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Social Equality in a Multi - Religious Society: A Plea for Uniform Civil Code

Democracy is a mere aspiration in the absence of social equality. The concept as such is of no vital significance to our people unless it serves as a means to bring about a change in the socio-economic structure of the community to cherish the ideal of social equality enshrined in *the Indian Constitution*.

The Objective Resolution declared that the people of India were to enjoy social, economic and political justice and equality of status, and opportunity before law.¹ *The Preamble* of the constitution granted social and economic justice also along with political justice.² The Directive Principles³ are wholly consistent with the solemn declaration made in *the Preamble*. The Philosophy of social equality is reflected and elaborated particularly in Part III, Part IV and Part XVI of the Constitution. The Constitution has laid down its objective as to usher in a new social order where there will be justice — political, social and economic.⁴ It declares certain rights as 'fundamental' and they are made enforceable in a court of law. They include civil, religious, political, social economic and cultural rights.⁵ It directs the state to bring about the necessary conditions for creating other right, particularly social and economic rights and the 'Fundamental Rights' and 'Directive

1. *Constituent Assembly Debate*, Vol. I, p. 57.

2. *Ibid.*, Vol. IX, pp. 429 - 457.

3. *Indian Constitution*, Articles 36-51

4. Cf. *The Preamble of the Constitution*.

5. See the section on "Fundamental Rights" in the *Indian Constitution*.

Principles' are interwoven into the design of social equality. The Constitution makers knew what they were laying down when they proposed social and economic Justice, and it was with a view to implement them that they enacted Part III and Part IV, both fundamental in character — on the one hand, basic freedom to the individual and, on the other, social security, justice and freedom from exploitation by laying down guiding principles for future governments.⁶

Justice, according to Hobhouse means 'right ordering of human relations'.⁷ The concept of Social Justice takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities.⁸ It may be noted that the interaction of an individual with his environment brings about different types of social relations. Social interaction is a process whereby men interpenetrate the minds of each other. Let us at this juncture analyse the concept of social change in the context of the study of the concept of social justice. It should be remembered that change is the law of nature. Nothing is static. Change may be in the right direction or it may be useless. once we have a change in the right direction, we call it progress. Social change indicates not only change in social structure but also change in attitudes or beliefs. Social change usually is generated by a desire of people to wipe out old patterns of living besides the influence of the new social and political elite, the rapid industrialization of the country, changes in religious and moral outlook etc. The process of social change may take place in the form of 'evolution', or 'revolution' or 'adaptation' or 'progress.'

Social change is generally gradual or in most cases is brought about by state-interference, in the form of social legislation. In addition to ameliorating the social condition of people, social legislation, bridges the gulf between the existing laws and the requirement of the society

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6. N. A. Palkhiwala, *Supreme Court on Amendments of Fundamental Rights in Indian Constitution*, (Allahabad : 1973), p. 308.
 7. L. T. Hobhouse, *The Elements of Social Justice*, (London : 1949) p. 94.
 8. P. B. Gajendra Gadkar, *Law, Liberty and Social Justice*, (Asia Publishing House, New York, 1965), p. 78.

at a given time. Its main emphasis is on removing exploitation and bringing about economic social and political justice. It provides social equality in society and provides social security to every citizen. A social legislation could only be effective if there is psychological preparedness amongst the people who receive it. "Without sensibility of consequence, law will mean non-sense, spell disaster and lead to frustration and emotional chaos."⁹ The purpose of social legislation is frustrated if its enforcement is feeble. If the laws are awarded with impunity, a dangerous situation would arise in the social set up. This would undermine the purpose of legislation. If there is excessive legislation, with the intention from the part of legislature to change human nature and individual morality, such attempts would naturally nullify the measures that are taken to reorder the social structure. It is therefore necessary that there should be fewer social laws with effective enforcement.

Application in India

The history of India after independence is by and large a record of progress in political, social and economic fields. The Constitution and the new laws under its framework, have brought about a type of social revolution, the nature of which has yet to be fathomed. It would not be too much of an exaggeration to claim that some of the Indian laws, after independence like *The Hindu Marriage Act, 1955*, *The Hindu Special Marriage Act, 1956*, *The Suppression of Immoral Traffic in Women and Girls Act 1956*, *The Untouchability Offence Act 1955* and the various labour laws have fostered the general welfare protected the weaker sections of society and channelised social change in a manner that would serve the common good. The Constitution too served as an enduring anvil on which a social revolution was gradually to be forged it. In order to build up a society on the basis of harmony and cohesion, it is absolutely essential that personal and social values must be rationalized as otherwise it will lead to contradictions and dichotomy in the society. In India the Constitution has opened a vast vista of changes for social equality, but due to the

9. Indian Journal of Social Work, Vol. XX, p. 53.

absence of rationality and value amalgam, both personal and social Constitutional opportunities are not fully availed of.

Let us examine the legal position of women in India, which of course, is somewhat better than in many parts of the world. But inequalities in various forms still exists. It must, however, be admitted that in actual practice as distinguished from laws, the position of women has not changed much. Occasionally, there is talk about ameliorating the conditions of muslim women, but political considerations stand in the way of doing anything substantial towards that end. Muslim personal laws are considered to be a part of the religion of Islam and government generally considers it necessary not to interfere directly in matter regarded as religious.

The Personal laws are excluded from the scope of the Fundamental Rights with the results that in matters of marriage, divorce, inheritance, maintenance, guardianship and the custody of children, adoption and other matters affecting personal life, women still experience inequalities and injustice. For example, so far as equal rights to succession given to the daughters are concerned, the snag is that, *by will*, the daughter's right in the family property can be defeated. In the same way adultery is regarded as a criminal and not a matrimonial offence, the remedy for which may be sought in divorce or separation. Retention of this as a criminal offence brings out clearly the value system of the last century which regarded the wife as the husband's property. It also prevents lawyers and others from giving necessary help to an oppressed wife.

Plea for Uniform Civil Code

The absence of a uniform civil code to achieve the ideal of Article 44, in the last quarter of the 20th century, is an incongruity that cannot be justified. The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights, and the Preamble to the Constitution which promises to secure to all citizens 'equality of status' and is against the spirit of national integration and secularism.

There is an urgent need to mobilize public opinion and strengthen social efforts against the social evils like polygamy, dowry, child marriage etc. The major issues relating to marriage that need careful investigation are polygamy, effective enforcement of the provisions against bigamy, age of marriage, compulsory registration of marriage, steps to prevent child marriage and dowry. A national policy on women's development in the light of Constitutional directives and pledges made to women in our country should be evolved by the Government to prevent any ambiguity in women's welfare.

It is true that late Pandit Nehru's hesitation over a uniform civil code was derived from his concern that nothing should be done which would have an unsettling effect upon the minorities, especially the Muslims. The *Shariah* (Muslim law) occupies an even more central place within Islamic religion than Hindu law does within Hinduism. It was feared that Indian Muslims would be likely to regard any alteration at all in their personal law as a grave violation of freedom of religion. Today the situation is indeed paradoxical; in order to build up and preserve the confidence of the religious minorities in the non-communal and secular nature of the Indian state one is constrained to sacrifice for the time being some significant principles of the secular state such as a Uniform Civil code. But the day of such a uniform code is not far away and the Indian Muslims like their Hindus and Christian fellow-citizens and as their co-religionists in other countries have done, should prepare themselves for these inevitable changes.