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Secularism and Uniform Civil Code

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ABSTRACT

India a diversified country with unique geography, culture, religion, linguistic, race etc. The Political document of independent India lays emphasize on secularism. Religion is the essential part of Indian culture which is intertwined in every aspect of our society. Secularism is the principle of separation of state from religious institution which is enshrined in the preamble of constitution. On the other Uniform Civil code which is one of the directive principles of state policy connotes the idea of uniform civil rules regardless of religion, race, caste, sex. Custom one of the important sources of personal laws of each religion, governing human conduct and civic life such as marriage, succession, adoption, divorce. The arguments which are favoured towards implementing UCC is it promote national integrity and gender equality. India going to step into 75th year of Independence but still facing communal violence based on contradiction in religious ideologies, religious persecution, religious discrimination. It is also important to analyse the feasibility of implementing Uniform civil code and what is the need and importance of such code in India. Therefore, this paper tries to analyse whether uniform civil code is against secularism or in favour of secularism. Moreover, it is the need of the hour to analyse whether there could be a balance of approach between freedom of religion and secularism and uniform civil code.

I. INTRODUCTION

India is a country of multi-religions and multi languages. Number of people is governed by their personal laws. It leads to different treatment meted out to different classes of people in their personal laws. There are different codes for different communities like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act, Hindu Guardianship Act. Muslims and Christians are governed by their personal laws. There are also many different sects and they are ruled by their customs, traditions etc. These codes are based on different personal laws of different religious communities, but this classification based on religion faces many difficulties, whenever the question arises on matter of succession, marriage, divorce, inheritance, adoption, maintenance, guardianship, custody of children etc. There is difficulty in distribution of justice; hence decisive steps were taken towards national consolidation in

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form of idea of uniform civil code which was for the first time mooted seriously in the Constituent Assembly in 1947. The uniform civil code as envisaged in the Article 44 of the Constitution includes inter alia, entire gambit of family laws. As far as the uniform legislation is concerned, we have almost covered every aspect of law except matrimonial laws. There is no uniform civil code of law applicable to the marital relation of all, irrespective of ethnic or religious affiliations. So through Article 44, the modern State is called upon to perform its onerous responsibility of giving uniform civil code on the above subject, applicable to all the citizens of India. The term uniform civil code and its meaning itself came under intense scrutiny during the Constituent Assembly debates. Muslim members were very vocal against this provision in Article 44. Mr. B. Pocker Sahib Bahadur wanted to know what did the term uniform civil code stand for and which particular law of which particular community were the framers of the provision going to take as the standard². The muslim member's opined that the word civil code did not cover strictly personal law of a citizen. Allowing the fears of the members who questioned the connotation of the word uniform civil code and the object of having such a provision in the Constitution, Shri K.M. Munshi said that the whole object of this Article is that as and when the Parliament thinks proper or rather when the majority in Parliament thinks proper an attempt may be made to unify the personal law of the country. The Chairman of the Drafting Committee, Mr. B.R. Ambedkar while replying to the questions on the provision of the uniform civil code in the Constituent by the minority community it was intended to have a code which provided for uniformity of law in matters of marriages, divorce, succession etc. irrespective of religion, community etc. Mr. M.C. Chagla, a former Minister while making a vehement plea for uniform civil code wrote, Article 44 is a mandatory provision binding the government and it is incumbent upon it to give effect to its provision. The Constitution was enacted for the whole country, and every section and community must accept its provision and its directives.³ This research paper tries to analyze whether Uniform Civil Code is against secularism or in favour of secularism. Moreover, it is the need of the hour to analyze whether there could be a balance of approach between freedom of religion and secularism and Uniform Civil Code.

II. CONSTITUTIONAL PERSPECTIVES

In India, there exist a concept of positive secularism as distinguished from doctrine of secularism accepted by America and some European States i.e., there is a wall of separation between religion and State. In India, positive secularism separates spiritualism with individual

² Constituent Assembly Debates, Vol. VII, (1949), p. 543.

³ M.C. Chagla, Plea for Uniform Civil Code, Weekly Round Table, March 25, 1973, p. 7.

faith. The reason is that America and the European countries went through the stages of renaissance, reformation and enlightenment and thus, they can enact a law stating that State shall not interfere with religion. On the contrary, India has not gone through these stages and thus, the responsibility lies on the State to interfere in the matters of religion so as to remove the impediments in the governance of the State. The Preamble of the Constitution states that India is a Secular Democratic Republic. This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A religion is only concerned with relation of man with God. It means that religion should be not interfering with the mundane life of an individual. The process of secularization is intimately connected with the goal of uniform civil code like a cause and effect. In *S.R. Bommai v. Union of India*⁴, as per Justice Jeevan Reddy, it was held that religion is the matter of individual faith and cannot be mixed with secular activities can be regulated by the State by enacting a law. The word secular is not precise and has different shades in different contexts. It is opposed to religion in the sense that the secular State cannot be a religious State. In this context, some feel that a secular State is an anti-religious State. The State, which has no religion of its own, does not necessarily mean an anti-religious State. It may be a State respecting all religions. Though the term secular was added to the preamble by way of 42nd Constitutional Amendment, secular spirit permeated every fiber of the Constitution from its very inception. This very secular spirit formed the foundation of fundamental right to equality before law⁵; prohibition of discrimination on grounds of religion, race, caste, sex, place of birth or any of them⁶; prohibition of discrimination on above said grounds or any other in respect of any employment or office under State⁷; or suffrage⁸; and freedom of conscience and free profession, practice and propagation of religion⁹. Article 27 is another consequence of secularism. It states that no person shall be compelled to pay any taxes, whose proceeds are used for the promotion of any relation. This makes clear that State is barred from patronizing or supporting any religion. Subject to public order, morality and health, every religious denomination or any section thereof shall have a right –

1. to establish and maintain institutions for religious and charitable purposes;
2. to manage its own affairs in matters of religion;
3. to own and acquire movable and immovable property; and

⁴ (1994) 3 SCC 1

⁵ Art. 14.

⁶ Art. 15.

⁷ Art. 16.

⁸ Art. 325

⁹ Art. 25.

4. to administer such property in accordance with law.

Articles 25 and 26 guarantees right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms. The protection of Articles 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the integral parts of religion.¹⁰ Uniform Civil Code is not opposed to secularism and will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion.¹¹ The UCC will interfere only in matters of inheritance, right to property, maintenance and succession, there will be a common law.

III. PERCEPTIONS OF SECULARISM AND UNIFORM CIVIL CODE

The concept of secularism which is of European origin which mandates that religion should be separated from the policy matters of the state and non-interference of state in religious activities. The model of Indian secularism is not replica of western model because the idea of peaceful co-existence of different religious communities have been the central idea behind adoption of secularism. On the other hand, Uniform civil code which is enshrined in the Indian Constitution mandates one Nation one rule. The common areas covered by UCC include laws related to acquisition and administration of property, marriage, divorce and adoption. UCC is a combination of three terms, Uniform; Civil; Code. Uniform means the same in the similar situation; Civil means Citizens and code means Codified laws. According to the Committee on the Status of Women in India, "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights and the Preamble to the Constitution which promises to secure to all citizens "equality of status, and is against the spirit of natural integration". The Committee recommended expeditious implementation of the constitutional directive in Article 44 by adopting a Uniform Civil Code. Need for uniform civil code can be summarized as:

¹⁰ Acharya Jagdishwaranand Avadhut v. Commissioner of Police, Calcutta, (1984) 4 SCC 522.

¹¹ Sarla Mudgal v. Union of India, AIR 1995 SC 1531.

1. Promote secularism
2. Address loopholes in personal laws
3. Reduce vote bank politics
4. Promotes national integration and gender equality

IV. ROLE OF JUDICIARY

In the modern period judiciary has always played a commendable role in enforcing secularism and acknowledged the need for Uniform civil code. The series of case laws shows the positive interpretation of judiciary on secularism and uniform civil code. In *Xavier college case*¹² the court took a view that secularism is neither anti God nor pro- God, it treats alike the devout, the antagonistic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion and it emphasizes the ancient doctrine in India that the State shall protect all religion but interfere with none. In *Bommai case*¹³ also Justice Chinnappa Reddy observed that Indian constitutional secularism is not supportive of religion at all but has adopted what may be termed as permissive attitude towards religion out of respect for individual conscience and dignity. There, even while recognizing the right to profess and practice religion etc., it has excluded all secular activities from the purview of religion and also of practices which are repugnant to public order, morality and health and are abhorrent to human rights and dignity, as embodied in the other fundamental rights guaranteed by the Constitution. In 1995 *Sarla Mudgal case*, the supreme court directed the government to implement Art 44 of Indian Constitution, which is the need of the hour to protect the oppressed and to promote unity and integrity. In *John Vallamattan V. Union of India*, in the year 2003, Supreme Court had once again expressed regret for non-enactment of Common Civil Code. In *shah bano begum case*¹⁴ pertaining to the liability of a Muslim husband to maintain his divorced wife beyond iddat period, who is not able to maintain herself, the Supreme Court held that Section 125 Cr. P. C which imposes such obligation on all the husbands is secular in character and is applicable to all religions. In *SS. Chopra case* also Justice Reddy observed the need for uniform civil code and unsatisfactory state of affairs. In the judgment of Kerala High Court, it was stated that it is not a mandate to codify all the laws related to religious community. The court further stated that there is a need to bring amendment in the marriage laws of the country particularly with reference to Triple Talaq. It is possible to

¹² *St. Xavier's College v. State of Gujarat*, AIR 1974 SC 1389.

¹³ *SR Bommai v. Union of India*, AIR 1994 SC

¹⁴ *Mohd Ahmed Khan vs. Shah Bano Begum* AIR 1985 SC 945

have a common code at least for marriages in India to bring the women on equal status¹⁵. In *Lily Thomas etc. v. Union of India*¹⁶ and others and held, “The desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change. Justice Khare, in the recent case¹⁷, said “It is no matter of doubt that marriage, succession and the like matters of secular character cannot be brought within the guarantee enshrined under Articles 25 and 26 of the Constitution.” The Chief Justice also cautioned that any legislation which brought succession and like matters of secular character within the ambit of Articles 25 and 26 is a suspect legislation. Article 25 confers right to practice and profess religion, while Article 44 divests religion from social relations and personal law. The law relating to the judicial separation, divorce and nullity of marriage is far from uniformity. Surely, the time has now come for a complete reform of the law of marriage and makes a uniform law applicable to all people irrespective of religion or caste; we suggest that the time has come for the intervention of the legislature in these matters to provide for the uniform code of marriage and divorce. A futile attempt was made in the direction of uniform civil code by the judiciary through the *Shah Bano* verdict. But the Government of India went ahead in passing the Muslim Women (Protection of Rights on Divorce) Act, 1986 making sections 125-127, Criminal Procedure Code optional to divorce, Muslim Women muted law can't be far ahead of the society which would lack social legitimacy. And for this, the mandate of Article 44 is that The State shall endeavour to secure which recognizes the fact that the different personal laws do exist in the country which needs to be uniform in its applicability.

V. CONCLUSION

The Constitution of India in Article 44 enjoins, The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. It is 60 years or more, yet we have not able to attain that level of sophistication to accept and adopt the Constitutional mandate. The Preamble of the Indian Constitution envisages India as a secular country. There are many communities prevailing in India which is not even known. The need of the hour is to make uniform laws for everyone so that backward communities do not suffer. Now a day there is an ongoing problem in the divorce cases and that is where the need to make registration of marriages is compulsory. All the personal laws have few provisions discriminating women and

¹⁵ Nazeer V. Shemeena

¹⁶ AIR 2000 SC 1650, at 668.

¹⁷ *John Vallamattom v. Union of India*, AIR 2003 SC 2902

children. These laws have to be changed, not only on the basis of uniformity but on equality and justice. The Government should draft a Common Civil Code with the opinion of Law Commission, National Human Right Commission, and National Commission for Women, Former Attorney Generals, Solicitor Generals and Judges of the Supreme Court and must implement the UCC in spirit of the Article-44 of the Constitution on priority.

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