

UNIFORM CIVIL CODE AND MINORITY RIGHTS IN INDIA

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India is the largest democratic nation in the world is always identified as a country with “Unity in Diversity”. Every religion in India has its own strong traditions and customs and stays as an exemplar for a pluralist society. The Indian constitution recognizes the plurality but insists on equality and ensures rights for the Minorities. Since the commencement of the constitution assembly there is a very big debate whether to have a uniform civil code for all the citizens in India to deal with the marriage, divorce, maintenance, guardianship and succession. After various discussions the uniform civil code was placed in part IV of Indian constitution under Article 44, *The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India.*¹

Earlier in the draft constitution uniform civil code was mentioned in the Article 35. During the constituent assembly debates there was a very elongated argument on uniform civil code both in support and against its implementation.

Dr.B.R.Ambedkar , The first law minister of India was in a critical position to settle down this issue . People who support Right wing political ideologies (Hindutva) also claim that he advocated for a uniform civil code in India . But his opinion on Uniform civil code has not reached the masses especially the minorities in India who oppose the uniform civil code.

In fact , in the constituent assembly debates Dr.B.R.Ambedkar spoke in favor of Minorities and said that Uniform civil code cannot be imposed on all the citizens in India .

He said *“I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.*

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier

¹ The constitution of India , Article 44

Province. The law said that here is a Shariat law which should be applied to Mussulmans who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified.....”²

These forgotten words of Dr.B.R.Ambedkar reveal his view on Uniform civil code.

Following him , Justice V.R. Krishna Iyer also advocated for the minorities and proposed to reform the personal laws instead of imposing uniform civil code . He argued that India is a pluralist society with various religious beliefs and few want Hindu law to be made the national family law . In countries like United states , the people are regulated by diverse laws in various states based on the religion . And he recommended to make changes in the personal laws of Muslims and Christians to ensure gender justice.

He was against religious hegemony in India and suggested that *“While a uniform civil code is not particularly high on the national agenda, value-based progressive changes, preserving the separate identity of each religious group, is a feasible project avoiding insult and injury to any minority. This may be a preliminary step to pave the way for a common code. Mobilisation of Muslim, Christian and Parsi opinion in this direction is sure to yield salutary results and reduce fundamentalist resistance. Maybe, to facilitate a national debate, a facultative common code may be drawn up at a non-governmental level. It will be purely optional for minorities to accept or reject those provisions. Our founding fathers have been cautious in their phraseology while drafting Article 44 and therefore in a situation where the nation is in the grip of communal tension hurry must make way to moderation.”³*

The observations made by Dr.B.R.Ambedkar and Justice V.R. Krishna Iyer should also be taken into account before implementing the article 44 of Indian constitution. Their interpretations, that Uniform civil code should not be imposed on all the citizens without their consent and rectification of the personal laws of minorities should be given much importance.

If the parliament of India is going to enact Uniform civil code it should provide a space to the minorities to adapt it without compulsion or to proceed with their own (reformed) personal laws. This will be the faultless means to implement the article 44 and also to protect the rights of the minorities in India.

² Constituent Assembly of India , Volume VII , Tuesday ,The 23rd

³ Unifying personal laws By V.R. Krishna Iyer , The Hindu – September 06,2003 .