CHAPTER ELEVEN

UNIFORM CIVIL CODE

The Secular character of the Indian Constitution is also explicit in the Directive Principles of State Policy, especially, in the Directive Principle, relating to the 'Uniform Civil Code'.

Article 44% of the Indian Constitution specifically enjoins that "the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India". Further, the Constitution of India empowers the Parliament as well as State Legislatures through Entry 5 of List III in the concurrent list, of the 7th scheduled to Legislation on marriage, divorce, inheritance and other matters of personal status.

Inspite of the above Constitutional Provisions and even after 34 years since the Constitution came into force, this Directive Principle, still remains to be implemented, and there is no endeavour by the Government in this direction.
In fact, the provision for a Uniform Civil Code is consistent with the Secular character of our State. As Basu points out that, 'the object of this Article is to introduce a 'Uniform Personal Law' for the purpose of national consolidation. It proceeds on the assumption that, there is no necessary connection between religious and personal law in a civilized society'. But unfortunately, we still have separate laws of marriage, divorce and inheritance and succession for each religious community. These laws are generally described as 'Personal Laws' of the particular community, for example 'Hindu Law' of Hindus, and 'Mohammedan Law' of Muslims.

**Historical Retrospect :-**

The personal laws came to be applied during the Muslim Rule and then British Rule in India. It may, here be noted that the personal laws were applied as a matter

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of policy and not as a matter of religion. There were also some reforms and codification of them. For example, there was Legislation to prohibit practice of 'Sati' (1833) and practice of Child Marriage. There was also a law to permit widow remarriage (1856). There was Code of Civil Procedure (1859) and Code of Criminal Procedure (1861). There were enactments like Indian Succession Act (1865), Indian Divorce Act (1869), the Special Marriages Act (1872), The Parsi Marriage and Divorce Act (1936), The dissolution of the Muslim Marriage Act (1939) etc. However, the British Government by and large, followed the policy of non-interference in religious affairs of the Indian People. Therefore, they generally applied the traditional laws of different communities.

Similarly, it was considered natural for Hindus to be governed by the Hindu Laws and Muslims to be governed by Mohammedan Law. This policy helped to maintain the importance of the personal laws. However, it should be noted that the Concept of the personal law is certainly medieval and it has no place in modern State.
In the Constituent Assembly:

The Constitution of India in Article 44th emphasises the importance of introducing a Uniform Civil Code throughout the territory of India. But there is a strong opposition to this and it is mainly from the Muslim Community. This is clear from the debates in the Constituent Assembly at the time of discussion on the Constitutional Provision of 'Uniform Civil Code' and then in the Parliament when attempts were made to reform the personal laws of Hindus. The main reason underlying the opposition is that the personal laws are regarded by the orthodox people as part and parcel of the religion of respective community. Therefore, they argue that, any reform in the personal laws means interference in matters of religion.

This issue was considered at length in the Constituent Assembly. Both, the opponents and the advocates of Uniform Civil Code expressed their views. Generally, the Muslim Members in the Constituent Assembly opposed the provision for the Uniform Civil Code and they attempted to safeguard the Muslim Personal Law.
Mohammad Ismail Sahib, (Madras) stated that 'a Secular State should not interfere with the personal law of a people which was part of their faith, their culture and their way of life. He claimed that the European countries including Yugoslavia, protected the Musalmans in the matter of family law and personal status.  

Naziruddin Ahmed argued that, abrogation of personal law should not be treated as a measure of social reform. He pointed out that even the British, who enacted various Acts and Civil Procedure Code and the Criminal Procedure Code did not interfere with the certain Fundamental Personal Laws.

Pocker Sahib Bahadur (Madras), disclosed that he had received many pamphlets from the various Organisations including the Hindu Organization explaining that such interference would be most tyrannous.

K.M. Munshi, Alladi Krishna Swami Iyer and Dr. Ambedkar, who were the members of the Drafting Committee of the

3. Ibid., PP. 541-543.
4. Ibid., PP. 544-546.
Constitution replied the objection raised on the issue of Uniform Civil Code. K.M. Munshi, stated that 'Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrasant as to prevent the enactment of a Civil Code. Take for instance, Turkey or Egypt. No minority in these countries is permitted to have such rights.' He accepted that there are many among Hindus who do not like a Uniform Civil Code. However, he pleaded for divorcing religion from Personal Law and asserted that the enactment of the Uniform Civil Code would come within Article 25 (2) and it would not violate religious freedom guaranteed in that Article.

Alladi Krishna Swami Iyer pointed out that even during the British period, there were some enactments relating to the various branches of the Hindu and the Muslim Law. He also explained the enactment of codes on matters of Personal status in European countries.

Dr. Ambedkar, pointed out that, there are various Uniform Codes, the only province the Civil Law has not been

6. Ibid., PP. 549-50.
able to invade so far is marriage and succession. He further argued that Shariat Law was not applied throughout the territory of India and all the Muslims were not governed by the Muslim Law and the enactment was made for that purpose. He further explained that, he realised the feeling of the Muslims and asked them not to read too much in this Article. He assured the Muslims that even a Common Civil Code was enacted its application would be voluntary. 

Reforms in Hindu Law:

After the independence, the Government has attempted to reform the Hindu Law and has passed Legislation in the field of marriage, divorce, adoption and succession. In this connection, the Special Marriage Act of 1954, may be mentioned. The supporters of this Act, described it as 'Uniform Civil Code of Marriage' and a step towards the Uniform Civil Code for all citizens contemplated by the Constitution. On the other hand, the critics of this Act contended that, this was communal legislation by a Secular State.

The orthodox Muslims also criticised this enactment. Mohammad Ismail, President of the Indian Union Muslim League appealed to all Muslims to observe April 29, 1955 as 'Shariat Law Preservation Day'. In this connection, it should be noted that the acceptance of this enactment was voluntary.

Considering the need of greater uniformity in the sphere of the Hindu Law first, the Government intended to introduce the Hindu Code as one comprehensive legislation but because of the opposition from the Orthodox Hindus, its main parts were introduced as separate bills which were enacted differently, namely - Hindu Marriage Act, 1956, Hindu Succession Act, 1956, Hindu Adoption Act, 1956.

The enactment of these legislations was criticised both in the Parliament and in the Public Meetings. The critics pointed out that, the legislation would be detrimental to the interests of the Hindu Religion. They also criticised it on the ground that, it would violate the freedom of religion. Some critics pointed out that, this policy of the Government would postpone the evolution of Uniform Civil Code for indefinite time. It was also argued
that, the Government intended to move in the direction of a Uniform Civil Code for all citizens, why attempts are made to reform the Hindu Law alone? Why the Muslim Law is kept unreformed? Why direct Uniform Civil Code is not introduced?

Why a Uniform Civil Code was not has been introduced?
Mr. Pataskar, the Law Minister was asked in the Parliament and he replied that, even these bills would apply to 85% of the people and would thus, constitute a big step towards uniformity.

Jawaharlal Nehru expressed that, the Personal Laws are not in consonance with the ideal of the Secular State. But he also felt that, a Uniform Civil Code could not be brought about all at once, and it was better to take the first step by reforming the Personal Law of the Hindus. He thought that, this would prepare the ground for Uniform Civil Code.

In this context, it may be observed that, the appeasement policy of the Government and the strong opposition from

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the Orthodox Muslims are the reasons for remaining the Muslim Personal Law un-reformed. In fact, for implementing the Directive Principles of the Uniform Civil Code, the funds are not required, but only the courage on the part of the Government is required, and it is, we find, lacking in the Government.

It is true that, after the independence, the Government enacted the Legislation to reform the Personal Laws of the Hindus. But the question arises whether these reforms were truly Secular in nature or whether they were free from the clutch of religion. It is remarked that 'Although this legislation substantially eliminated the diversities in Hindu Law as applicable in various parts of the country, it did not wholly Secularise the law.—- These laws are not Secular. They still reflect the influence of religion'.

Objections :-

The opponents of Uniform Civil Code generally raised

two objections. Firstly, it would violate the religious freedom guaranteed in Article 25 of the Indian Constitution, secondly, it would violate the right to conserve culture guaranteed in Article 29 (1) of the Indian Constitution.

So far as the Muslim Law is concerned, it is observed that, 'A Muslim who wants to take plural wives or to divorce his wife unilaterally for no reason or any reason or does not want to maintain his divorced wife, is engaged neither in professing nor in promoting or propagating his religion'. Therefore, there is no violation of Article 25, if the Muslim Personal Law is reformed or amended. Similarly, 'neither polygamy and unilateral right to divorce, nor non-maintenance of divorced women and disinheri-
tance of orphaned grand children can be identified with the Muslim culture'. It does not, therefore, violate the Article 29 (1), if there is amendment or abrogation of the Muslim Law.10

In this connection, it is to be noted that, Islamic

countries like Turkey, Pakistan, Bangladesh have either abrogated or reformed the Muslim Law. But it has not destroyed their cultural identity and religious freedom. Then, how it would effect in reverse in case of India, is difficult to understand. Thus, it is clear that neither reform nor replacement of the Personal Law by Uniform Civil Code violates Articles 25 and 29 (1) of the Indian Constitution.

Some Muslim writers and reformers support the view of reforming the Muslim Personal Law. Noorani says 'the Personal Law of Muslims in a Secular set up needs reform, but not abrogation by a Uniform Code. The later is as easily demanded by the Parochial minded as indeed, it is by the Secular minded.' Mr. Engineer, also argues that the Uniform Civil Code is not possible immediately. In his opinion, 'the first step therefore, should be to either ban or strictly regulate the practice of Polygamy and unilaterally divorce. As the nature of Muslim Marriage is contractual a clause restricting husband from taking second

wife can be inserted in marriage agreement. Suitable provision can also be made in respect of divorce.¹²

From the above discussion, it may be concluded that, the diversity of Personal Laws in India is against the spirit and letter of the Constitution that guarantees equality before the law and equal protection of the Law. A Uniform Civil Code is, therefore, an urgent necessity, if the Indian Citizen desire the benefit of equality which is the most vital principle enshrined in the Constitution of India. The Uniform Civil Code is also a must for establishing a Secular social order. However, it may not be possible to enact the Uniform Civil Code immediately.

The Secularization, that is to say extracting the Personal Laws from the clutch of religion is essential before Uniform Civil Code is made. The process of Secularization of personal laws may be useful in evolving some common rules acceptable to all communities and this will be a good start towards the Uniform Civil Code, in future.