



INDIAN SECULARISM AND FEASIBILITY OF UNIFORM CIVIL CODE

*By Shrusti Mulgund
From Symbiosis Law School Hyderabad*

ABSTRACT

Since our political emancipation in 1947, there is an ongoing debate regarding the adoption of Uniform Civil Code. The word 'Secular' was added in the Indian constitution through 42nd amendment in 1976. Surprisingly, the word secularism has nowhere been defined in the Indian Constitution, consequently different scholars have defined the word in their own way. Hence, an attempt has been made to define the word 'Secularism'. Secularism is a foreign concept, which has been borrowed from the European experiences, but due to the deep roots of religion in India, the same model cannot be implemented in India. This paper distinguishes the differences between Western and Indian Model of Secularism, and also explains different types of secularism. The researcher has used doctrinal research methodology in this paper. This paper will look into the emergence of secularism and the challenges faced by the Indian secularism and how the political parties are using the religion as vote banks. Personal laws in India are often interpreted from the viewpoint of patriarchal social arrangement, this paper wants to view this issue from the viewpoint of women. This paper will throw light on how personal laws are acting as impediments to the gender justice and if implementation of UCC will

bring gender justice. It also looks into the debates surrounding the UCC, and the intricacies involved in the implementation of UCC.

Secularism and UCC shouldn't be viewed as one against the other, in fact they are complimentary to each other and go hand in hand. It is evident that there is a dire need of UCC, but implementing it in a hurried manner will not be fruitful. Hence, this paper suggests the possible way in which UCC can be implemented.

INTRODUCTION

India is a country which is known for its cultural diversity. There are innumerable traditions, customs, cultures and religions followed by Indians. India being a secular country has given its citizens the freedom to choose their own religion, the government does not compel any person to adopt a specific religion, it does not identify itself with any specific religion and it is required to keep a fair distance from all religions. A country or a state is said to be secular, if it follows and promotes religious tolerance, discourages bigotry, religious education of a particular religion is not imparted by the government, and should not compel anyone to pay taxes for the sake of promotion or maintenance of a particular religion or religious institutions.¹ Until the 42nd amendment, the preamble of the Indian constitution comprised only of the words Sovereign and Democratic Republic, the words, Socialist and Secular were added to the preamble through this amendment, through this amendment Indian Constitution highlights that our country is secular with no

¹ S.M.A.W. Chishti, *Secularism in India: An Overview*, THE INDIAN JOURNAL OF POLITICAL SCIENCE 65, no. 2 (2004): 183-198



state religion and will recognize and accept every religion and neither favours nor patronizes any religion in particular.

Constitution of India constantly makes efforts to acknowledge and preserve social diversity, and strengthen the concept of unity in diversity. In the landmark case “*Kesavananda Bharti v. State of Kerala*²”, the Supreme Court held Secularism to be a basic feature of the Indian Constitution. Article 14 of the Indian Constitution ensures that the state shall not deny anyone equality before law and equal protection of law. Article 15 expands the notion of secularism by securing the citizens from any kind of discrimination on the grounds of religion, caste, sex or place of birth. Indian secularism is embodied in the fundamental rights of our constitution from Article 25 to Article 28 in which it grants the freedom to practice any religion to its citizens.

But in recent times it is said that Indian Secularism is in crisis and also under a lot of pressure. Secularism is not so stable as democracy or judicial system; it is a very delicate topic. Our country's secularism is likely to implode because of a lot of strain, because it will not be able to withstand the weight of political schemes and motives. There is a dire need for de-politicisation of religion from secularism, because many politicians use religion to get in the good books of people for election benefits, this speaks of how fragile Indian Secularism is and the need for its strengthening.

For a country which has enshrined secularism in its Constitution, the existence of personal laws contradicts the whole concept of secularism. Nearly all religions or

communities in India have their separate set of personal laws in family matters. Even though all these communities co-exist as part of our country, have same set of laws regarding criminal matters, but laws related to marriage, divorce, inheritance, succession etc differ from one religion to the other. The reason behind this is that rituals, traditions, customs practiced in their daily lives heavily depend on the religion that they were born into. Personal laws have indirectly resulted in suppression of women’s rights, the majority of the time it is blamed on the social obligations or duties. To curb this problem the Uniform Civil Code can be a way to eliminate all oppressive evils which have emerged within our present personal laws regarding marriage, divorce, adoption, custody. etc with laws which will be same for everyone irrespective of their caste and religion. As contemplated under our Indian Constitution, UCC is consistently hailed as the magic solution for if not all, at least some of the social problems that Indian women face. In order to achieve uniformity of law, the framers of the Indian constitution inserted Article 44, which says “*The State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India.*” Even though Directive Principles of State Policy cannot be enforced by a court of law according to Article 37 of Indian Constitution, nevertheless that does not diminish the importance of DPSPs. The intention embedded in the Uniform Civil Code is to remove conflicts that are based on religious beliefs and to strengthen the idea of national integration.

Even though debates for Uniform Civil Code has always been around, in recent times it has

² *Kesavananda Bharti v. State of Kerala* (1973) 4 SCC 225



gained steam as a result of a petition lodged by Shayara Bano. In the case “*Shayara Bano v. Union of India and Others*³” a Muslim woman urges the court to ban the triple talaq practise and declare it to be unconstitutional. This again brings us back to the question that if UCC will be the magic solution in filtering out the practices which are considered anti-women and discriminatory not just by people of different religion, but a group of people of their own religion. UCC is praised as well as chastised. While some parts of society regard it as anti-secular, whereas the others consider it as a way towards communal harmony.

RESEARCH METHODOLOGY

The research methodology used in this research paper is Doctrinal Research Method. It focuses on judgements, laws, legal article, legal sources, statutes etc. It examines law as a collection of principles that can be interpreted & analysed through legal sources only. It does not consist of quantitative/qualitative research. In this research methodology, information is collected from several sources and organised in a systematic order and is the significant aspect of this research methodology. Secondary data source has been used in this research paper to gather the data.

RESEARCH QUESTIONS

- How is the Indian Model of Secularism different from the Western Model of Secularism?
- How will Uniform Civil Code curb discrimination present because of the Personal laws?
- Why Uniform Civil Code still has not been implemented in our country?

- How can the notion of Uniform Civil Code can be brought into reality?

RESEARCH OBJECTIVES

- To understand the model of secularism used/ followed in India.
- To look into the different types of secularism.
- To interpret the present scenario of secularism in India.
- To analyse the need of Uniform Civil Code in India.
- To gain an understanding about how Personal laws are discriminatory in the area of marriage, divorce, inheritance, custody, etc.
- To analyse the debates surrounding the implementation of Uniform Civil Code.
- To understand the objections against the implementation of Uniform Civil Code.
- To learn the ways in which Uniform Civil Code can be implemented.
- To analyse if UCC will be in favour or against the Indian Secularism.

AN OVERVIEW OF SECULARISM

Meaning of Secularism

Over the years, Secularism has been defined by several scholars, judges, historians, sociologists etc. The term ‘Secular’ has come from the Latin Christians. It was used by Jerome for Greek terms to translate the new testament.⁴ In India, the national leaders were the first to consciously discuss about the principle of Secularism. Eventually, secularism & the concept of a secular state were suggested as national policy to achieve 2 purposes, to fight communalism & to

³ Shayara Bano v. Union of India and Others (2017) 9 SCC 1

⁴ John Finnis, *On the Practical Meaning of Secularism*, 73 NOTRE DAME L. REV. 491 (1998)



establish a socio political system for democratization of the country.⁵

In the Constitution of India, the term 'secular' is mentioned only in the preamble, it was incorporated in the preamble in 1976 through the 42nd amendment. After this amendment, the preamble states that India is a "Sovereign, Socialist, Secular, Democratic Republic."

Justice P.B. Gajendragadkar, who was the 7th CJI of India, wrote a book "Secularism and the Constitution" in this book he has given his view on secularism as "*the word 'secular', like the word 'religious', is amongst the richest of all words in its range of meaning. It is full of subtle shades which involve internal contradictions, and of these contradictions the conventional dictionary meaning can scarcely give a correct view.*"⁶ Donald Smith, who is a professor in the Pennsylvania University, teaches Political Science. In his book "India as a Secular State" he has describes what he thinks is a secular state. "*The secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion, nor does it seek to promote or interfere with religion*".⁷

To summarise the above view and definition in simpler words, Secularism is when a state separates itself from all religions, does not identify itself with any religion, does not propagate any religion, does not prefer or

discriminate against someone because of their religion and gives its citizens freedom to choose their own religion.

Western and Indian Model of Secularism

The concept of secularism was borrowed from the western culture, but the western model of secularism wasn't suitable for a country like India which has religion deeply rooted into the minds of its people, so the Indian model of secularism consists of some modifications from that of the western model.

- The western model sets a clear distinction of state from religion. But in India, it is not possible to draw a line between the state and the religion.
- According to the western model, secularism is strict separation between state and the church, whereas in India model, it doesn't separate state from religion rather encourages state to treat every religion with equal respect.
- In the western secularism a common uniform code is used to impart justice notwithstanding the religion of an individual. India has same laws for everyone when it comes to criminal matters, but has separate personal laws when it comes to marriage, divorce, adoption, succession etc.
- In the western model, state regards every religion with same indifference, it neither financially aids any religious organisations nor tax them. Whereas in India, the state will provide financial assistance to the religious

⁵ *Distinctness of Indian Secularism*, SHODHGANGA (Oct. 6, 2020, 10:54 PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/266710/13/13_chapter%203.pdf

⁶ P. B. GAJENDRAGADKAR, *SECULARISM AND THE CONSTITUTION OF INDIA* (Bombay : University of Bombay 1971)

⁷ DONALD EUGENE SMITH, *INDIA AS A SECULAR STATE* (Princeton University Press 1963)



institutions and will also tax them accordingly.⁸

Types of Secularism

Secularism is a wide and flexible concept, it covers philosophical, cultural, social along with political aspect of a country. Though the definition of Secularism might be same everywhere, but the way it is interpreted and implied differently around the world. It can be branched out into 3 main types: political secularism, socio-cultural secularism and philosophical secularism.

Political secularism is about keeping the government strictly apart from all the religions. So that the state does not prefer one religion and force that religion on others, this will result in discrimination and the minorities will suffer if this happens. People are allowed to have a relation with their God, but it should interfere with the obligations and functioning of a state.⁹

Socio-Cultural secularism signifies that the society is moving away from religions day by day as a result of advancement of science as well as technology. The modernization of society has resulted in decline of influence and dominance of religion. Another reason is vast population, because of it, diversity is expanding and because of that only 1 particular religion is no more enough.¹⁰

Philosophical secularism represents an ideology that strongly opposes theism. It also includes absolute dissection of religion, criticizes the religious & its followers. This approach to secularism provides the standstill situation & conflict that the secularism is facing in the recent time.¹¹

HISTORY OF INDIAN SECULARISM AND PRESENT SCENARIO

Emergence of Secularism in India

The national leaders of India struggled a lot to bring the foreign concept of secularism in India. Several political debates, social movements, conferences, meeting were centred around secularism. The biggest hurdle was to link people following different religions; religion caused differences, which further resulted in belittling a culture of another religion. The aim of bringing secularism was to set boundaries in which people can enjoy their freedom of religion in a democratic India.

Indian National Congress was formed in the year 1885 & subsequently became the face on national freedom movement. Its mission was to enhance the economic condition of the country & to help people realise how the British exploitation was hampering the development of the country. Hence, this led to the swadeshi movement, which wasn't just an economic & political movement but was also a cultural movement to unite the people

⁸ FARAH GODREJ, MULTICULTURALISM IN THE BRITISH COMMONWEALTH: COMPARATIVE PERSPECTIVES ON THEORY AND PRACTICE 150-166 (1st ed. California: University of California Press 2019)

⁹ Rajeev Bhargava, *Political Secularism: Why It Is Needed And What Can Be Learnt From Its Indian Version*, EUIEU (Oct. 8, 2020, 8:42 AM) <https://iow.eui.eu/wp-content/uploads/sites/18/2014/05/Bhargava-03-Bhargava.pdf>

¹⁰ *Secularization of Society: Definition & Theory*, STUDY.COM (Oct. 8, 2020, 9:09 AM) <https://study.com/academy/lesson/secularization-of-society-definition-theory-quiz.html>

¹¹ William W. Cobern, *The Competing Influence of Secularism and Religion on Science Education in a Secular Society*, SCIENTIFIC LITERACY AND CULTURAL STUDIES PROJECT (Oct. 8, 2020, 9:20 AM) https://scholarworks.wmich.edu/science_slcsp/24/



of India and to liberate the energy of the country.¹² In the year 1920, INC came under the control of Mohandas Karamchand Gandhi, who was a Hindu, was a profound believer of Hindu philosophy. He was of the opinion that Hinduism was "all inclusive. It is not anti-Muslim, anti-Christian or anti-any other religion. But it is pro-Muslim, pro-Christian and pro-every other living faith in the world. To me, Hinduism is but one branch from the same parent trunk."¹³ Under the leadership of Gandhi, INC gained a Hindu oriented outlook. Nevertheless, he constantly emphasised political, social and religious unity among all the religions to build a framework for a secular state. He stated that that a country must be so coordinated that all the religions can co-exist in a peaceful way. He did not believe that religion can be separated from politics, he intended to incorporate religion into politics. He said that "those who say that religion has nothing to do with politics do not know what religion means."¹⁴ Gandhi's views on secularism and mixing religion with politics were quite contradictory to one and other.

Nehru's ideology for secularism was much suitable for the Indian scenario as it was closely tied to the vision of building a decent society. His concept of secularism had 4 main aspects: First - India which is a multi-religious country, is made of people who belong to several religions & irrespective of their religion they need to be treated equally. Second - State should be neutral to all religions and its related matters. Third - A sense of attitude should be developed which

will bring all religions in harmony. Fourth - Nehru didn't support the concept of religious communities having different set of laws regarding the matters of marriage, divorce, succession, etc. He vouched for the implementation of a uniform civil code.¹⁵

Dr. B.R Ambedkar & Jawaharlal Nehru were on the same page that in the presence of pervasive communalism, achieving democracy would be difficult & pointless, and so only a secular state centred on equality is suitable for India. The Indian Constitution comprises Nehru's ideology of a state which is neutral to all the religions.¹⁶

Challenges faced by Indian Secularism

Since the time the discussion of secularism has been in the air, it was known that it is going to be a difficult task to make India a secular country. But in the year 1976, the word 'secular' has been added to the preamble of the Indian Constitution. But the question is, Is India a really secular country? The main basis of secularism is being neutral and respectful to all religions. However, the political parties in India are using religion as a tool to gain votes by the followers of a particular religion. This is done by either supporting the culture, practices or rituals of a certain religion or by using hate speech against another religion.

The same issue has been dealt with in the case of "*Abhiram Singh v. C.D. Commachen By Lrs. & Ors*", in which it was stated that "*The elections to the State legislature or to the Parliament or for that matter or any other body in the State is a secular exercise just as*

¹² *Supra* note 10

¹³ *Supra* note 12

¹⁴ AMAR SINGH, RELIGION IN POLITICS GANDHIAN PERSPECTIVE IN THE PRESENT CONTEXT, (Deep and Deep Publications 2003)

¹⁵ ANURADHA DINGVANEY NEEDHAM, RAJESWARI SUNDER RAJAN, THE CRISIS OF SECULARISM IN INDIA (Duke University Press 2006)

¹⁶ AHULWALIA, B.K, NEHRU'S MAN OF DESTINY 28 (New Man Group Publishers 1978)



*the functions of the elected representatives must be secular in both outlook and practice. Suffice it to say that the Constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State.*¹⁷ Supreme Court of India directed that no candidates are allowed to seek votes by using religion or caste, & if done so the candidate will be disqualified on the grounds of 'corrupt practice.'

But this hasn't stopped the political parties from employing religion to their benefit to rise to power. This will result in riots and hatred among the religions. And this will quash the concept of 'tolerance towards all religions.' This practice is very similar to the "Divide & Rule Policy" employed by the British.

PERSONAL LAWS VERSUS GENDER JUSTICE. IS UNIFORM CIVIL CODE THE SOLUTION TO THIS DISCRIMINATION?

India which is a home for several religious communities, has different personal laws for the religious communities regarding marriage, divorce, succession etc. The majority community of our country-Hindus have their own family law, and so does the largest minority community-Muslims. Even the smaller religious communities like Jews, Parsis & Christians who occupy a small number of the population have got their personal laws. Everywhere in the world, discrimination against women exists, this discrimination can be seen in the personal

laws itself. Several International laws and treaties are made to ensure right to equality from time & again, but it is ironic how the countries entering these treaties themselves have not given equal rights to women.¹⁸

There are many circumstances where women are discriminated because of Person laws. Muslim personal laws have been a notable contentious topic and have been a popular topic for debate. Discrimination against women can be noticed in the property rights of Muslim personal law, where the property won't be divided among brothers and sisters equally, brother receives double of what is received by his sister.¹⁹ In India, bigamy is considered as an offence under Indian Penal laws, whereas Muslim personal laws allow a man to practice polygamy where he can have up to 4 wives, which is extremely unfair to the women. In India, the minimum age of consent for marriage is 18 & 21 for girl and boy respectively according to the Indian Majority Act, but this act doesn't apply to the India Muslims. Puberty is considered as age of majority for marriage. Indian Majority Act has set the minimum age for girls to 18 because of several reasons, as the girl won't be mentally and physically ready to fulfil the marital obligations and it also curtails the education of those girls.

Many women have suffered because of triple talaq and denial of maintenance by her husband after the divorce. A case where both these issues coincide is "*Mohd. Ahmed Khan v. Shah Bano Begum and Ors*", in this case

¹⁷ *Abhiram Singh vs C.D. Commachen By Lrs.& Ors* AIR 1996 SCC (3) 665

¹⁸ *Women's Rights And Personal Laws: A Comparative Analysis*, AMU.AC (Oct. 9, 2020, 6:26 PM)
<https://www.amu.ac.in/emp/studym/100009318.pdf>

¹⁹ *Anchit Bhandari, Urvashi Jaswani, A Critical Analysis of Gender Inequality In The Existing Legislation Relating To Property Rights in India: A Comparative Study of Hindu And Muslim Law*, MANUPATRA (Oct. 20, 2020, 1:02 AM)
<http://docs.manupatra.in/newsline/articles/Upload/06EF3D18-696B-4E5F-A61E-80646EC0E664.pdf>



the husband divorced the wife by triple talaq & used it as a defence to deny paying maintenance. The appeal of the husband was dismissed and the Supreme Court held that it is the legal liability of the husband to pay maintenance/alimony to his divorced wife if she isn't able to maintain herself.²⁰ In this case the issue of maintenance was dealt with however the issue of triple talaq was not touched in this case.

In the case of “Ahmedabad Women Action group (AWAG) & Ors. v. Union of India”, 3 writ petitions were to seek gender justice. It contented that the Personal laws were discriminatory in nature and did not treat women equally. 1st petition was to declare Muslim Personal Law, that permits polygamy as void, as it is violates Art. 14 & 15 of the constitution. 2nd petition was to ban the unilateral talak which allows Muslim men to divorce their wife without any judicial proceedings. 3rd petition pointed out that Muslim men allowed to take more than 1 wife is an act of cruelty. 4th petition asked to declare Muslim Women (Protection of Rights on Divorce) Act of 1986 as void as it infringes Art. 14 & 15. The court quashed all the petitions on the grounds that the answer they were seeking lied with legislative and not judiciary, as it is parliament's duty to make laws and it was beyond the power of judiciary.²¹

Subsequently, in the case “Shayara Bano v. Union of India and Others²²” after a serious struggle the milestone was achieved when the

triple talaq was finally quashed. But this was just a stepping stone and there is still a long way to go to ensure that women are also treated equally before the law.

The discrimination arising from the personal questions has brought up the question that if implementing a uniform civil code that will have common set of laws for all the religions notwithstanding an individual's religion will be the answer to curb this discrimination.

DEBATES SURROUNDING THE UNIFORM CIVIL CODE

Many social activists, feminists, NGOs, scholars have been struggling to bring the myth of Uniform Civil Code which was promised to India in Article 44 of DPSP in Indian Constitution to bring it to reality, hoping that it would bring equality among the religions & also within the religions.

Arguments for Uniform Civil Code

The All India Women's Conference (AIWC) was the 1st to demand for the Uniform Civil Code. They voiced their frustration regarding the male-dominated legislature in an AIWC conference held in 1933. They demanded the UCC as a substitute for the present personal laws, based on the Karachi Congress Resolution that ensured equal rights to both the genders.²³

In the case of “Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and Others”, Justice Kuldip Singh endorsed the need to enforce UCC, as it will

²⁰ Mohd. Ahmed Khan v. Shah Bano Begum and Ors AIR 1985 SC 945

²¹ Ahmedabad Women Action group (AWAG) & Ors. v. Union of India AIR 1997 SC 3614

²² (2017) 9 SCC 1

²³ Anubhuti Rastogi, *Uniform Civil Code*, LAW TIMES JOURNAL (Oct. 9, 2020, 11:20 PM) <http://lawtimesjournal.in/uniform-civil-code/#:~:text=A%20uniform%20civil%20code%20administers,place%20in%20most%20modern%20nations.>



be a step towards national consolidation. He fervently advocated for UCC so that the personal laws of one religion don't overlap on the other. He also stated that *"The desirability of uniform 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."* The court directed that measures needs to be taken by the Government & Ministry of Law & Justice to ensure that the people of India get the 'Uniform Civil Code' that was promised.²⁴

Uniform civil code is believed to not only bring gender justice and common set of laws to all the religions, it is also believed to achieve national integration. In *"John Vallamattan v. Union of India"*, the issue was that the Section 118 of Indian Succession act was discriminatory in nature against Christians as it imposed unnecessary restriction regarding wilfully donating property for charitable/religious causes. The court struck down the section as unconstitutional. CJI V.V Khare who was one of the judges on the bench stated *"Article 44 provides that the State shall endeavour to secure for all citizens a Uniform Civil Code throughout the territory of India. It is a matter of great regrets that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A Common Civil Code will help the cause of national*

*integration by removing the contradictions based on ideologies."*²⁵

Arguments against Uniform Civil Code

During the process of making the Indian Constitution, UCC became one of the main topics for the debate in the Constituent Assembly. It received immense support as well as backlash. Md. Ismail who was an antagonist, who opposed UCC, he was of the opinion that adhering to the personal laws of their respective religion was a fundamental right. He believed that interfering with personal laws would be like interfering in the life of the people who have followed those laws for several years. To further prove his point, he explained that India was on the verge of becoming a secular country & no steps should be taken that might disrupt its citizen's cultural & religious ideology.²⁶

Nazir Ahmad, who was also a member of constituent assembly stated that *"Provided that the personal law of any community which has been guaranteed by the statutes shall not be changed except with the previous approval of the community ascertained in such a manner as Union legislature may determine by law."* He also noted that UCC will not only be cumbersome for the Muslims but to every religion which has religion-based laws, & the very nature of UCC is contradictory to the freedom of religion and culture granted to every citizen.²⁷

B. Pocker Sahib, a Muslim member of the constituent assembly opposed for having UCC which would replace all personal laws.

²⁴ Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and Others AIR 1995 SC 1531

²⁵ John Vallamattan v. Union of India AIR 2003 SC 2902

²⁶ Constituent Assembly of India Debates (Proceedings) – Volume VII, Tuesday Nov.23, 1948

²⁷ *Id.*



Regarding this he stated *"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."*²⁸

Husain Imam was of the opinion that "India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything." He questions that for a country like India which is extremely diverse, how is it possible to have a common civil law?²⁹

In the constituent assembly debates, whoever debated against the Uniform civil code can be categorised into two parts, one where the members completely opposed the idea of UCC, in the present scenario (1948) or in future, whereas there were also some people who opposed implementation of UCC in the present scenario (1948), but considered the possibility of it in the future.

Another argument against UCC, is that the north-eastern states which consists of more than two hundred tribes are governed by their own customary laws. And if the UCC is implemented then it will be a threat to the culture and diversity of these tribes that India has tried to preserve.

Due to severe stir because of the demand of UCC, the matter of forming UCC came under twenty-second Law Commission, headed by Justice Balbir Singh Chauhan for review. But the Law Commission stated that such a code is "neither necessary nor desirable at this stage."

IMPLEMENTATION OF UNIFORM CIVIL CODE – IS IT POSSIBLE?

²⁸ *Id.*

Personal Laws are contradictory to the very core concept of secularism, which professes a state to be neutral towards all the religions. Secularism in India is under threat because the political parties are using religious communities for their own vendettas. Hence strong opposition can be seen from the political parties for the adopting the Uniform Civil Code. UCC provided in Article 44 of Constitution of India is actually a tool to make India truly secular, and all citizens will be governed under the same laws and it will not treat any citizen differently because of the religion they belong to. Along with secularism UCC will also bring gender justice, regional integration and harmony among the religious communities. If UCC is not adopted and if every single law that is discriminatory in nature will be dealt with singularly, then it will take decades to finally get rid of the laws that are discriminatory. Triple talaq is an evident example for this matter.

Goa has a common 'Goa Civil Code' that governs all the people in goa under the same set of civil laws. The Hon'ble Supreme Court has called it a "shining example" for implementing a common civil code. The researcher is of the opinion that India does not have to implement UCC all over the country right at this moment. Instead, all the states should be encouraged to adopt their own common civil code. This has many advantages. The common civil code implemented at the state level can take into consideration of the religious and ethnic composition of its own people. Only after the implementation of common civil code in all the states, the Central government can truly analyse the pros & cons, do's & don'ts while implementing it all over the country. After

²⁹ *Id.*



evaluating the needs of the states, the Central government can formulate a really comprehensive Uniform Civil Code at the central level.

The concern regarding UCC destroying the diversity & culture preserved by the tribes is real, but this can be taken care of while implementing a common civil code in the state level, the state can make sure that the laws discriminatory in nature are quashed, but the cultural diversity and ethnicity of the tribes are still preserved. And the same can be done while implementing UCC all over the country, with required modifications.

This process may take several years and delay implementation of UCC, but at least it will be a step towards having a common set of laws that will treat every citizen the same without any distinction because of the religion and can finally become a secular country.

CONCLUSIONS AND RECOMMENDATIONS

The word 'secular' might be engraved in the Constitution of India, but India is not truly secular until religion is stopped being dragged into politics and especially if religion becomes a reason for injustice & inequality. This becomes a reason for hindrance in the growth and development of our country. Implementation of Uniform Civil Code would be the first step towards making India secular. It is a misconception that Uniform Civil Code will take away the religious freedom given to people under Article 25 and 26 of Indian Constitution. UCC will not take away the freedom of religion, it will just separate the religion from the judicial system so that every citizen is viewed as equal in the eyes of state. UCC

should not be viewed as a weapon that will destroy freedom of religion, instead it should be viewed as an instrument that will uphold secularism in India.

Implementation of Uniform Civil Code appears to be a herculean task in a country like India which is very famous for its cultural and ethnic diversity. However, many scholars feel that it is only through UCC, secularism and national integration can be achieved. Regarding UCC different religious communities in India have different perceptions. Almost all religious minorities in India have raised their voice against the notion of UCC. Hence, in spite of repeated assertion by Hon'ble Supreme Court of India, the implementation of UCC has remained in the realm of dream.

The religious minorities of India - Muslims, Christians, Sikhs etc consider UCC as a violation of their cultural autonomy. Hence, they want to maintain the status quo. In reality, the main beneficiaries of societal arrangement are the men folk who are enjoying all the benefits of development and progress. They feel the adoption of UCC is a great threat to their enjoyment of its benefits. Example- Polygamy, Property rights are beneficial only to men. The need of the hour is to eliminate misconception and create awareness among the minorities regarding the benefits of UCC. Hence, while adopting UCC due weightage should be given to the voice and sentiments of the minority women as they are the ones who are suffering because of the personal law. Another important step is to take the leaders and religious heads into confidence. The political will is an essential precondition for implementation of UCC in India.



There can never be a perfect time to Implement Uniform Civil Code in India, but initiative needs to be taken to implement it in state level and then subsequently implement it in central level to truly make India secular and to protect the rights of women & children of our country. The implementation of UCC will start a new era for Secularism as well as for women, for enjoying equal rights.

REFERENCES

- AHULWALIA, B.K, NEHRU'S MAN OF DESTINY 28 (New Man Group Publishers 1978)
- AMAR SINGH, RELIGION IN POLITICS, GANDHIAN PERSPECTIVE IN THE PRESENT CONTEXT, (Deep and Deep Publications 2003)
- Anchit Bhandari, Urvashi Jaswani, *A Critical Analysis of Gender Inequality In The Existing Legislation Relating To Property Rights in India: A Comparative Study of Hindu And Muslim Law*, MANUPATRA (Oct. 20, 2020, 1:02 AM) <http://docs.manupatra.in/newslines/articles/Upload/06EF3D18-696B-4E5F-A61E-80646EC0E664.pdf>
- ANURADHA DINGVANEY NEEDHAM, RAJESWARI SUNDER RAJAN, THE CRISIS OF SECULARISM IN INDIA (Duke University Press 2006)
- Anubhuti Rastogi, *Uniform Civil Code*, LAW TIMES JOURNAL (Oct. 9, 2020, 11:20 PM) <http://lawtimesjournal.in/uniform-civil-code/#:~:text=A%20uniform%20civil%20code%20administers,place%20in%20most%20modern%20nations.>
- Constituent Assembly of India Debates (Proceedings) – Volume VII, Tuesday Nov.23, 1948
- *Distinctness of Indian Secularism*, SHODHGANGA (Oct. 6, 2020, 10:54 PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/266710/13/13_chapter%203.pdf
- DONALD EUGENE SMITH, INDIA AS A SECULAR STATE (Princeton University Press 1963)
- FARAH GODREJ, MULTICULTURALISM IN THE BRITISH COMMONWEALTH: COMPARATIVE PERSPECTIVES ON THEORY AND PRACTICE 150-166 (1st ed. California: University of California Press 2019)
- John Finnis, *On the Practical Meaning of Secularism*, 73 NOTRE DAME L. REV. 491 (1998)
- P. B. GAJENDRAGADKAR, SECULARISM AND THE CONSTITUTION OF INDIA (Bombay : University of Bombay 1971)
- Rajeev Bhargava, *Political Secularism: Why It Is Needed And What Can Be Learnt From Its Indian Version*, EUI.EU (Oct. 8, 2020, 8:42 AM) <https://iow.eui.eu/wp-content/uploads/sites/18/2014/05/Bhargava-03-Bhargava.pdf>
- S.M.A.W. Chishti, *Secularism in India: An Overview*, THE INDIAN JOURNAL OF POLITICAL SCIENCE 65, no. 2 (2004): 183-198
- *Secularization of Society: Definition & Theory*, STUDY.COM (Oct. 8, 2020, 9:09 AM) <https://study.com/academy/lesson/secularization-of-society-definition-theory-quiz.html>
- William W. Cobern, *The Competing Influence of Secularism and Religion on Science Education in a Secular Society*, SCIENTIFIC LITERACY AND CULTURAL STUDIES PROJECT (Oct. 8, 2020, 9:20 AM) https://scholarworks.wmich.edu/science_slcp/24/
- *Women's Rights And Personal Laws: A Comparative Analysis*, AMU.AC (Oct. 9, 2020, 6:26 PM) <https://www.amu.ac.in/emp/studym/100009318.pdf>



LIST OF CASES

- Ahmadabad Women's Action Group (AWAG) v. Union of India, AIR 1997 SC 3614
- Abhiram Singh vs C.D. Commachen By Lrs.& Ors AIR 1996 SCC (3) 665
- John Vallamattan v. Union of India AIR 2003 SC 2902
- Kesavananda Bharti v. State of Kerala (1973) 4 SCC 225
- Mohd. Ahmed Khan v. Shah Bano Begum and Ors AIR 1985 SC 945
- Sarla Mudgal (Smt.), President, Kalyani and others v. Union of India and Others AIR 1995 SC 1531
- Shayara Bano v. Union of India and Others (2017) 9 SCC 1

LEGAL DATABASES

In this research paper, secondary source is used to collect the data and conduct research, like research papers, case laws, articles, journals, etc.

- Hein Online - <https://home.heinonline.org/>
- Manupatra <https://www.manupatrafast.com/>
- SCC Online - <https://www.sconline.com/>
- Lexis Nexis - <https://www.lexisnexis.com/>
- JSTOR - <https://www.jstor.org/>
