

UNIFORM CIVIL CODE:A POSSIBLE AID TO ACHIEVE SECULARISM

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ABSTRACT

The preamble of Indian constitution declares India a Sovereign, Socialist, secular, Democratic, Republic State. Secularism can be achieved by implementing the constitutional measures. Article 44 of our constitution is a directive principal on Uniform civil code which states that the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. If this code is codified then it will be helpful in achieving the secularism. It has explained that secularism is not to be confused with communal or religious concepts of an individual or a group of persons. For the enactment of uniform civil code all the religions have to sacrifice their personal laws for the benefit of the country. Uniform civil code is essential for national integrity of the nation. Our religious rights will also be protected by this code.

**“Let us forget I am a Hindu you are a Muslim let us think I and mine in a common Indian nationality”
Mahatma Gandhi**

INTRODUCTION:

A Uniform Civil Code administers the same set of secular civil laws to govern all people irrespective of their religion, caste and race. A Secular State has no religion of its own as recognised religion of State. It treats all religions equally. The Preamble declares the resolve of the people of India to secure to all its citizens “Liberty ofbelief, faith and worship”.¹ The 42nd Amendment Act, 1976, has inserted the word ‘secular’ in the Preamble. This amendment is intended merely to spell out clearly the concept of ‘secularism’ in the Constitution. There is no mysticism in the secular character of the State. In India, a Secular State was never considered as an irreligious or atheistic State.² However it is to be noted that the freedom of religion is not an absolute freedom, but subject to the regulatory power of the State. In the name of religion nothing can be done which is against public order, morality and health of the public. Secularism is also subject to ‘democratic socialism’. Religious freedom cannot, therefore, be used to practice economic exploitation. The right to acquire, own and administer property by religious institutions is subject to the regulatory power of the state.³

MEANING OF SECULARISM:

The shorter Oxford Dictionary defines Secularism as “Secularism” means (1) “The doctrine that morality should be based solely on regard to the well-being of mankind in the present life, to the

¹Dr. J.N. Pandey, Constitutional Law of India, 51st Edition, Central Law Agency(CLA) p.29

²Ibid p.348

³ Ibid p.29

exclusion of all considerations drawn from belief in God or in a future state" and (2) "The view that national education should be purely secular (1872)." **Chamber's dictionary defines** "Secularism" as "the belief that the state, morals, education, etc. should be independent of religion. Secularism is derived from the Latin word "SAECULUM" which means "this age or this world". The British thinker Holyoake defined secularist as "one who gives primary attention to those subjects the issues of which can be tested by the experience of this life over those which pertain to another world"⁴

According to Dietrich Bonhoeffer, Secularism lays emphasis on this world rather than the supernatural, behavior rather than belief, freedom rather than obedience and a bold maturity rather than conservatism.⁵ According to the Fontana Dictionary of Modern Thought, secularism means the rejection of religion after secularization.⁶ In the Encyclopaedia Britannica, the term is defined as "non spiritual, having no concern with religious or spiritual matters".⁷ The Encyclopaedia of Religion and Ethics, describes it as a "movement intentionally ethical, negatively religious with political and philosophical antecedents".⁸ The Encyclopaedia of the Social Sciences says that "secularism be defined as the attempt to establish an autonomous sphere of knowledge purged of supernatural, fideistic presuppositions".⁹ The Winston Dictionary defines secularism as "The quality or state of being devoted to world, rather than to sacred matters".¹⁰ According to the Everyman's Encyclopaedia "secularism: materialistic and rationalistic movement.... aimed at establishing morality on a utilitarian basis"

MEANING OF UNIFORM CIVIL CODE:

At present criminal law are common but civil law are different from public law and cover marriage, divorce, inheritance, adoption and maintenance. Uniform civil code in India is the proposal to replace the personal laws based on the scriptures and customs of each major religious with a common set governing every citizen. Article 44 of the Constitution declares that the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

The demand for a uniform civil code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. Though the exact contours of such a uniform code have not been spelt out, it should presumably incorporate the most modern and progressive aspects of all existing personal laws while discarding those which are retrograde. India has set before itself the ideal of a secular society

⁴George Jacob Holyoake, Christianity and Secularism,(London, 1863) .

⁵Allan Bullock and Oliver Stallybrass , Fontana Dictionary of Modern Thought, (London; 14 State James's place,1977), p.564.

⁶ Ibid.

⁷ Encyclopaedia Britannica, Volume XX, (London: 1960) ,p.264 .

⁸ Encyclopaedia of Religion and Ethics, Volume XI, (1954),p.347.

⁹ Encyclopaedia of Social Science (1048),Volume XIII,p.631

¹⁰ The Winston Dictionary, (Philadelphia 1946), p.888

and in that context achievement of a uniform civil code becomes more desirable. Such a code will do away with diversity in matrimonial laws, simplify the Indian legal system and make Indian society more homogeneous. It will de-link law from religion which is a very desirable objective to achieve in a secular and socialist pattern of society. It will create a national identity and will help in containing fissiparous tendencies in the country. The uniform civil code will contain uniform provisions applicable to everyone and based on social justice and gender equality in family matters.¹¹

UNIFORM CIVIL CODE AND JUDICIARY:

The judiciary played a vital role in suggesting enacting the uniform civil code. Article 44 is in the part 4 of the constitution of India and article clearly states that The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Mr. Justice Gajendra Gadkar, former Chief Justice of India has observed that in any event the non-implementation of the Introduction provision contained in Article 44 amounts to a great failure of democracy and the sooner we take suitable actions in that behalf, the better and that "In the process of evolving a new Secular Social order a Common Civil Code is a must".¹²

Mohd. Ahmad Khan v. Shah Bano Begum,¹³ the Hon'ble Justice Y V Chandrachud, the then Chief Justice of India has stated that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so."

Sarla Mudgal v. Union of India,¹⁴ In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose Of contracting bigamous circumvents Section 494 of Indian Penal Code. Such marriages have been declared as bigamous and void by the court. The court after referring to various precedents on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded. The Judges of various High Courts and Supreme Court became the main instrument for bringing important gradual legal developments which also put its impact on the question of uniform civil code. Justice Kuldeep Singh suggested the central government to

¹¹ Journal On Contemporary Issues of Law (JCIL) Vol. 2 Issue 9 available at <http://jcil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

¹² Gajendra Gadkar, Secularism and the Constitution of India, p. 126(1971).

¹³ AIR 1985 SC 945

¹⁴ (1995) 3 SCC 635

take step towards Uniform civil code. The Hon'ble Supreme Court has observed that "the legislation-not religion-being the authority under which personal laws were permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing the Uniform Civil Code. In this view of the matter, no community can oppose the introduction of Uniform Civil Code for all the citizens in the territory of India. Justice Hedge, a former judge of the Supreme Court has also observed that "Religion oriented personal laws were a concept of medieval times alien to modern societies which are secular as well as cosmopolitan" and that "so long as our laws are religion oriented we can hardly build up a homogenous nation."¹⁵

The Supreme Court of India in its judgment in **John Vallamottom v. Union of India**¹⁶ delivered by three judge Bench comprising of Mr. Justice V.N. Khare the Chief Justice of India and S.B. Sinha and A.R. Lakshmann J.J. which hit the headlines in the national press where in the court has emphasized the need to enact Uniform Civil Code as envisaged under Article 44 of the Constitution. This evoked a public debate in the country. In this case the Constitutionality of the Section 118 of Indian Succession Act 1925 was in question. It was contended that the said Section was discriminatory to the Christian community because it prevented a Christian from bequeathing his property for religious and charitable purpose. While delivering the judgment justice V.N. Khare, the Chief justice of India with both judges has made reference to Uniform Civil Code.

In **Lily Thomas and Others v. Union of India**¹⁷ the question raised that whether a Hindu who is already married and having wife living gets converted into Islam and marries again commits bigamy or not under Section 494 of the Indian Penal Code, 1860. The apex court held that till the time of marriage of a Hindu is dissolved under the Act none of the spouses can contract second marriage. Further, the Supreme Court has emphasized that in order to curb the tendency on the part of Hindu males to resort to conversion to Islam whenever they want to have second wife, the legislature must enact Uniform Civil Code as directed under Article 44 of the Constitution. But the court added that the desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by the elite of the society, statesman amongst leaders who instead of gaining personal mileage rise above and awakes the masses to accept the change. The issue should be entrusted to the law commission which may examine the same in consultation with the Minorities Commission. That is why the court clarified that its direction was only an obiter dictum and not legally binding on the Government.

UNIFORM CIVIL CODE AND GOVERNMENT:

Personal laws were first framed during the British Raj, mainly for Hindu and Muslim citizens. The British feared opposition from community leaders and refrained from further interfering within this domestic sphere. The demand for a uniform civil code was first put forward by women activists in the beginning of the twentieth century, with the objective of women's rights, equality and secularism. Till Independence in 1947, a few law reforms were passed to improve the condition of women, especially Hindu widows. In

¹⁵ K.S. Hegde, Islamic Law in Modern India edited by Taliir Mahmood, Indian Law Institute, 1972, p. 3.

¹⁶ AIR 2003 SC 2903

¹⁷ AIR 2000 SC 1650.

1956, the Indian Parliament passed Hindu Code Bill amidst significant opposition. Though a demand for a uniform civil code was made by Prime Minister Jawaharlal Nehru, his supporters and women activists, they had to finally accept the compromise of it being added to the Directive Principles because of heavy opposition. The debate for a uniform civil code dates back to the colonial period in India.¹⁸

Apart from the constitutional directives to the state for enacting a Uniform civil code, there are compelling reasons why all right-thinking people in society should come together for evolving a common civil code at least on an optional basis to begin with. The unity and integrity of the country is of primary concern to every Indian citizen. Law is a major instrument for preserving and promoting national unity. The legal system cannot afford to protect divisive tendencies and force inimical to the secular creed of our constitutional policy. By and large the basic principles of family relations have great deal of similarity in different system of personal law. The constitution of India provides a frame work for unifying them. All that is required now is to give proper leadership whereby a blue print of code could be developed for discussion by leaders of public opinion and through them by the people at large.¹⁹

In the Constituent Assembly when Article 44 was being put forth for debate the Chairman of the Drafting Committee Dr. B.R. Ambedkar said: "The Muslims unnecessarily read too much in Article 44." He also declared that "No government can exercise the legislative power in such a manner as to provoke Muslim community to rise in rebellion, to think, it would be a mad government if it did so."²⁰

The reason for including Article 44 in the Directive Principles, during the Constituent Assembly debate it was observed that "when you want to consolidate a community, you have to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in Europe, which have a civil code, everyone who goes there forms a part of the world and every minority has to submit to the civil code. It is not felt to be tyrannical to the minorities"²¹The third national convention on uniform civil code sponsored by the Bar council of India Trust was attended by over 250 judges, lawyers, jurists, law ministers, legislators, law officers and law teachers from all over the country. The convention discussed the proposals submitted by extensive notes on existing laws and practice in different communities. The following are the major propositions which found support in the convention²²

1. The Uniform civil code when adopted has to be mandatory in its application to all Indians. However, appropriate strategies may be adopted to minimize hardship on the part of any section of Indian people. Accordingly the government may exempt some section of the people from the application of part or full

¹⁸ [National Crime Investigation Bureau](http://www.ncib.in/pdf/uniform-civil-code.pdf), <http://www.ncib.in/pdf/uniform-civil-code.pdf>

¹⁹ V.c.Mishra former chairman Bar council of India, Inaugural address on Uniform civil code, special issue on uniform civil code, Indian bar review vol.xviii(3&4)1991,Journal of The bar council of India trust New Delhi ,p.no.04

²⁰ Constituent Assembly Debates, Vol. VII, p. 781-82.

²¹ Constituent Assembly Debate, Volume VII, p. 547.

²² V.C. Mishra (Former chairman bar council of India) and N.N. Mathur, A report and a plan of action on Uniform civil code, a which was presented to Rajiv Gandhi Former P.M. of India, Indian Bar review Vol.XXI(2-3)1994 page no.219&220

of the code for particular period, or may bring into force the provision of the code in instalments. Sufficient time may also be allowed to pass before the code is brought into force after its enactment.

2. It is necessary to include a chapter on interpretation of the code so that it is comprehensive and self – contained in all respects. External aids for interpretations are to be avoided as far as possible.
3. The Uniform civil should contain the following topics: Marriage, divorce, maintenance, Custody and guardianship of children, adoption, legitimacy, inheritance and succession, implementation machinery and procedure.
4. As far as possible principles and practices in the existing laws of various communities would be incorporated in the Uniform civil code with suitable modifications if it conforms to the constitutional values of equality, social justice and secularism.
5. Equality between the sexes, respect for the status of women and improvement in the condition of children would not be possible without the adoption of a the Uniform civil code the personal laws as they exists today are discriminatory against women in several respects and are indifferent toward the welfare of the children particularly when marriages fail. Hence, the progress of society depends on radical reforms in personal laws.

Government always played a non supporting role over uniform civil code but the Law Commission of India has sought for a public vote on the implementation of the Uniform Civil Code in the country. It has released a questionnaire on the 7th of October 2016. The questionnaire could be filled out by any person or organisation within 45 days. the law commission chairman retired Justice BS Chauhan has said, “The Commission hopes to begin a healthy conversation about the viability of a uniform civil code and will focus on family laws of all religions and the diversity of customary practices, to address social injustice rather than plurality of laws.”

CONCLUSION:

India is a multi-racial, multi-religious and multi-lingual country with wide variations and inequalities amongst people which have been accentuated by regional, traditional disparities over a period of time. The State has been conscious of these inherent inequalities in the society. There is, therefore a long history of affirmative action for the backward communities with a view to ensure equity and social justice. After taking note of the initiative taken prior to independence, the need for identifying and providing for those discriminated against and/or socially and economically backward was acknowledged by the Constitution framers.²³

The legal expert Satyabrata Rai Chowdhuri also observed “Since differential treatment for any religious group is violative of the UN Covenant on Civil and Political Rights and the Declaration on the Right to

²³ Report of the National Commission for Religious and Linguistic Minorities p. 56

Development adopted by the World Conference on Human Rights, it is hoped that Parliament will frame a common civil code without further delay, divesting religion from social relations and personal law”.²⁴

Introduction of the Uniform civil code in India is in the hands of the Indian masses and its religious leaders and finally left to the will of the political parties. It can be achieved only if the entire Indian community at large is mature enough to accept a the Uniform civil law, which will govern their personal issues. It is a time consuming process, which can be achieved only by way of gradual process of the civilization, and one should be optimistic that the concept of Common civil code works in realistic terms in the Indian subcontinent superceding fundamentalism, and religious fanaticism.²⁵Uniform civil code is essential for national integrity of the nation. Our religious rights will also be protected by this code. Uniformity of the civil Laws is also necessary for gender justice. This will fulfill the need of Article 14 of constitution of India. In September 2003, in an interactive session in PGI Chandigarh, then President A. P. J. Abdul Kalam supported the need of Uniform Civil Code.

²⁴ Satyabrata Rai Chowdhuri, “A Common Civil Code: It is a Constitutional Obligation” The Tribune 30 July 2003 p.10

²⁵ A. Sumanth, Judicial Dicta vis –a –via Uniform civil code , Is uniform civil code need of the hour? Indian bar review Journal of the bar council of India trust vol.XXX (4)2003