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THE UNIFORM CIVIL CODE- Amish Rohatgi & Mili Rathor¹**ABSTRACT**

One of the most debated and vexed state policy left to us under the State policy by the architects of our constitution is mentioned in Article 44, where it is directed that when the time and resources are appropriate the State shall make efforts to endeavour to secure a uniform civil code for the entire territory of India. Implementing a uniform civil code governing all would be a social reform that focuses on the value of pluralism in a diverse country like India. During the formulation of the Constitution, there was a very elaborate debate with celebrated freedom fighters having varying opinions that finally led to a compromise for including the notion of having Uniform Civil Code under the Directive Principles of the State Policy. One particular futuristic opinion was comprehensively put forward by B.R. Ambedkar, wherein he explained painstakingly that unlike a rudimentary society based on religion and culture, a modern society must be based on equality, liberty and fraternity; and establishing democracy which is upright with political, economic and social standards.

INTRODUCTION

Uniform Civil Code once implemented would be one social document containing civil code of all the citizens irrespective of any aspect of life. Most of the matters of civil nature have already been documented under various acts like the Code of Civil Procedure, Contracts Act, Transfer of Property Act and all other civil laws apply to every citizen alike. The Uniform Civil Code abolishes all personal laws of all religions and accommodates all under one law that addresses every aspect of life from marriage, inheritance, adoption, divorce, and guardianship.

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A demarcated identity for a nation brings the sense of unity among the citizens and having an unobstructed definition or discourse to retain on an international platform with a sense of uniqueness that differentiates us with the rest of the world. Although, this expedition would prove to be difficult for India has nearly 1.393 billion people⁶, 28 states and 22 regional languages⁷, and where people profess all the major religions of the world and is arguably one of the most popular cultural travel destinations on earth. It took Krishna himself to recite the entire Gita to resolve Arjun's Identity Crisis; and hence the intensity needed to decipher our Indian identity crisis would be far more extensive. The only viable way to find out the identity of us people would be to suitably trace back history to find out about the groundworks of the country and before developing new discourses to describe ourselves, the prejudices should be checked.

If we start this quest for identity in contemporary modern history, it is safe to say that it got majorly distorted while the Britishers colonised us for the period of 200 years, which is a considerable aggregate of time to bring around a major shift in the culture of any country. Colonisation is not just about economical exploitation, but taking control of the overall inhabitants in every facet of living from employment and education to even mere fundamental rights. The people were then Indian citizens with an *English Identity*.

If contemporary history could not resolve the hunt for National identity, we ought to go back further earlier. Are we to identify ourselves as natives who knew prodigious math and science from the rich and intellectual era of India being a '*soone ki chidiya*'?

Under the likeness of India being a 'Hindu Rashtra', if you identify yourself as a Hindu, what category do Hindu people identify as, a Brahmin, a Kshatriya, a Vaishya, or a Shudhra? The Gita, the holy Hindu book, in its chapter-18⁸ had ascertained these categories as 'guna', meaning a *value*. The uncertainty then arrives that can a person genuinely identify themselves as a '*value*', because that would pretty much be a '*quality*' rather than an '*identity*'.

CRITICAL EVALUATION

⁶[Population Projection Report 2011-2036 - upload_compressed_0.pdf \(mohfw.gov.in\)](#).

⁷<https://legislative.gov.in/constitution-of-india-in-regional-languages>.

⁸ Verse 41:18 - Verse 48:18.

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Personal laws govern the real aspects of life based on religion and culture, based on sharias, shastras and other religious holy texts. It has always been contended that these personal laws have been discriminatory. The same can be proved by tracing the judicial precedents set by the courts. Some of the major precedents were Shah Bano case⁹, Triple talaq case¹⁰, Sabarimala¹¹ judgement and many more. Similarly Hindu personal laws have been carefully codified under The Hindu Marriage Act, 1955, The Indian Succession Act, 1925, Guardianship and Adoption Act, 1956, etc. It is very evident that the laws governing personal laws are widespread and rather haphazard.

The Uniform civil code abolishes all previously existing personal laws and regulates them to be consistent with the modern ideas of democracy. It has been expected that the Uniform Civil Code will be a Pandora's box with the best of all the personal laws that will uphold the principles of Islamic fundamentals, Orthodox Hindus as well as all other religious sentiments for one law to apply on all.

In a country like India with its particular background, a Uniform Civil Code if inaccurately implemented would be an invitation to a very real conscious chaos. Let us take the example of the Ram Mandir. If we look at the modern deliberation of identity quest through the dispute of the several decade prolonged disputed land of Ayodhya¹². The debate of whether the masjid was erected earlier or not has been bothering the people concerned and the Archaeological Survey of India (ASI) for a long time. The argument has been put forward that during the Mughal era, Babur, the son of Taimur Lang built a 'masjid' in the year 1528, which was later demolished. If we contemplate on ground of moral values, no person, let alone any Muslim, would like to associate their identity with someone like the ruler Taimur Lang who was by far the cruellest king, killing millions of people, selling thousands of women or even Babur for that matter, as he followed Taimur Lang's path for the intention behind the mosque wasn't primarily to build it for devotional purposes rather it was an establishment of power wherein he used the religious sentiments strongly at his convenience

⁹ 1985 (1) SCALE 767 = 1985 (3) SCR 844 = 1985 (2) SCC 556 = AIR 1985 SC 945.

¹⁰ (2017) 9 SCC 1.

¹¹ (2019) 11 SCC 1.

¹² M. Siddiq (D) Thr. Lrs. vs Mahant Suresh Das 2019 1251 SC.

as he even sometimes even ransacked Muslim towns. With the wrong understanding and the namesake of 'Jihad', he had yet another excuse and motivation to do these killings and violence.

In the *Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt*¹³, the court laid down that as per Article 26, the people possess the right to manage their own affairs in the matters of religion. Practices of religion from sacred texts, ceremonies, expenditure, daily recital, etc form an essential part of any religion, they would not be subjected to State regulations and additionally will be protected by the Constitution itself. With the 42nd amendment of 1976, in the era of Indira Gandhi among the chaotic times of the emergency, India was asserted as a secular *State*¹⁴ since the formation of the Republic of India; and with the introduced concept of 'faith', where every 'faith' is equally significant. India's secularism does not separate religion and States. The issue of the Ram Jann Bhoomi and Babri Masjid wasn't a question of mere right to property as in all rationality there was always abundant land to build a Mandir as well as Masjid. Faith is placed higher than the right to property and the issue in question has been dragged along decades to irreversibly solidify its place as a part of the yet loftier debate of whose 'faith' would win to establish a shrine of victory by building a temple or a mosque.

The Uniform civil code will only be put into practical utility if only drafted with the utmost consideration regarding protecting and preserving the sentiments of all religions. Practising faith is something very personal to every person and taking away the freedom to believe and practising their own religion, just in the name of one civil code, can be catastrophic.

LEGAL FRAMEWORK

There is no better test of the excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen than his knowledge that he can rely on the certain and prompt administration of justice. The same was upheld in landmark judgements in cases, viz *Chiranjit Lal Chowdhury v. The Union of India and Others*¹⁵ and *The State of Bombay and Another v. F. N. Balsara*¹⁶, where the

¹³ 1954 Air 282, 1954 SCR 1005.

¹⁴ S. R. Bommai v. Union of India 1994 AIR 1918.

¹⁵ 1951 AIR 41.

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judiciary emphasised that the constitution is designed in such a manner as to protect all the people against legislative discrimination.

The Constitution of India has gone into a long term of its activity. One ought to recollect that a Constitution is a key law where we set down fundamental objectives and reach the destinations. In our nation's polity the governing body is the law making authority and the executives take the charge of the legislation for its execution. The legal executive under our Constitution is the guardian of the Constitution. It investigates both; laws making and the law usage by the other two wings of the Constitutional democracy system. The capacities and function of these organisations are basic for fruitful activity of the Constitutional vote based system in our nation. A democratic nation implies giving a legislature by conversation. The representation of individuals voice the desires of the electorate for smooth activity of socio-economic, financial advancement and other policies. The Indian Constitution is above all else a social document. Its founding fathers set up in the Constitution both the country's beliefs and process for accomplishing them. The goals were national unity with integrity and a democratic equitable society.

The new society was to be accomplished through a socio-economic revolution pursued with a democratic spirit using constitutional, democratic institutions. Subsequently unity, social insurgency, and democratic-majority rule government, were objectives, which were commonly needy and must be looked for together and not independently. The above perception appropriately portrays the Indian State, as considered by the designers of the Constitution. Truth be told the Preamble to the Constitution¹⁷, which is also the goal of Pandit Jawaharlal Nehru, affirms that 'We the people' of India, through this Constitution, aim at establishing a Sovereign, Socialist, Secular, Democratic, Republic of India and to secure to all its citizens, justice-social, economic and political.

The caste system acts against the underlying roots of democracy in India. The democratic extensions like the fundamental rights relating to equality, speech,¹⁸ expression¹⁹,

¹⁶ AIR 1951 Bom 210.

¹⁷ The Constitution of India, 1950, Preamble.

¹⁸ Romesh Thappar vs State of Madras, 1950 AIR 124, 1950 SCR 594.

¹⁹ Brij Bhushan Sharma vs The State of Delhi, 1950 AIR 129 1950 SCR 605.

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association, participation in the electoral process, and legislative forums are misused for maintaining caste identity. It is true that India has been an unequal society from times immemorial. There are enormous inequalities in our society which are posing serious challenges to Indian democracy.

CONCLUSION

It was very discernible that the existing personal laws have left us a series of gaps including but not limited to women remarriage, widow remarriage, maintenance of ex-wife and children, adoption of child, and property inheritance rights of women. The Contemporary world understands the primary need for a world where everybody regardless of their sexual orientation is valued equally, and are able to share the equity in matters regarding distribution of power, knowledge, and resources. In order to achieve the ideal fair, thriving, and sustainable community we ought to collectively act and influence to create just and equitable relationships between men and women.

Now in 2023, at last after experiencing all these turning events, India culminated being a democratic country with people living concurrently belonging from a comprehensive range of various cultural and ethnic diversities. Customarily when a group of people united by religion overpowers a State, the elementary thing that is established is suspension of people's right to practise their own religion and/or speak their own language and the inclusive change in the cultural and religious background. Throughout history this practice is fairly common, for example this is exactly how the predominant ancient Middle East transformed from a majority christian world to the majority-muslim world we know today. The multi-ethnic character of the Indian nation-state here does not necessarily refer to the horizontal and vertical distribution of power among religious, casts and linguistic groups, a trend though very much visible, but primarily refers to the Indian nation-state's capacity and flexibility to accommodate the diverse cultural, religious and linguistic identities. India ended up being an independent secular country where the only identity which is common among all the citizens residing here are 'being an Indian' and not a particular Hindu, Muslim, Sikh, Parsi or any other singular form of religion; which is indeed a beautiful thing to be proud of.

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