

# Historical purview of Uniform Civil Code in the backdrop of Constituent Assembly Debates

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**Abstract**—*The vision of the constituent assembly behind incorporation of the directive principle for enactment of uniform civil code replete with consenting and dissenting voices and the concept of gender justice.*

**Index Terms**—Uniform Civil Code, equality between gender, gender justice, vision of the founding fathers, constituent assembly.

## I. INTRODUCTION

Uniform Civil Code is an idea in synchronization with the codification of personal laws. Interestingly, before the national political debate of 1940, the idea of uniform civil code had not emerged. It was the National Planning Committee who took the lead in preparation of a report on the role of women in Independent India in August, 1940 thereby sowing the seeds of the concept of a uniform civil code.<sup>1</sup> Later, the Constituent Assembly while framing the Constitution of India included the concept in the Directive Principles of State Policy but not without extensive debate with opposition as well as concurrence from various members of the Constituent Assembly. This article is an attempt to throw light on the Constituent Assembly Debates before the concept of uniform civil code could be incorporated in the Constitution of India.

## II. HISTORICAL BACKGROUND

The concept of Uniform Civil Code owes its existence in the Constitution to Minoo Masani who as member of the Constituent Assembly relentlessly pursued the inclusion of the directive for enactment of Uniform Civil Code in the Constitution of India. Minoo Masani

who was a member of the sub-committee on fundamental rights proposed that in order to bring all communities under one umbrella, the State should take the responsibility of enacting a Uniform Civil Code.<sup>2</sup> The members of the Constituent Assembly namely Minoo Masani, Hansa Mehta, Rajkumari Amrit Kaur and Ambedkar vehemently supported the inclusion of the clause on enactment of Uniform Civil Code in the Constitution. They advocated the inclusion in the justiciable fundamental rights rather than as the non-justiciable directive principles of state policy. But for reasons best known, the sub-committee on fundamental rights included uniform civil code under clause 39 of the draft directive principles of state policy with the recommendation that applicability of uniform civil code shall be on voluntary basis. This step of the committee faced staunch opposition from Minoo Masani, Rajkumari Amrit Kaur and Hansa Mehta who objected to setting out uniform civil code as a non-justiciable social objective as personal laws instead of unifying the various communities acted in amplifying the differences and hence, they proposed the advisory committee of the Constituent Assembly to place the clause for enactment of uniform civil code under the fundamental rights as justiciable.<sup>3</sup>

During the debate in the Constituent Assembly, clause 39 was renumbered as article 35. Now, article 35 faced strong opposition from various members of the Constituent Assembly and prominent amongst them was Shri Mohammad Ismail Sahib who rose in support of adding a proviso to article 35 to the effect that no community should be obliged to give up on its

<sup>1</sup> A.Parashar, women and family law reform in India, 1992, P.P.230-235.t

<sup>2</sup> Minutes of the meeting of the sub-committee on fundamental right. 28 March 1947, in Siva Rao,

B.,The framing of India's constitution, 1968, Vol.-II, P.128

<sup>3</sup> Shiva Rao, Framing of India's constitution, 1968, Vol.-II select documents 206,

personal law even if uniform civil code is ever enacted and he backed his argument on the ground that personal law was the fundamental right of any community.<sup>4</sup> There were other arguments and proposed amendments to article 35 on the grounds that it violates the fundamental to religion which is justiciable and article 35 even though non-justiciable may hinge upon the said fundamental right. Further, Shri B. Pocker Sahib Bahadur, a member of the constituent assembly observed that the majority community's favorable stance towards article 35 deserves condemnation as in a democracy, duty to protect the minority communities' vests upon the majority communities.<sup>5</sup> At this point, Dr Bhimrao Ambedkar, the chairman of the constituent Assembly assured the minority communities that article 35 shall not enforce uniform civil code upon all its citizens but for those citizens who voluntarily declare to be bound by it and hence, the fear expressed by the minority communities are nullified.<sup>6</sup> Thus, the constituent assembly was a witness to the debate about the inclusion of the provision regarding the enactment of uniform civil code on the grounds of opposition marred with conflict between freedom of religion guaranteed as a fundamental right under the constitution and secularism of democratic India. The conflict did not reach any resolution as evident from the inclusion of article 35 as a directive principle and not as a fundamental right.

A prominent voice in support of uniform civil code was that of Shri K.M Munshi who emphasized the drawback of personal laws that could be rectified by the introduction of uniform civil code. He categorically stated that in absence of a uniform civil code; women could never achieve equality within the realm of personal law in matters of inheritance, succession. He put forth the argument that the constitution guarantees the fundamental right of non-discrimination on grounds of sex and gender and the personal laws when it comes to matters of inheritance and succession are on opposite ground; thereby necessitating the enactment of a uniform civil code in the country.<sup>7</sup> Shri Munshi urged that matters of inheritance should be separated from personal law as

it is an aspect of secularism.<sup>8</sup> He stated that inheritance being a matter of secular legislation ought not to be governed by religion and personal law as doing so would push women regressively in the social strata and equality between the sexes and the fundamental right guaranteed to the citizen of the country regarding non-discrimination on ground of sex shall remain a distant dream. But the stance of Shri. K.M Munshi countered opposition on the ground that even the British did not during their rule of 175 years did not tamper with personal law and hence, minority communities should not be asked to embrace uniform civil code after giving up personal laws governed by religion as the same would be perceived as tyranny of the majority as it would infringe upon Article 25 which protects the fundamental right to freedom of religion. .<sup>9</sup> It is pertinent to note that the only voice in the constituent assembly that rose in support of uniform civil code while stressing the point of gender justice was that of Shri. K.M Munshi. Till today, the point raised by Shri. Munshi is pending resolution as we continue to battle gender discrimination on matters of inheritance and succession. Thus, it can be concluded that the founding fathers of the constitution could effectively incorporate the enactment of uniform civil code as a directive principle after battling arguments based on tyranny of majority, conflict between fundamental right to religion yet the aspect of gender injustice was not reflected upon by the opposition. As we celebrate seventy decades of freedom, uniform civil code still remains a dream of the visionaries' of the constituent assembly that is yet to see the light of the day.

#### REFERENCES

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- [4] Shiva Rao, Framing of India's constitution, 1968, Vol.-II select documents 206

<sup>4</sup> Vol. VII, CAD., at 540

<sup>5</sup> Vol. VII, CAD., at 543

<sup>6</sup> VII CAD, at P.P. 551-552

<sup>7</sup> VII. C.A.D. at P. 548

<sup>8</sup> VII C.A.D. P.540

<sup>9</sup> Need for a uniform civil code, Dr. Ranjan Kumar P-144