, 6:43 P.M.), file:///C:/Users/ASUS/Documents/SSRN-id1162110.pdf.

⁶STATE OF BOMBAY V. NARASU APPA MALI, A.I.R. 1952 BOMBAY 84.

them understand the true spirit of their respective religion and not to be misguided by some of the religion opportunists who want gain position in the society by spreading some of the false notions this idea can be like introducing the study of Quran, Bible and other religious text in the school which will help in two ways to understand the true spirit of a religion and then to increasing the scope of implementation of Uniform Civil Code in India as it was told that only the younger generation can bring a change.

Thirdly the possible solution to this problem can be achieved by Strengthening the old and dynamic concept of women empowerment so as to make the women of our country aware of their rights and the correct procedure of achieving that right as on the context of Shah Bano case we can clearly see that there is reluctance in providing true justice when it comes to women to remove this problem and to achieve our dream of a UCC first we need to ensure that women of our country are self-sufficient so that there is no scope of depending on someone for getting her rights redressed we need our Malala.

IV. UNIFORM CIVIL CODE AS A VOTE BANK POLICY

First in order to understand this problem we have to understand what is vote bank policy it is kind of a trick by a political party in which the said party promises something to the common people in lieu of their votes. In the light of recent trends of the Indian politics introduction of uniform civil code has been used as a vote bank policy by different political parties in order to gain a rigid political ground in India, but what went in vain in doing so is loss of people's faith in making people believe that UCC is wholly based on secularism principles what has been result of this raucous is that the parties which alleged to be communal is supporting this proposed plan of UCC and those parties which are considered to be secular in character are against this whole plan of UCC so end result which is end of people's trust over the government. Uniform civil code for the very first time introduced in 1948-49 by Pandit Jawaharlal Nehru and his cabinet minister but due to certain politicalised evil motives of some leaders it failed to be a law, and it is a failure from the side of different government to implement this whole idea of UCC though the Supreme Court of India time and again given some direct and indirect indications to implement this unfulfilled aspiration of India, for ex. In the celebrated case of *John Vallamattom*⁷ the supreme court of India said that steps to be taken to implement and adopt the UCC in India another example can be the *Jorden Diengdeh v. S.S. Chopra*⁸ where the apex court said that clearly the time has come to draft a common for the intervention of legislature in order to draft a common set of law for matter relating marriages, and divorce in India, which clearly points out my point of government's duty of drafting the Uniform civil code but time again the various governments have failed to do so. In 2016 NDA led government emphasised on the fact of having a uniform civil code according the famous newspaper agency The Economics this was the first government after Nehru's government who expressed their views of having a common set of laws for all the religions in India. There is utter a confusion with this whole idea of implementing Uniform civil code in India for instance present Congress government has been continuously protesting this idea of uniform civil code against the Nehruvian and Ambedkarite vision which is

⁷JOHN VALLAMATTON VS. UNION OF INDIA,(AIR 2003 SC 2902).

⁸JORDEN DIENGDEH V. S.S. CHOPRA,(AIR 1985 SC 935).

again spreading a bad message to the public of utter confusion and sheer feeling of ambiguity within the same people whose founders wanted something and the same is being rejected by their successors.

SOLUTION TO THIS PROBLEM

The possible solutions of this problem lies in the hands of the present government only who can try to fix the things up with their willingness of implementing this idea of our forefathers, a possible solution to this problem can be transferring the whole concept of drafting the proposal to the present law framing bodies like the law commission of India and the legislature can work together to achieve this whole idea with ease rather than going on different roads . But this thing will alone will not help to achieve our dream of having the UCC in order to make it possible we would be needing the consensus of all the major and minor religions in India whose duty is again goes to the present government's court whereby the present government have to make sure to make all the major and political parties to give their common consensus to this idea of Uniform civil code and also to make their stand clear regarding the future prospectus of this whole idea of having a Uniform civil code which make people fearless of losing their religion and cultural identity in this diverse country India. Another possible solution to this problem can be taking suggestions form the bodies the things which they want from this uniform civil code like the government should handle this matter with democratic approach of consolidating and integrating the views of each major and minor ethnic groups in India so that they also have say regarding this matter and also that they will not feel out casted from the entire administrative system of India.

V. THE CONCLUSION

“Religion is never the problem it's the people who use it to gain power” - Anonymous

With the above discussions and presented fact we came to the conclusion that there is some major problem regarding implementation of Uniform civil code in India but with possible solutions suggested above we can try to have a one step further to the introduction of UCC in India, despite of the fact that it's been a 'dead letter' till now.