ISSN – 2277-7911
Impact Factor – 5.077
YOUNG RESEARCHER
A Multidisciplinary Peer-Reviewed Refereed Research Journal
July- Aug - Sept 2023
Vol. 12 No. 3

UNIVERSAL CIVIL CODE: A STEP TOWARDS ACTUALIZING THE RIGHT TO EQUALITY

Dr. Maheshkumar N. Patel

I/C Principal And Assistant Professor,

Shree S.M.Shah Law College, Mehsana.

Corresponding Author: Mahesh Patel

DOI - 10.5281/zenodo.10553659

Abstract:

Many post-colonial states after independence are grappling with the problems of multiple jurisdictions, cultural and religious plurality and often states are unable to harmonize warring factions. This result in uneven and unequal standards based on religious differences giving way to subverted international human rights, especially in the case of women and leads to situations which are theoretically unconstitutional but still a reality in democratic states. States committed to the notion of multiculturalism often face the dilemma of balancing interests which arise due to tensions between proponents of cultural plurality and the states commitment to deliver the promise of universal and equal rights.

This paper is an attempt to understand the implications and possible unification of all civil laws regardless of religious differences as perceived by the Indian Constitution under Art 44 which speaks of a Universal Civil Code and comparing its application in Indonesia and Turkey.

Introduction:

India is a land of contradictions, paradox's and differences so diverse and incongruous that its existence has been a puzzle for everyone from casual observers to academic scholars for whom poverty, illiteracy and cultural heterogeneity do not make a democratic nation. But India has survived against all odds, braving through mass upheavals, labour unrests, ethnic violence and secessionists movements, the people divided on ideologies but united by a thread common to all who live on this great land: *the idea of India*. A land of hope where millions strive and struggle everyday to transform into reality the vision of our forefathers and mothers who gave us our most revered document, worshipped and cherished by all, the *Constitution Of India.*

One of the pillars of Indian constitutionalism is the concept of equality. It permeates the entire text,

manifesting itself patently in numerous different provisions and latently inherent, in all other. In the Preamble, the people of India promise to secure to themselves inter alia, social and economic justice and equality of status and opportunity. We were never idealistic about the concept of equality which was grounded in the facts of reality and history of our nation. Equality has never meant treating everyone as equal, blinding oneself to a peoples past, but it means equals respect and concern for all while bearing in mind the universal fact that no human being is the exact replica of another. Therefore, while adopting the time-altering notion of equality, our constitution allows differential treatment as a means to attaining this constitutional imperative.

With equality and liberty is attached another constitutional ideal of fraternity[1] which encompasses respect for each individual and paves way for unity and integrity of the nation[2]. Identification with 'India' has been very hard to achieve for us since our Indian identity is neither easy nor effortless nor based on a single language, religion or culture. The British made it their policy to deepen the cleavage between different factions of people in an attempt to subvert nationalistic tendencies and prevent a revolution. Despite desperate attempts, the differences that divide us and which makes us famous all over the world, have failed to unite us. *The lack of spirit of community has always been our Achilles heel.* Diversity itself can be a source of strength and all people should not be confined to a single interpretation of reality.[3] Hence, we have to own up to our truth: we are not uniform. We are certainly not equal and we resist reform and change vociferously to maintain our status quo, till a crisis strikes us and which forces us to mend our ways and thinking. Recent examples could be the economic reforms of 1991 or the recent amendments in the criminal laws of our

[1]The notion of fraternity finds place under The Constitution of India, art. 51A dealing with Fundamental Duties. It states that It shall be the duty of every citizen of India—(c) to uphold and protect the sovereignty, unity and integrity of India; (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

[2] We are Indians, firstly and lastly - B.R. Ambedkar

[3] Excerpts from Indira Gandhi's convocation address delivered at University of Delhi on April1, 1980, *available at* http://aicc.org.in/web.php/indira_gandhi/speech/4#(Last visited on August 3, 2015).

country relating to rape and sexual assault in the backdrop of the tragic loss of an innocent life

The key to realizing our constitutional obligations and ideals lies in a progressive, open minded and literate mass that identifies itself with un-feudal and secular ideas and believe strongly in the rule of law. Here is when B.R. Ambedkar said "What are we having this liberty for? We are having this liberty in order to reform our social system, which is full of inequality, discrimination and other things, which conflict with our fundamental rights.[4]"

Uniform Civil Code: Historical Background:

India is a secular country with a singular citizenship and the state promises everyone certain fundamental rights which are applied uniformly without any discrimination based on race, religion, sex, caste or place of birth. Uniformity of laws is therefore a pre-requisite for a just and equal society as envisaged by the constitution. The French writer Andre Malraux once asked Pandit Nehru what has been his greatest difficulty since independence. Nehru replied, "*Creating a just state by just means. Perhaps, too, creating a secular state in a religious country.*" [5]

At the time of independence, India was illiterate, poor, highly feudal and the horrors of partition were still fresh. The constitution as a transformative document had decimated the traditional foundations of the Indian society, under it the caste system was uprooted and untouchability was made a criminal offence; all were deemed equal and democracy and rule of law were established where everyone had equal rights. However, in a multi-cultural and pluralistic society like India, religion plays a dominant role in dictating laws applicable to its followers and the constitution framers realizing this reality put the onus of formulating a civil code for the nation in part IV of the constitution. Pandit Nehru and Dr. B.R.Ambedkar (the first law minister) were champions of this idea and both saw its implementation as vindicating India's commitment to modernity and secularism.

Article 44: The state shall *endeavour* to secure for the citizens a uniform

[4] CAD, vol. 7, p 746.

[5] Andre Malraux, *Antememoirs* 145 (Hamish Hamilton Publishing House, London, 1968). The conversation took place sometime in 1958.

civil code throughout the territory of India.

When this article was discussed in the constituent assembly, it incited and provoked a lot of resentment and agitation, particularly amongst Muslim members and also from the orthodox Hindus who viewed these proposed changes as complete abrogation of the Hindu tradition and unacceptable interference with the rules of caste and the traditional relations between the sexes.[6]. Their line was argument was that during the British regime, they refrained from interfering in personal laws, so why couldn't the successor state follow the same path? Muslims felt that the laws of inheritance, marriage, adoption, succession and divorce of their community were inseparable from their religion and the adoption of a uniform civil code would contradict the right of freedom of religion and was too ambitious and in advance of its time.[7]

The Hindus were singled out because they were an overwhelming majority and were witnessing a vigorous reform movement. The codification had a dual purpose*: first*, to elevate the rights and status of Hindu women; *second*, to do away with the disparities and divisions of caste. These changes went very far in the direction of gender equity, a notion absent in the Hindu religion and were radical departures from the main body of law. A doughty opponent of this bill was Rajendra Prasad, who viewed the bill as the imposition of progressive ideas of a microscopic minority over the entire Hindu community.[8]After the elections of 1952, the original bill was broken into parts and the Prime Ministers contended that '*the real progress of the country means progress not only on the political plane, not only on the economic plane, but also on the social plane*[9].' These were piloted by a new law minister, H.V.Pataskar and he observed that the new laws were based on the constitutional recognition of the dignity of person, irrespective of any distinction of sex.[10]

Therefore, unimagined changes were brought in Hindu law, yet the government did not think it fit to do the same with the Muslims yet, because after the violence and ostracization of the Muslims in the backdrop of the Partition of India, the Muslims were

[6] Ram Chandra Guha, *India After Gandhi* 230 (Picador India, London, 2007).
[7] CAD, vol. 8 543-6, 722-3.
[8] SPC, vol. 6 399-404.
[9] Jawaharlal Nehru *Speeches* vol. 3 438-54 (Delhi Publications Divisions, New Delhi, 1958).
[10] Lok Sabha Debates, 13 December 1955.

vulnerable and confused and looking towards the state for protection. Another problem, also linked to Partition, was the lack of a credible middle class. Large number of Muslim civil servants, lawyers, scholars, doctors and entrepreneurs had migrated to Pakistan, and the Muslims who remained were the labouring poor, the peasants, labourers and artisans. The Muslims of India were a large vulnerable minority under constant threat from Hindu Communalism and provocation of Pakistan.

In the author's opinion, it was easier to codify Hindu Law because the very foundations upon which Hinduism builds its identity are liberal and not restrictive. In 1966, in the case of *Sastri Yagnapurushadj v.Muldas Bhudardas Vaishya*the in an attempt to define Hinduism, the Court said, *"When we think of the Hindu religion, we find it difficult, if not impossible; to define Hindu religion or even adequately describe as it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more."* The Hindus were therefore, made to conform to a uniform civil code as they were ready to accept a progressive way of thinking and undo the inequalities which had flourished and gained acceptance under the garb of religion. Religion was saved from being a roadblock to emancipation. Moreover, it was the Hindu leaders who had enacted uniform laws, but for the Muslims, it was a dominating majority asking them to merge its sacred religious identity with the rest in the name of secularism and patriotism. Also, due to the fact that there were so many discrepancies between the practices of the numerous Hindu communities that uniformity was not seen as a threat to identity or culture. Muslims, were deliberately left out and Pandit Nehru remarked that, '*at the present moment, the time is not ripe in India for me to try to push it (uniform civil code) through. I want to prepare the ground for it'.*[11] This is still the view even though Islam's interaction with democracy and rule of law remains highly contested in the modern world[12].

Uniform Civil Code was thus put in the category of Directive Principles of State Policy. Although they are non-justiciable, but they are deemed to be fundamental in the governance of the

[11] D.E. Smith, *India as a Secular State* 326 (Princeton University Press, London, 1963).
[12] In the *Case of Refah Partisi (the Welfare Party) and others v Turkey* (2003) 37 EHRR 1.

country and it is the duty of the state to apply these principles in making laws.[13]

UCC and Role of Courts:

The judiciary has been strongly committed to the principles of secularism and the goal of creating a composite Indian nation. In 1996, in *Pannalal Bansilal Pitti v. State of Andhra Pradesh*[14], the Supreme Court reconfirmed its commitment to this assimilationist vision of nation building through attainment of legal uniformity in the following words: "The founding fathers provided a secular Constitution to integrate all sections of the society as a united Bharat . Article 44 attempts to foster uniformity among people of different faiths." Another landmark judgement is that of *S.R. Bommai v. Union of India*[15] in which the Supreme Court held that secularism is an integral part of the basic structure of the Constitution. Justice Ramaswamy said, "Secularism in the Constitution is not anti-God… this Court does not accept the wall of separation between law and the religion…." Justice Reddy declared, "Secularism is… more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions." The Supreme Court regretted that Article 44 of the Constitution has remained a "dead letter". In the same judgement the Supreme Court unequivocally upheld the legislative power of Parliament to reform personal laws and urged the government to enact a common civil code to promote national integration.

In *Ahmad Khan v. Shah Bano*[16] the Supreme Court pronounced its judgement in gross violation of the Muslim Personal Law. This judgement would have paved way for a uniform civil code in India if Muslims of the nation would not have put a dogged resistance against the same. It held:

> It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State

[13] The Constitution of India, art.37.
[14] 1996 SCC (2) 498
[15] AIR 1994 SC 1918
[16] AIR 1985 SC 945

> which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so. We understand the difficulties involved but, a beginning has to be made. But piecemeal attempts of courts to bridge that gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case.

Chandrachud, CJ in the above case observed:

> The 1772 Regulations followed by the Regulations of 1781 prescribed that either community was to be governed by its "personal" law in matters relating to inheritance, marriage, religious usage and institutions. The Legislation - not religion - being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing a uniform civil code. In this view of the matter no community can oppose the introduction of uniform civil code for all the citizens in the territory of India.

In *Ms. Jordan Diengdeh vs S.S. Chopra*[17] the court observed:

> It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far, far from uniform. Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all. We suggest that the time has come for the intervention of the legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way

[17] 1985 SCR Supl. (1) 704

out of the unhappy situations...

Judicial pronouncements also harmonised several aspects of Christian personal law. In *Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors*[18] the Supreme Court held in 1986 that provisions of the Travancore Syrian Christian Act, 1916, and the Cochin Succession Act, 1921, which limited the right of Syrian Christian women to their paternal property, were unconstitutional. However, it was only in 2010 that the decree in Mary Roy's case was executed and she could claim her share of her father's house back from her brother.

Hence, we can conclude that India is committed to upholding its constitutional mandate of secularism and over the years, we are inching towards what is envisaged in Article 44. The judiciary has tried its best to ensure secularity and equality but it is the obligation of the state to ensure that Article 44 becomes a reality. The seemingly lack of political should not come in the way of realizing our constitutional obligations

UCC and the Right to Equality:

The Constitution emphasises on the duty of the state to secure a social order, aimed at the ideal of equality. The state is directed to establish social welfare by way of removing inequalities, wherever they exist, in respect of status, facilities and opportunities by positive legislation.[19]Article 14, 15 and 25 can be invoked to justify the implementation of a uniform civil code.

Article 14: Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.(3) Nothing in this article shall prevent the State from making any special provision for women and children.(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 25: Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to

[18] 1986 AIR 1011

[19] The Constitution of India, art. 38.

public order, morality and health and to the **other provisions of this Part,** all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (b) Providing for **social welfare and reform** or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

We can infer that equal protection means the absence of any arbitrary discrimination by the laws themselves or in their administration. No one should be placed under any disadvantage, in circumstances that do not admit of any reasonable justification for a different treatment. Equal protection of the laws means subjection to equal laws applying to all in the same circumstances[20]. The reasonableness of a classification would depend upon the purpose for which classification is made. Hence in *B. Archana Reddy And Ors. vs State Of AP*[21] the court held that "Articles 14, 15 and 16 enjoin upon the State to treat all its people equally irrespective of their religion, faith or belief. Whether a group, caste or class is entitled to the benefit of affirmative action does not depend upon religion, faith or worship." In this case the court struck down 5% reservation for Muslims in Andhra Pradesh in Educational Institutions and of appointments/posts in the Public Services.[22] "There is no prohibition to declare Muslims, as a community, socially and educationally backward for the purposes of Articles 15(4) and 16(4) of the Constitution of India, provided they satisfy the test of social backwardness."

The expression "**equal protection of laws**" is a positive obligation on the state to ensure equal protection of the laws by bringing in necessary social and economic changes. If the state leaves the existing inequalities untouched by the laws, it fails in its duty of providing equal protection of its laws to all persons[23]. **Basic principle is:** *there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same.*

[20] *Lindsley v. Natural Carbolic Co.*, 1910, 220 US 61

[21] 2005 (6) ALD 582

[22] State to Muslim Community Ordinance, 2005 (Ordinance No. 13 of 2005, dated 20-06-2005)

[23] *St. Stephen College v. University of Delhi,* AIR 1992 SC 1630

Hence, the state is under a positive duty to

1. Rectify laws (existing or enacted) and personal laws, which flout this principle.
2. Reform personal laws which create inequality based on sex, religion etc.

Restrictions upon freedom of religion[24]

1. Public order, morality or health.
2. Other provision of part III of the constitution
3. Regulation of non-religious practices associated with religious practices
4. Social welfare
5. Social reform
6. Throwing open of Hindu religious institutions of public character to all classes and sections.

Section 118 of the Indian Succession Act was held violative of Article 14 since classification between Christian testators and others and bequests for religion and bequests for other purposes were deemed unreasonable and has no nexus with the objective sought to be achieved. [25]. In *Reynold v. United States*[26] it was held that while religious belief was protected by the constitution, religious practices were subject to state regulation. Similarly, in *In Mohd. Hanif Qureshi v. State of Bihar* the Court 'found' that cow slaughter on Eid ul Azha is not an essential practice of Islam and therefore prohibited in the interest of public order.

Marriage is a social institution and therefore all conditions or disabilities flowing from it are objects of social reform[27] and the state has the power to interfere with religious practices to effectuate social reform. In *Shamim Ara vs State Of U.P. & Anrother*[28] the court held that the husband did not have a unilateral right to triple talaq and had to provide good reasons for the divorce and go through attempts at reconciliation. In *Sarla Mudgal Case* it was held that "*Religious practices, violative of human rights and dignity are not autonomy but oppression".* Summararily, state regulation of the right to freedom of religion, may be as follows

- Practices which are not the essence of any religion but merely are associated with it

[24] *Saifuddin v. State of Bombay*, AIR 1962 SC 853
[25] *John Vallamattom v. UOI,* 2003 6 SCC 611
[26] 25 L ED 244: 98 US 145 1878 at pp. 166, 167.
[27] *State of Bombay v. Narasu* AIR 1952 Bom 84 (para. 7)
[28] Appeal (crl.) 465 of 1996 decided on 1 October, 2002

may be regulated by state in the interest of general public.

- Even if they form an integral part of religion, it would be subject to state regulation, in so far as necessary, in the interests of 'public order, morality and health'.

We can argue whether having more than one wife, refusing equal rights in matters of property, succession, inheritance, adoption, marriage, divorce, expression of one's individuality based solely on one's sex can be essential practices or form the core of any religion? And can it allowed in a democracy based on secularism, rule of law and equality?

Uniform Civil Code in Indonesia:

India, which accounts for majority of world's Hindus, is also home to almost all the major religions of the world and is home to 11% of the world Muslim population – the second largest after Indonesia. Turkey has 5% of the Muslim population. According to the 2010 National Census of Indonesia, population stands at 237.6 million[29]. Indonesia has been deemed the world's third largest democracy by population. Muslims form the majority with 87.5% of the population, Christians 9% and Hindus and Buddhists form 3% and 2% population share, respectively.[30]

After Indonesia's independence in 1945, the founding fathers had to decide what kind of state Indonesia should become, and the core ethos on which the state should be based. Although Indonesia is a Muslim majority society, its pre-Islamic Buddhist and Hindu heritage remain strong. On the one hand, after centuries of colonial rule, they had a chance to create an Islamist state. On the other, cultural norms that created and conserved great diversity would make understanding of Islamic law difficult, and the proclamation of an Islamic State might provoke non-Muslim islands to secede. Ultimately, the drafting committee agreed on a unitary state with equal rights and citizenship for all.[31]

Indonesia is a secular state with the guiding force of Pancasila. In August

[29] National Census of Indonesia 2010 *available at* http://www.bps.go.id/65tahun/SP2010_agregat_data_perProvinsi.pdf (Last visited August 3, 2015).

[30] Pew Research, Religion & Public Life Project, Demographic Study: The Global Religious Landscape Dec 18, 2012 *available at* http://www.pewforum.org/2012/12/18/global-religious-landscape-exec/(Last visited August 3, 2015).

[31] Yüksel'Sezgin & Mirjam'Künkler, *Contesting Boundaries Of Private And Public: Religious Law In India And Indonesia, 2010 available at* http://igov.berkeley.edu/sites/default/files/Sezgin%20Kunkler.pdf(Last visited August 4, 2015).

1945 they agreed upon the usage of the term One and Only God instead of Allah in the Indonesian Constitution[32]. This was done particularly to strengthen the confidence of minorities who preferred using the term Tuhan and could connect with it. The official motto of Indonesia is "Bhinneka Tunggal Ika" which can be translated as "Unity in Diversity"[33]. The national coat of arms in Indonesia is called Garuda Pancasila[34]. Indonesia's national airline has also been influenced by this bird of Hindu mythology and is called Garuda Indonesia. Hanuman is the official mascot of Indonesia's military intelligence and the 20,000 rupiah note of that country has Lord Ganesh imprinted on it.[35]

The Indonesian Constitution is very unique in terms of its relation between religion and state. It is stated there that that the state is based "*on the belief in the One and Only God*[36]" but at the same time, it doesn't mention the name of any religion. Historical interpretation into the constitutional drafting process reveals that the Constitution is neutral with respect to religions and worldviews. However, the Constitution does prefer a theistic worldview over the non theist[37]. Religious freedom is acknowledged under Article 29(2) which stipulates that "***the state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief".*** In addition to that, the second Constitutional amendments radically modified the human rights chapter under Article 28 of the Constitution. Those which are precisely relevant with religious freedom are Article 28E (1)[38] and (2)[39] and Article 28I[40]. These Articles incorporates basic freedom as normally found in modern Constitutions, namely the freedom to worship and to practice the religion of

[32] Preamble to the Constitution of the Republic of Indonesia

[33] The Constitution of the Republic of Indonesia, art. 36A.

[34] *Ibid.*

[35] L.K. Advani ,*Hindu influence in Indonesia* on 17th July, 2010 *available at* blog.lkadvani.in/blog-in-english/hindu-influence-in-indonesia(Last visited August 3, 2015)

[36] The Constitution of the Republic of Indonesia, art. 29(1).

[37] The Constitution of the Republic of Indonesia, art. 36.

[38] Article 28E (1) Every person shall be free to choose and to practice the religion of his/her choice.

[39] The Constitution of the Republic of Indonesia, art. 28E(2): Every person shall have the right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience.

[40] Article 28I(1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances. (3) ***The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations***.

his choice. From the liberty side, more emphasis on religious liberty is provided by Article 28E and Article 28 E (2) can also be interpreted as a guarantee towards non-theist worldviews. From the equality side, however, it appears that there has been no change with respect to the rights of non-theist followers. This would mean that the state is under obligation to protect their conviction, but is not obligated to provide material supports. Conversely, for theist followers, the state is obligated not only in protecting them, but also in providing supports.

Civil Code in Indonesia:

Indonesia enacted its Civil Code on April 39, 1847. It applies to all individuals equally irrespective of their religious affiliations. The Indonesian civil code in divided into three parts. Book One deals with rights and duties of "individual" regulating matters of divorce, maintenance, guardianship, marriage, annulment of marriage, minority, matrimony , division of assets etc. Book Two is titled "Assets" dealing with ownership of land, mortgages, servitudes, wills, succession, ungoverned inheritances, estate division, priority of debts etc. Book Three deals with "Contracts" enumerating general provisions concerning contractual obligations are enumerated. The world's largest Muslim majority country stands as a testimony for those who believe that societies which are dominated by Islam do not exhibit respect for other religions.

Uniform Civil Code in Turkey:

Modern Turkey's first constitution was drafted in 1924[41], one year after the establishment of the republic, by the Grand National Assembly, controlled by Mustafa Kemal's "People's Party." Kemalism was designed to advance a particular modernizing ideology based on three tenets: *Westernization, Turkish nationalism, and a scientific approach to religion*. Kemal and his fellow founders aimed at constructing a prosperous, rational, and irreligious modern society. Secularizing Turkish society and consolidating a homogenous national identity from its diverse ethnic and religious groups were the central goals

[41] The 1924 Constitution was amended in 1937, the six main principles of the Republican Peoples' Party programme, republicanism, nationalism, populism, statism, secularism, and reformism, also being enshrined in the Constitution itself as basic qualities of the state. Sourced from: Republic of Turkey, Ministry of Foreign Affairshttp://www.mfa.gov.tr/constitution-of-the-republic-of-turkey.en.mfa

of the state. At the same time, Mustafa Kemal realized that Islam was deeply embedded in Ottoman culture and could not be eliminated by the stroke of a pen. For that reason, the 1924 constitution included the statement that "the religion of the Turkish Republic is Islam" in 1937, however, this statement was removed from the constitution and Turkey was defined as a secular state. The government under Ataturk implemented the secular agenda by removing Turkish symbols, banning religious institutions that were closely tied to the government, eliminating Sharia, outlawing traditional dress, adopting Western calendar, and replacing the Arabic alphabet with the Latin alphabet. In contrast to the consensus-based approach to decision making on religious issues adopted by the drafters in India, the Turkish constitution represented a revolutionary model of imposed secularism. Preamble to the Constitution declares:

> *[N]o protection shall be accorded to an activity contrary to Turkish national interests, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Ataturk and as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics*[42].

Articles 2, 4, 10[43], 13, 14 and 24 affirm this faith in secularism and equality.

The idea of creating a modern public society in which equality was guaranteed to all citizens without distinction on grounds of religion, denomination or sex had already been mooted in the Ottoman debates of the 19th century. Significant advances in women's rights were made during this period (equality of treatment in education, ban on polygamy in 1914, the transfer of jurisdiction in matrimonial cases to the secular courts established in the 19th century).The defining feature of the Republican ideal was the presence of women in public life and their active participation in

[42] Hanna Lerner "Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey" 65 World Politics 609-655 (2013) *available at* doi:10.1017/S0043887113000208(Last visited August 4, 2015).

[43] *Men and women shall have equal rights. The State shall take action to achieve such equality in practice.*

society. Consequently, the ideas that women should be freed from religious constraints and that society should be modernised had a common origin. Thus, on February 17 , 1926 the Civil Code was adopted, which provided for equality of the sexes in the enjoyment of civic rights, in particular with regard to divorce and succession. Subsequently, through a constitutional amendment of December 5, 1934 (Article 10 of the 1924 Constitution), women obtained equal political rights to men.[44] In the case of Refah Partisi (The Welfare Party) and Others v. Turkey[45] the court held that "Democracy is the antithesis of sharia. [The] principle [of secularism], which is a sign of civic responsibility, was the impetus which enabled the Turkish Republic to move on from Ummah [ümmet – the Muslim religious community] to the nation."

Hence, the Constitution makes Article 2 unamendable[46]. The Turkish Constitution recognizes freedom of religion for individuals whereas the religious communities are placed under the protection of state, but they cannot become involved in the religious process (by forming a religious party for instance) and no party can claim that it represents a form of religious belief[47]. Nevertheless, religious sensibilities are generally represented through conservative parties. Hence, we can see that Turkey's commitment to secularism has managed to make it a role model for a secular democracy in a Muslim country on the international stage.

Conclusion:

It is to be noted that 'personal law' is neither synonymous nor co-extensive with 'religion' which also contains certain social rules of conduct which may not form the essence of a religion and needs to evolve according

[44] *Case Of Leyla Şahin V. Turkey* Application no. 44774/98, Judgement on 10 Nov 2005 *available at* http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70956 (Last visited August 4, 2015).

[45] (Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98) Judgement on 13 Feb 2003 *available at* http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60936 (Last visited August 4, 2015).

[46] David Schilling "Islamaphobia and Turkey - Refah Partisi (The Welfare Party) v. Turkey" 26 Loy. L.A. Int'l & Comp. L. Rev. 501(2004) *available at* http://digitalcommons.lmu.edu/ilr/vol26/iss3/8 (Last visited August 4, 2015).

[47] The Constitution of the Republic of Turkey, art. 68: 4th para: The statutes and programs, as well as the activities of political parties shall not be contrary to the independence of the State, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic; they shall not aim to promote or establish class or group dictatorship or dictatorship of any kind, nor shall they incite citizens to crime. Article 69: The activities, internal regulations and operation of political parties shall be in line with democratic principles. The application of these principles is regulated by law. Political parties shall not engage in commercial activities.

to *exigencies of time*. The Hindu Succession (Amendment) Act of 2005, the Prohibition of Child Marriage Act of 2006 and most recently the remarkable Maintenance and Welfare of Parents and Senior Citizens Act of 2007 showcase the changes and progress in India. In July 2013, Mumbai's first Sharia Court was set up by the Bharatiya Muslim Mahila Aandolan (BMMA). In the same month, tribal women in Himachal Pradesh rallied on the streets of Shimla demanding that a century-old law that bars women from inheriting ancestral property be revoked,[48]finally winning their battle and getting equal rights in property according to the Hindu Successions Act,1956.[49] Meanwhile, in Gujarat, a young Parsi woman has taken her community leaders to court challenging the denial of access to the fire temple to Parsi women who have married non-Parsis. These seemingly disparate episodes affecting women of different faiths in different parts of the country are examples of the changing landscape of family law in India. There is more debate and dissent within communities and a concerted attempt to reform family law from within. New evidence suggests that gender inequality within the family bears a greater correlation to socio-economic conditions than the form of religious law. But perhaps, most importantly, the new areas of emphasis on family law reform address questions such as domestic violence which cut across community identities and concerns.

The Danial Latifi and Shamim Ara decisions evoked little protest, in part because of the broad divergences in views of Indian Muslims over the last decade. Muslim personal law has moved from being an issue around which Muslim identity is expressed to being a site where different Muslim voices have come to assert their individual identities. With the spread of literacy and new forms of media, religious authority is being fragmented and new groups are questioning older orthodoxies.

It is often argued that UCC should not be forced upon unwilling persons but it should be applied when the community asks for reform and when they come forward seeking it. **The All India**

[48] Vishal Gulati, "She battles for tribal women's property rights" The Indian Express, Dec 22, 2010 *available at* http://www.newindianexpress.com/nation/article172931.ece?service=print (Last Updated: May 16, 2012 2:40 PM).

[49] Arun Sharma, "Tribal women gets rights in ancestor's property, breaks age old practice*"* The Indian Express, Jun 26, 2015 *available at* 12:45, http://indianexpress.com/article/india/india-others/tribal-women-gets-rights-in-ancestors-property-breaks-age-old-practice/ (Last Updated Aug 3, 2015 11 PM).

Muslim Women Personal Law Board[50] has written on its website the following:

> The Muslim woman today continues to face the brunt of a discriminatory law. The Muslim community is marginalized, poor, and backward but the Muslim women are a minority within a minority. She is divorced either orally, in writing, and unilaterally, she gets meager or no mehr amounts, her husband continues to remarry with impunity; her consent is not taken at the time of marriage, she is forced to undergo halala, she faces intolerable restrictions during her iddat and so on. It is a tragedy that while Quran bestows many rights on the Muslim women, they are not able to access them. There can't be two Islamic laws: one being imposed by madarsas and another being practiced in homes. Nobody, including clerics, has the authority to go beyond Quranic laws. But the mullahs and clerics in India are creating their own rules, forcing men and women to either follow them or be condemned through fatwas.

They released the *"Sharia Nikahnama"* that they claim would give equal rights to both Muslim men and women.

Women from the Oran and Ho communities of Jharkhand had previously challenged the constitutionality of the Chotanagpur Land Tenancy Act, which limited the right to cultivate jungle land to male descendants. The Supreme Court, mirroring its manoeuvres in the Danial Latifi case, upheld the constitutionality of the Act but argued that it had to be interpreted keeping in mind the constitutional right to life and livelihood[51]. Until 2001, a Christian

[50] *Available at* http://muslimwomenpersonallaw.com/index.html (Last visited August 3, 2015).

[51] *Madhu Kishwar & Ors. Etc vs State Of Bihar* 1996 SCC (5) 125

woman could not claim more than one-fifth of her husband's income as alimony. The reforms in 2001 were carried out by the NDA government, with little opposition from Churches or Christian groups. This is partly because the groups concerned were extensively consulted through the process. Thus, there is much greater congruence within different personal laws today than a decade ago despite the lack of a UCC.

The civil code in Goa has recognised the right to matrimonial property since the 19th century, but other States are catching up. Maharashtra is considering a Bill that will give married women the right to half of their husband's property. The central Marriage Laws (Amendment) Bill, 2010, which has been approved by the Union Cabinet, seeks to amend the Hindu Marriage Act and the Special Marriage Act to entitle the divorced wife to half the share of her husband's residential property[52]. Meanwhile, courts are attempting to define in numerical terms the contribution of women as homemakers. In the *Lata Wadhwa v. State of Bihar*[53], the Supreme Court laid down Rs.3500 as a notional monthly income for a homemaker in a small town in India[54].

Many Islamic countries like Egypt, Sudan, Jordan, Iran, Syria, Lebanon, Morocco and Iraq are updating Shariat laws relating to marriage and have imposed a court injunction against the husband pronouncing the infamour triple talaaq. In Turkey and Cyprus, unilateral divorce has been disapproved and needs court intervention. Turkey is trying to reinterpret and radicalise Hadis, the second-most sacred text based on the sayings of the Prophet. The Iranian Family Protection Law 1967 does not grant a man the right to divorce his wife without judicial intervention. The author believes that it is possible now through central codification to secure reasonable uniform rights and duties in the light of changing circumstances and truly fulfil our responsibility under CEDAW and ICCPR. This has been possible because of the fragmentation of religious authority, greater debate and dissent

[52] "Women to get a share in husband's property in case of divorce" *The Hindu*, *available at* http://www.thehindu.com/news/national/article3429903.ece (Last Updated May 18, 2012 01:03 IST)

[53] (2001) 8 SCC 197.

[54] Rohit De, "Personal laws: A reality check" *Frontline* September 6, 2013 *available at* http://www.frontline.in/cover-story/personal-laws-a-reality-check/article5037670.ece (Last visited August 4, 2015).

within communities, and growing literacy and awareness of women.

Pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position.[55]. Uniform Civil Code's main objective is to bring out equality and Social Reform, not religious reform as many fear. It is important to recognize and reiterate that the call of reform of discriminatory laws is not a criticism or derogation of any religion itself. Laws are constructed by fallible human beings; they are a construct of human mind set and need consistent review and revision based on changing socio-economic needs and perception of morality, equality, liberty and rule of law. In order to make progress, societies must ensure consistent alignment of constitution norms with evolving human and minority rights.

[55] *Case Of Leyla Şahin V. Turkey* , Application no. 44774/98, Council of Europe: European Court of Human Rights, 10 November 2005, *available at* http://www.refworld.org/docid/48abd56ed.html (Last visited August 3, 2015).