UNIFORM CIVIL CODIFICATION: READING THE REGIONAL CONTEXT FOR PROSPECTIVE TEXT AHEAD

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Abstract

The great grandeur *vis-à-vis* uniform civil codification appears a *deja vecu* for the South Asian subcontinent and its population since long back. From the ancient Vedic hymns, to Ashokan edicts, to so called religion of God, by courtesy the Emperor Akbar, all these constitute parts of the same project in a way or other and thereby got played out as predecessors for article 44 of the Constitution. Taken together, the history of codification may get traced back to antiquity while there is widening enigma to loom larger than earlier and the trend is on its rise till date.

Back to contemporary South Asia, recent reiteration in favour of codification appears problematic enough and more so in the given context since the same resurfaces article 44 in a circumstance poles apart from one that prompted the Constituent Assembly put the impugned provision as a directive principle of state policy; albeit amidst subtle polemics in floor of the then assembly. The author hereby explores the historic context of uniform civil codification and thereby engages a tentative roadmap *vis-à-vis* text of such codification to attune an optimal balance and thereby represent cultural diversity of India with tunes of unity and integrity in time ahead. Also, assumption of the code to characterize plural demography of India poses a moot point to this end.

I Introduction

THE RECENT realpolitik on implementation of an aspirant directive principle for the State to secure for citizens a uniform civil code throughout the territory of India- as provided for under article 44 of the Constitution-constitutes the focus of this effort. A recent development indeed, attempts to work out uniform civil codification (UCC) across the regime are but traceable in the chronicles of ancient Indian antiquity as

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well. Uniformity across the regime being default dream of a(ny) ruler concerned, whether or how far the same is imperative for better governance raises a moot point to this end. Rather than concern for the UCC by itself, therefore, governmentality of the regime concerned appears no less critical to this end. Thus, the given context- rather than text of the Code- may and does count to characterize the politicking and thereby decipher the colourable legislation, if any, under the disguise of UCC. Taking the stocktaking of legislative politicking, however, requires objective and systematic analysis to read in between the provisions of the Code. In the given state of affairs in affairs of the state, while proposed text of the UCC is yet to get drafted anyway, positioning on the same either way ought to appear premature. At the same time, with its given characteristics, movement toward formulating the UCC appears stuck to discursive divides of its own; between the parochial majority on one side and the paranoid minority on the other. A need of the hour lies in working out something to uphold unity and integrity of India; as articulated in floor of the Constituent Assembly and later inserted to the Preamble and thereby construed by the apex court of India as basic features of the Constitution. Whether and how far the same may be put to fruition through UCC is a point apart.

II Uniform civil codification in ancient antiquity

In a way or other, in the regional context of South Asia, the UCC resembles salvation for an increasingly heterogeneous population and end number of divides to grapple with. Unlike popular perception, that the UCC is a contemporary concern, the same may get traced back to the ancient Indian antiquity except such jingoism- as the same appears in practice with politics of its own- while the then oral tradition (orature in technical sense of the term) of the *vedas* got codified to attain discursive certainty across the South Asian peninsula; perhaps sometime in the fifth century BC.[1] Subject to spatial spread over between approximity and anachronism, codification of the *vedas* was driven by similar jurisprudence to attain normative uniformity in the then system of governance since these hymns in the then oral

[1] Vedic literature was preserved for hundreds of years by oral tradition before it was written in Sanskrit, the language of the Aryans, is about the fifth century BC. Pamela Price, The Vedic Age 1500-500 BC., written after RomilaThapar, From Lineage to State: Social Formations of the mid-first millennium BC in the Ganga Valley, Oxford University Press, New Delhi, 1984, as a main source for her lecture. *Available at:* http://www.uio.no/studier/emner/hf/iakh/HIS2172/h10/undervisningsmateriale/his2172%20til%20forelesning.pdf (last visited on March 21, 2017).

tradition were construed to offer law of the land for the time being in force. Thus, sometime during the first millennium BC, a crude version of uniform civil codification initiated its ordeal through documentation of oracle in cosmic hymns of *the Vedas*; albeit with the debacle of its own, to get reduced to a *sui generis* race divided society in the South Asian subcontinent.[2] Afterwards, with Islamic invasion down the line, religion would have emerged as another parallel divider for generations ahead to offer newer twist to the social demography. In British India, the same went ahead by divide-n-rule policy of the colonial regime.

In the fourth century BC, the same trend toward uniformity resurfaced toward a quest for normative behavioural pattern- by and large after the Buddhist religious lessons- as meeting point for the subjects. By courtesy, the then Mouryan dynasty in general and Ashoka in particular; through so-called Ashokan edicts- inscriptions carved sometimes on rock surface and the rest on stone surface to get followed by subjects across his rule.[3] At bottom, he was driven by the same governmentality for uniformity to get optimised in the then public life world. Despite getting driven by the same, Ashoka but observed great restraint from coercion on this count and

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[2] The Aryans, he (Max Muller) maintained, had invaded in large numbers and subordinated the indigenous population of northern India in the second millennium BC. … Since a mechanism for maintaining racial segregation was required, this took the form of dividing society into socially self-contained and separate castes. The racial imprint may also have been due to the counterposing of *arya* with *dasa*, since it was argued that in the earliest section of the Vedic corpus, the *Rig-Veda*, the *dasa* is described as physically dissimilar to the *arya*, particularly with reference to skin colour. This was interpreted as the representation of two racial types. Race was seen as a scientific explanation for castes and the four main castes or *varnas* were said to represent the major racial groups.
Romila Thapar, *The Penguin History of Early India: From the Origins to AD 1300* 13 (Penguin Books, London, 2002), *Available at*:
http://www.ahandfulofleaves.org/documents/History%20of%20Early%20India%20From%20the%20Orgins%20to%20AD%201300_Thapar.pdf (last visited on March 22, 2017).

[3](In Mauryan India) there was also an assumption of cultural uniformity, based largely on the symbols of imperial power. … monumental architecture was seen as important, but largely as a statement of power and presence. Another aspect of such a presence would have been uniformity in laws, perhaps mentioned indirectly in one of the edicts of the Emperor Ashoka, although the laws in question are not spelt out.
With the coming of Mauryas in latter part of the fourth century BC, the historical sense is illuminated by relative abundance of evidence from variety of sources. Not only do these provide information, but they also encourage traditional thoughts on the history of those times. The political picture is relatively clear, with the empire of the Mauryas covering a large part of the subcontinent, the focus being control by a single power. Attempts were made to give political system a degree of uniformity, and historical generalization can be made with more confidence for this period than in earlier centuries.
Supra note 2 at174-175.

thereby put a newer genre of legislation to place. He institutionalised roadside edicts to get carved on polished surface of rocks and stones with built-in nonbinding character of the same. In crude sense of the term, these Ashokan edicts may get construed as maiden illustration of directive principles of state policy. With contemporary sophistication resurfaced by the Irish Constitution and followed by the Constitution of India through putting these as suggestive and, therefore, not enforceable by any court, the ancient Indian jurisprudence transcended to the modern constitutions worldwide with democratic edifice underlying in the same. A great legacy was thereby left to get followed in time ahead.

In the mid-sixteenth century, while engaged in propagation of his synergetic religion *Din-I-Ilahi* (Religion of the God), the Mughal Emperor Akbar followed Ashokan legacy and thereby preached his position without imposition of the royal creed on his subjects. A creative combination of progressive praxis on one side,[4] and pragmatic programme on the other,[5]in the given context of demographic heterogeneity of the then population in his empire, the creed intended toward uniform civil codification with due humility resembles a signature for statesmanship talent of the Emperor. Back to juridical side, the same genre of suggestive and- therefore- nonbinding nature characterized his creed; the way Ashokan edicts were left to good faith of his subjects. Interestingly enough, both these Hindu and Muslim rulers refrained themselves from imposition. Instead, way back to their respective times, what went apparent were tolerance and endurance to digest the right to dissent in general and the same on the count of creed in particular. Thus, back to relevant legacy of the proposed UCC, there is no space for imposition since the code, if introduced,

[4]So far as the last commandment was concerned it has a *vedantic* touch. The eternal craving of the human soul for a union with the lord and the ultimate sublimation with him has no direct and strict Islamic background though many Sufis have stretched Qur'anic verse no. 163 chapter VI Part III … to mean something like that, and accepted it as a creed in their life and philosophy. … Regarding the practice of his own life, we find a profound influence of his Hindu, Zoroastrian, Jain and Buddhist associates. Also see, Makhanlal Roychoudhury, *The Din-I-Ilahi or the Religion of Akbar*, 302- 303 (University of Calcutta, 1941). *Available at*:
https://ia601407.us.archive.org/14/items/diniilahiorthere031361mbp/diniilahiorthere031361mbp.pdf last visited on March 23, 2017.

[5] Like an orthodox Islamic Sufi, he (Akbar) believed in the unity of God; like a Hindu, he felt the universal presence of deity. … the Persian etiquette and manners formed the formula of the daily life of an Ilahian generally. … tolerance was the basis of whole system. The Quranic verses breathe a spirit of toleration and the Quran was the background of his beliefs; Sufi thought gave him his inspiration for tolerance and not the Mulla interpretation of the Sacred Verses.
Supra note 4 at 305.

resembles another creed before the crowd. Likes or not, therefore, ought to get left to those at the receiving end rather than to whim and fancy of those proposing the same.

All these scribbling down the line taken together toward uniform civil codification, from Vedic hymn to Buddhist edict to Sufi creed, diversified forms apart, they but share common characteristics, e.g. broad-based roadmap toward salvation, adherence subject to volition, endurance of difference followed by space left for plurality, and the like. Due to historical reasoning, regional demography getting too heterogeneous to regimental uniformity, all these ruling regimes put focus upon functional uniformity for governance purpose. On one side, prescriptions went inclusive to house all alike; on the other, those with difference were left to their living space with no proscription to this end. Consequently, there was no outburst to overthrow these uniformity drives since none of them followed political elites alone; nor replicated dominant discourse to the detriment of those with dissimilar discourses of their own. At their best, these represent iconic display of respective aspirations with equidistance from one and all; the way transcendental displays create no chaos. The iconic presence of an epic verse, ñ*yatodharmastatojaya*ò, within the abacus of the apex court of India, for instance, has never got contested by those of other creeds since the given phrase thereby refers to apposition of victory with righteousness; something to correspond to all sundry creeds alike across the world.[6] Same is the case of ñ*satyamevajayate*ò, the state emblem script to correspond to a teleological end to unite all alike irrespective of discursive diversity *inter se* in course of their means and methods to attain the same.[7] The popular rhetoric of unity in diversity, by courtesy Vincent Smith, finds omnipresence in the curriculum while hegemony in diversity often than not subverts unity from within the system itself.[8] An apparently unproblematic indulgence in the community disparity *vis-à-vis* separate civil codes, communal electorates, and the like, in British India got driven by so-called divide-n-rule governmentality rather than the orientalist rhetoric of unity-in-diversity and

6 History (of the Supreme Court of India), anonymous literature uploaded in official website at 7. *Available at*: http://supremecourtofindia.nic.in/supct/scm/m2.pdf(last visited on March 24, 2017).

7 The State Emblem of India (Prohibition of Improper Use) Act, 2005, Appendix I-II. *Available at*: http://mha.nic.in/sites/upload_files/mha/files/pdf/STATE_EMBLEM_ACT2005.pdf (last visited on March 24, 2017).

8 Vivek Kumar, XLVI(19) Cultural Heterogeneity and Exclusion in India, *Mainstream* April 27, 2008. *Available at:* https://www.mainstreamweekly.net/article661.html (last visited on March 24, 2017).

eventually culminated into the partition of British India during transfer of power. Thus, as testified by colonial historians, emphasis on diversity rather than unity, albeit with default colonial politicking undercover, went counterproductive in British India to fragment the subcontinent into India and Pakistan on the basis of religion. The latter got further divided into Pakistan and Bangladesh on the basis of language.

Emphasis on its diversity did havoc to the unity and integrity of India as well to bleed the country. Thus, India is put to predicament on several counts of its diversity, *eg*. religion, race, caste, sex, and the like, all being prohibited markers to get played out in public sphere under the Constitution of India[9]while these constitute critical criteria for realpolitik to get played out and thereby score electoral mileage in power struggle. The liberal politics to prompt India to observe secularism and house all religious creeds alike with no discrimination *inter se* before the law appears increasingly on its wane. Thus, in contemporary India, right-wing force appears on its rise with electoral mileage on the basis of majoritarian politics to prompt the apex court reiterate the proscription once again; albeit to put the same in deaf ears of electoral playwrights as target group.[10] As per lessons learnt from lived experience since time immemorial, therefore, prudence lies in functional balance between unity and diversity while disproportionate emphasis on either is likely to put another- and eventually both-to jeopardy. With its experience in potential jeopardy either way, ómidnightôs childrenô initiated their tryst with destiny and pass critical crossroads of inclusive governance with optimized balance of interest among all stakeholders of heterogeneous folk in the subcontinent. All these fragments from pages of the past taken together, the roadmap for an otherwise imperative uniform civil codification- a great grandeur for all lawmakers since time immemorial - ought to get drafted with care and caution for the unity and integrity (sic.) under the Preamble to the Constitution of India; as the same is read by the apex court to have constituted a

[9] Constitution of India, 1950, art. 15.

[10] *Abhiram Singh* v. *C. D. Commachen (Dead) by Lrs*, Civil Appeal No. 37 of 1992; with *Narayan Singh* v. *Sunderlal Patwa*, Civil Appeal No. 8339 of 1995. Supreme Court, Jan. 2, 2017. *Available at*: http://judis.nic.in/supremecourt/imgs1.aspx?filename=44451(last visited on March 25, 2017).

basic feature of its Constitution.[11]A fictional distinction between unity and integrity- as those are put to place one after another- leaves no doubt about legislative intention behind the same that, rather than getting driven by mundane unity fetishism to emerge as a regional giant in the political map, the Parliament looked forward for organic unity followed by integrity to get reiterated once again in the wake of national emergency.[12] The moot point hereby raised before the readership lies in characterizing the integrity and the legislative politics of the then House involved therein. Since secularism got inserted to the Preamble of the Constitution of India with the very same amendment and at the same stroke of enactment, this may be presumed with reasoning that secularism- in its letter and spirit- may get construed as something in consonance with integrity.[13] And here is juridical context to get text of the proposed code.

III Legislative intention behind civil codification

Flash back to floor of the Constituent Assembly, while fundamental law of the land was on the making, the august house underwent a classic conundrum of jurisprudence on the question of uniform civil code. Initially conceived as one to strengthen unity, the proposed code was mooted as part of the package containing fundamental rights. Munshi and Ambedkar thought alike while the same got eventually placed otherwise; with the package of directive principles.[14]While getting debated, proposed

[11]JJ A. M. Grover and J. M. Shelat, in *Kesavananda Bharati Sripadagalvaru* v. *State of Kerala*, Writ Petition (Civil) 135 of 1970, Supreme Court. *Available at*: http://judis.nic.in/supremecourt/imgs1.aspx?filename=29981 last visited on April 1, 2017.

12 The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denial that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good.
It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the Nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. Statement of Objects and Reasons appended to the Constitution (Forty-fourth Amendment) Bill, 1976 (Bill No. 91 of 1976) which was enacted as the Constitution (Forty-second Amendment) Act, 1976, para 2-3. *Available at*: http://www.constitution.org/cons/india/tamnd42.htm last visited on March 25, 2017.

13 *Ibid*.

14 Both Munshi's and Ambedkar's draft articles of March 1947 on justiciable rights contained clauses referring indirectly to a uniform civil code. … By March 30, however, the Fundamental Rights Sub-Committee has decided to make the uniform civil code a directive principle of state policy. *Vide* Shefali Jha, Secularism in the

positioning of the code generated substantial heat. On one side, there was concern for uniformity- raised by women members in particular- to do away with all divides within nationhood. On the other, there was but resistance- spearheaded by Muslim members in particular- to do away with the setting up of a UCC. Thus, the proposed code placed as a directive got bartered as negotiated compromise between these belligerent groups; keeping the same in limbo- and thereby pushing the dicey proposition- to get resolved by the posterity ahead.[15] Before the readership parts with these debates, characterizing the moot point appears imperative to underscore context of the contemporary debate around the proposed code. While liberal grouping in the assembly undertook the code to modernise the society through legislative reform across the religious divides around and thereby put an end of hierarchy (read patriarchy) under the disguise of tradition (read religion), conservative minority read the same as a majoritarian highhandedness in between the lines of proposed codification and thereby put minority to peril. Thus, want of meeting of minds rocked the floor of the house with both groupings aggressive enough not to hear logic, if any, of rival side. Both of them pleaded contrast polemics while truth lies in between; somewhere like grey rather than black-n-white dichotomy. Partition of India left its imprint in floor of the assembly as well.

To the former, in the absence of uniform civil code, equality clause under article 14 of the Constitution gets defeated in several ways: first, diversified customary practice as communitarian law offends the very jurisprudence *vis-à-vis* equality before the law and equal protection of the laws between followers of diverse religious faiths; second, by courtesy built-in patriarchy, women are vulnerable to get deprived of an otherwise due coverage of the due process of law within customary regime of their communities irrespective of their respective religious faiths. Thus, liberal groupings contend that, secularism stands subverted from within the

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Constituent Assembly Debates, 1946-1950, 37(30) *Economic and Political Weekly*, 3178 (July 27- Aug. 2, 2002). *Available at*: https://www.jstor.org/stable/pdf/4412419.pdf last visited on Mar. 25, 2017.

15 (While few members) demanded in the Assembly that the provision regarding uniform civil code be transferred from the chapter on directive principles to that on fundamental rights, (few others) wanted to include a right to oneôs personal law in the fundamental right to religion. é These members were opposed to the setting up of a uniform civil code.
An intermediate position was that the establishment of the uniform civil code must be done slowly, with the consent of all communities. é Ambedkar can also be put in this group since he supported the inclusion of the uniform civil code in the directive principles but said that the code would only apply to those who wanted it to apply to them. *Supra* note 14 at 3178-3179.

Constitution till the proposed codification remains great grandeur of the Constitution. On the contrary, to conservative minority, the proposed codification- if implemented- ought to offend freedom of religion since customary practice followed by the majority is likely to get imposed upon the minority in the name of uniformity on the basis of demographic headcount to subvert secularism from within the system. Thus, conservative grouping contends that, uniform civil code resembles last and final nail in the coffin of pluralism to offend heterogeneous character of the people of India. At bottom, there is disconnect between these ideologue groupings out of mutual distrust over political (ill) will in other side of the fence; no wonder that both sides are at loggerheads to get engaged in tug-of-war and get hold of the same rope of secularism from another. In the midst of such whirlpool on the legacy of secularism, there is apprehension, good governance as the teleological end of secularism suffers setback and the same gets substantiated by consecutive communal conflicts one after another; of 1947, 1992, 2002, and the like, as the worst among them; followed by plenty others to showcase low intensity communal feud as a regular phenomenon across the country. Codification may get productive with mutual trust and not without.

While the former levels claim of gender inequality undercover the customary practice followed by the conservative minority, there is counterclaim of majoritarian politicking to put others to peril undercover the uniformity drive sponsored by liberal grouping. Interestingly enough, with the passage of time, liberal groupings went irrelevant since they were reduced to otiose by both sides; condemned by right-wing force on the count communal appeasement of the latter and by minority crowd on the count of compromise with majoritarian politicking for the former. With moderate grouping getting extinct, the face-off got worsened with takeover of the baton by right-wing majoritarian force. These two belligerent sides- sharing mutual wrath *inter se* and consequent crucifixion of secularism to gross detriment of constitutional governance- appear more aggressive than earlier. In its given trajectory, inter-community rivalry does a decisive march-past toward tragic crossroads of a potential civil war ahead; US did experience the same in course of its racial rift. Both sides take the cover of secularism to defend themselves and thereby fortify argumentative fortress in ways of their own.

With the passage of time in last four decades (1976-2016), shift appears unambiguous the way right-wing force took over contested amendments enacted by coercive force. During the national emergency, few provisions of the then Constitution (Forty-second Amendment) Act, 1976 nowadays appear prone to get liberal democratic governance subverted from within. Despite getting enacted with a legislative intention to strengthen the statecraft in the wake of unruly opposition, as worked out by those in power, all these boomerang the cause of inclusive governance as the same get operated by right-wing force to put the minority to peril under the same rhetoric of strong statecraft. The express rationale behind article 51A of the Constitution, as provided for in the proposed enactment, may at ease get misused to put the minority to predicament after the proposed uniform code is put to fruition.[16] Also, by courtesy a clear majority in the Parliament, majoritarian whim and fancy may get enacted without care for pluralist demographic character and consequent legal obligation on the minority to care for the same with no space to contest since dissent ought to get construed antinational and thereby subjected to repression;[17]as is the case of cattle trade. Initially introduced to handle diversity in political pluralism during official emergency, resort to the same to paddle diversity in religious pluralism during unofficial emergency cannot get waived at ease. Here lies genesis of the cynicism that appears increasingly on its rise in the wake of intolerance *via* majoritarian politics to dig dent to otherwise fortified castle of the proposed code. If fallen in these hands, whether and how far the UCC may get driven to attain the inter-communal unity raises a moot point of social justice.

The jingoism of mainstream party politicking taken together, the ruling regime stands immune in the wake of opposition since most of these phrases originated in the regime while the present opposition was in the seat of power. For instance, the fateful rhetoric of antinationalism finds its genesis within the text of the Constitution (Forty-second Amendment) Bill, 1976 and enacted by those in opposition way back

16 It is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with antinational activities, whether by individuals or associations. *Supra* note 12, para 3.

17 Parliament and State Legislatures embody the will of the people and the essence of democracy is that the will of the people should prevail. Even though Article 368 of the Constitution is clear and categoric with regard to the all-inclusive nature of the amending power, it is considered necessary to put the matter beyond doubt. *Supra* note 12, para 4.

in 2016; albeit repealed by the Constitution (Forty-third Amendment) Bill, 1977.[18] Thus, opposition of the rhetoric, while it was introduced on their own, suffers from want of legitimacy to this end. Once introduced with legislative intention to bulldoze the political rivalry, there is shift in its focus nowadays to bulldoze the religious rivalry. Thus, at bottom, the underlying driving force remained the same; to pose the interest of those in power as national interest and thereby silence dissidence against the same under the disguise of antinationalism. Thus, role of the right-wing force got limited in putting the same old wine of nationalism brewed by the coercive force in newer container and thereby serve the same accordingly. Likewise, the same old clause vis-à-vis unity and integrity got inserted to the Preamble to the Constitution of India by coercive force while nowadays all these phrases get played out at random by right-wing force with rhetoric of its own.[19] Rather than justifying parochial politicking anyway, the underlying rationale behind articulation of the comparative study lies in identifying genesis behind vicious cycle; the way such evil turns worse to wreak havoc with the passage of time.

Here the u-turn taken by liberal grouping ought to attract attention of the readership. On the eve of independence, in the wake of resistance from the conservative minority against uniform civil code, liberal grouping pleaded for codification since the same could do away with the tyranny of patriarchy in course of its proceeds for uniformity of all (sic.) religious faiths to keep pace with rest of the world. It was not at all meant for the minority alone and the same may be substantiated by subsequent codification of Hindu laws immediately after the independence. Down the line, the liberal position suffered setback on two counts. First, in the name of secularism, minority appeasement emerged as a practice in commonplace among pseudo-secular political parties to score electoral mileage over one another and eventually the same culminated into a rat race to win the vote bank through *sui generis* communal politics to create majority backlash played out by the right-wing force. Second, the proclamation of national emergency by otherwise liberal grouping generated widespread scepticism about governmentality behind liberalism and the same got strengthened with enactment of the Constitution (Forty-second Amendment) Act, 1976 whereby the then government issued statement of objects to propose provisions

18 The Constitution of India, 1950, Art. 31D. Saving of laws in respect of anti-national activities.

19 *Supra* note 12.

that the will of the people prevail over the judiciary.[20] At bottom, as per popular perception, the liberal grouping thereby pushed its way ahead to emerge as the same old óLeviathanô- the way mid-seventeenth century Hobbesian masterpiece articulated the then statecraft- to complete travesty of the liberalism itself. In contemporary India, while pleading for the UCC, the same old argument- that ñwill of the people should prevailò- resurfaces with legacy of the liberal turned authoritarian during the emergency and thereby jaywalks with absolute right-wing majority in floor of the Parliament followed by the series of electoral victory in states one after another. Thus, concern for ñundeclared emergencyò- as showcased by liberal grouping- appears deceptive enough; the way crocodiles cry for default reasoning of their own. Therefore, there is imperative to read in between the lines of so-called ñwill of the peopleò lest the majoritarian will may bulldoze the minority will to dust. After all, will, not force, is the basis of state; the wisdom of T. H. Green appears alive till date with political prudence to its credit.

Nowadays, while the right-wing force pleads for the UCC, the same liberal grouping pleads against codification since the same would do away with the communal autonomy to gross detriment of pluralist character of demography in India. Albeit unproblematic at a glance, in its given flip-flop, ideological decadence- if not bankruptcy- on the part of liberal grouping is apparent on the face of record. To brief hidden fault lines: first, while pleading for the code, the liberal grouping earlier ignored potential majoritarian politicking and nowadays the same appears on its rise as Frankenstein; second, while pleading against the code, the liberal grouping nowadays ignores potential patriarchal tyranny to offend justice within conservative minority. Both these stands suffer from vulnerability of their own. Indeed, justified out of fundamental change in circumstance, the U-turn leaves confusion in liberal ideology apparent, if compared to poles apart positioning of majority grouping on one side and of minority grouping on the other. No wonder, until recent one, all regimes irrespective of their political colour preferred the UCC to remain at rest; visible yet not verbal. Slowdown and consensus politics before policymaking are on the cards, as per an intermediate position.[21] Taken together, in the absence of

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20 *Ibid.*

21 Adoption and Implementation of a Uniform Civil Code: Background Guide, in Ad Hoc Committee of the Indian Parliament, SBSMUN 2017, *Available at*: http://intra2017.sbsmun.in/files/a.pdf (last visited on April 1, 2017).

conceptual clarity behind the proposed UCC, its form and content, legislative intention is yet to get spelt out amidst the deafening cacophony to this end. Since there was no such code all throughout pages of the past, way back from antiquity to date, there is no knowledge about the proposed UCC; not even to those otherwise well versed with law of the land.[22] Until the polemical dusts get settled, lawmakers ought to observe restraint. Meanwhile, academic debate has had the potential to spearhead socio-legal reasoning and thereby explore the hitherto conundrum vis-à-vis uniformity. This effort constitutes part of the same proceeding.

IV Contextualising the contemporary uniformity

There is no definition, neither explanation, of uniformity under the Constitution. Thus, conceptualizing the same appears Herculean assignment in itself; not without reason that the Chairman of Law Commission pleaded ignorance on the proposed code and thereby demonstrated his knowledge about problematic behind such codification. To the author, contextualising the concept of uniformity constitutes one, albeit not only, way for proceeding toward the problematic of uniformity.

All dicey questions appear on their offing about characterizing uniformity; such as, uniformity of form, and of content, and the like. Thereafter, purpose of such uniformity is scheduled to takeover and thereby carry forward academic debate. Also, there are others, more contentious, to put lawmakers and policymakers alike on their toes, if not knees, on the governmentality behind timing for resurrection of the UCC from the storehouse of part IV under the Constitution; along with handpicked few; prohibition on slaughter of cows, *etc*.[23]to illustrate one among them. Taken together, all these critical issues constitute a conundrum of democratic governance in India. To extend the same ahead, whether and how far picking articles 44 and 48 together from the storehouse of part IV refers toa conscious policy choice as part of the same project to colour the statecraft with the religion involves another

22 We ourselves don't know what UCC is and what is required. At this stage, we cannot anticipate what should be its template or model, what will be acceptable to people and to what extent the government is willing to go ahead with it. We have merely started an academic debate because we want to know what people think and what they want. B. S. Chauhan, J., Chairman, Law Commission of India, *The Times of India,* Oct. 24, 2016. *Available at*:http://blogs.timesofindia.indiatimes.com/the-interviews-blog/we-ourselves-dont-know-what-uniform-civil-code-is-merely-started-an-academic-debate-to-know-what-people-think/(last visited on April 1, 2017).

23 Constitution of India, 1950, art. 48.

contentious quest to this end. In etymological sense, secularism has often been viewed as being anti-religious[24] and thereby refers to system where religion ought not to influence the statecraft. In the given context, by courtesy polysemy of the secular, the term involves poles apart discourse in India and the same indulges in right-wing politics to defeat classical secular politics[25] despite secularism is otherwise upheld by the Apex Court as a basic feature of the Constitution.[26] Thus, irrespective of political ideology, secularism appears played out by those in the seat of power to suit their vested political interest. In the given circumstance, the UCC is displayed as icon of classical secularism while governmentality is played out by dissimilar genre; albeit all in the name of secularism.

Back to the question of uniformity, in the absence of clarity, there is likelihood that- if enacted to convert others to the mainstream creed (read Hinduism)- the UCC ought to open up Pandoraôs Box and release the vices of civil war *inter se* across the country. A more fundamental question lies in the want of uniformity well within the Hinduism itself. In South India, for instance, there lies widespread variety within the Hinduism itself; something often than not unnoticed while debating on either side of the UCC.[27] Before similarity between diverse creeds, similarity of diverse sects

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24 Secularism, in Encyclopaedia Britannica. *Available at*: https://www.britannica.com/topic/secularism (last visited on April 1, 2017).

25 Ashis Nandy, in discussing the problems that arise out of the uses of the term "secular", shows up the confusions often involved in analogous statements about the Indian case: for example, that the Emperor Asoka was "secular", or that the Mughal Emperor Akbar established a "secular" form of rule.
But this kind of statement can also reflect a certain wisdom. In fact, Nandy distinguishes two quite different notions that consciously or unconsciously inform the Indian discussion. There is the "scientific-rational" sense of the term in which secularism is closely identified with modernity, and a variety of "accommodative" meanings rooted in indigenous traditions. The first attempts to free public life from religion; the second seeks to open space "for a continuous dialogue among religious traditions and between the religious and the secular".
Charles Taylor, 76(4) *The Polysemy of the Secular, Social Research* 1149-1150 (2009). *Available at:* https://www.jstor.org/stable/pdf/40972206.pdf (last visited on April 2, 2017).

26 Sikri CJ., in Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr., Writ Petition (Civil) 135 of 1970, Supreme Court, dated 24.04.1973. *Available at:*
http://judis.nic.in/supremecourt/imgs1.aspx?filename=29981(last visited on April 2, 2017).

27 The Hindu Marriage Act, 1956 removed the necessity that marriage had to be performed within the same caste. It also introduced monogamy as a rule and uniform provisions for the dissolution of marriage. While the Hindu Marriage Act, 1956 was progressive from the point of view of the dominant North Indian region, for women of South India, the Act proved to be a setback. This was very clear in the case of divorce laws. In a large number of communities, where divorce and remarriage were in practice, divorce was an easy process which was supervised by the community decision-making body. … But the framers failed to draw

within the creed appears to be taken care with pre-emptive priority appears a pending need of the hour. Besides, rather than pouncing upon uniformity, codification of all customary practices available in the Islamic law ought to be progressive enough for march-past of uniformity within the creed itself. Also, there is little clarity on the model of uniformity; whether Charter of the United Nations, or the Constitution of India, or the liberal Hinduism, or the UCC as *sui generis* creed in itself, and how far national consensus may be drawn upon modelling the same, and the like. Before such uniformity, conceptualizing what does it stand for deserves to get settled.

If the same is meant to replicate models available in the hitherto religious creeds, then it is likely to fail the very purpose. Even the Mughal Emperor Akbar could not succeed since creeds appear too institutionalized to let its subjects follow another newer creed and more so in the hour of mutual distrust. Therefore, proposition of an optional UCC- with its inbuilt merits- ought to get reduced to another great grandeur.[28]On the contrary, imposition of the proposed code upon the unwilling people through either enactment or otherwise ought to offend article 25, read with liberty clause of the Preamble to the Constitution, and thereby subject to get struck down by the court on the count of unconstitutionality. Thus, the proposed code cannot get implemented either by volition or by compulsion.

While the Indian Penal Code getting enacted way back in 1860, there was no resistance despite the same was uniform penal code in technical sense of the term. The civil code, however, could not be enacted for several reasoning: first, the colonial

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on the indigenous system of divorce while framing the law. The Hindu Marriage Act in fact made divorce difficult.

Chitra Sinha, *Debating Patriarchy: The Hindu Code Bill Controversy in India (1941-1956*), 198 Oxford University Press, New Delhi, 2012.

28 A Common Civil Code that would put in place a set of laws to govern personal matters of all citizens irrespective of religion is perhaps the need of the hour. It is, in fact, the cornerstone of true secularism. Such a progressive reform would not only help end discrimination against women on religious grounds but also strengthen secular fabric of the country and promote unity. However, it can be implemented only when there is wide acceptance from all religious communities after discussing all the pros and cons as no decision, however reformatory, could be thrust on the people without their acceptance. All misgivings would have to be squarely addressed for progress to be achieved on this count.

M. Venkaiah Naidu, *Why not a Common Civil Code for all?*, web edition, *The Hindu*, July 16, 2016, *Available at*: *http://www.thehindu.com/opinion/lead/Why-not-a-Common-Civil-Code-for-all/article14491018.ece* (last visited on April 2, 2017).

regime intended not to get involved with its subjects until the same was imperative for the empire and, second, the civil life world being governed by customary practices of their respective religious creeds, the regime was apprehensive of a rebellion. After experience of 1857, the regime was neither able nor willing to afford another. A felt need for uniformity struck the then nationalist leadership on the count of better governance and, in floor of the Constituent Assembly, the same was proposed as well. Due to partition of India, and the consequent distrust thereby generated, the conservative minority demonstrated resistance against its inclusion in part III of the Constitution. Accordingly, the same got shifted to part IV of the Constitution. Even with the passage of last seven decades (1947-2017), intercommunity relations are yet to get improved with the consequence that implementation of the proposed UCC is likely to suffer the same fate once again. What appears imperative is improvement of intercommunity relations in daily life world to attain good faith *inter se* before engagement of negotiation with governance agenda in public interest; the proposed code being one among them. Once there is groundwork on this count, adoption and adaption of the proposed code ought to get easier thereafter. There are better means of social engineering than the law and the given circumstance deserves those to bring in basic infrastructure beforehand for roller-coaster of the law. Regrettably, the same is not seen meanwhile. The way cattle trade, cow slaughter, *etc*. getting played out by right-wing fanaticism, there is cynicism that the same paves way for the proposed code to get reduced to travesty and thereby force the people of India to pay price. Thereafter, the minority is likely to get condemned for the travesty with contributory role played out by the majority pushed to backseat.

In such circumstance, scepticism appears on its rise, the UCC is part of a larger project, like the right-wing position on the status of Kashmir or, of the temple, and the same is likely to get set at rest into the perennial wish list for crowd-puller politics to score better electoral mileage out of its otherwise prudent end vis-à-vis better governance. In a way or other, taken together, these three resemble parallels of the directive principles in right-wing electoral policy: great to watch, not to touch. Thus, has the proposed code been such, there is no need for the minority to get scared on the count of their freedom of religion. At the same time, however, getting stuck to mediaeval parochial practice to gross detriment of gender justice ought to

bounce back to the community one day or other. Thus, sooner these pervasive wings of patriarchy get cut to size, better it appears for progressive march of the community. This is but universal axiomatic and applicable to all sundry creeds across the world; rather than to the given regional context of South Asia alone.

Before departure from the concern for minority protection, another contentious point attracts attention. Either out of insecurity syndrome, or out of minority appeasement, there is a trend to showcase the community spirit through taking the system on its ride and that also in the name of the community concerned. At bottom, however, the trend tends to gradual erosion of the community from within. By courtesy majority backlash, the right-wing force thereby derives its strength out of hostile response to the minority. In the age of rising terrorism worldwide, recourse to violence out of silly reasoning has put the state apparatus and right-wing force together in course of common pursuit to arrest chaos and attain order with realpolitik of their own. There is but a caveat that blanket slander about all in the community stands vitiated by illicit generalization while the same offends the integrity and there by defeats the purpose. Also, last but not least, Hinduism being the minority in global context, right-wing force has had its own stake to safeguard the presence of the Hindu community well within source state and more so while the Hindu minority suffers atrocity with impunity in the very neighbouring state.[29] Likewise, Indian state apparatus ought not to indulge in atrocity against the minority while it condemns the same elsewhere. After all, charity ought to commence at home. The minority has had nothing to lose but their vulnerability. Rather than cognizance of the vulnerability of a particular community in a particular country, legal reasoning ought to have cognizance of all of them to be taken together in larger context worldwide. The vulnerability has had no identity of its own and the same appears manifold, with all benchmarks proscribed under article 15 of the Constitution.

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29 A week before Bangladesh Prime Minister Sheikh Hasina's visit to Delhi, speakers at a seminar, organized by the BJP's refugee cell in West Bengal, targeted her for her policy to appease the majority community in Bangladesh.
Using still photographs and films, the participants, mostly Hindu minority of Bangladesh, many of whom were attacked in recent months, gave a graphic description of the violence committed against the minorities during the Awami League's tenure.
Bangladesh's Hindus voice anger ahead of Hasina's visit, Special Correspondent, *The Hindu*, Monday, April 3, 2017, at 2. *Available at:*
http://www.thehindu.com/todays-paper/tp-national/tp-otherstates/bangladeshs-hindus-voice-anger-ahead-of-hasinas-visit/article17765513.ece (last visited on April 3, 2017).

Back to uniformity, the foremost challenge before the country lies in characterizing the same; whether the same refers to universality. If so, then the polemics vis-à-vis universalism and cultural relativism get recalibrated in the Indian national context.[30] Since there is no final victory for either side of polemics, universalising the rhetoric of uniformity is unlikely to help since the cultural practice of diverse communities constitutes critical part of the larger project for the religion; more so if the same happens to be minority. Whether and how far practice, evil ones in particular, may continue undercover constitutes a moot point to this end. A corollary point, however, lies in the locus to get judgmental on so contentious point. If uniformity means similarity among all creeds *inter se*, the same ought to be inimical to diversity since dissimilarity appears *sine qua non* for diversity (read heterogeneity) of the region. At the end, uniformity- whatever way the same may get construed by the state- ought to correspond to the integrity clause inserted in the Preamble to the Constitution. Thus, with due heed to cultural diversity, uniformity drive may be given a joyride and thereby attain unity, but subject to integrity clause as litmus test for the Constitution. With classical fiction of social contract extended to the Constitution, integrity- as a basic feature of the Constitution- may get construed as sacrosanct for one and all.[31] Thus, be the same custom or usage having in the community the force of law, or full-fledged legislation, or even the proposed code, all these- irrespective of their variety- need to get consistent with part III of the Constitution.

Hence uniformity, if any, ought to correspond to the Constitution in general and to all its basic features in particular, irrespective of variety as per the inclusive definition of ñlawò under the Constitution.[32] Also, in the age of systematic percolation of human rights through nationalization of international rights regimes, community practice needs to correspond to most fundamental human rights as part of *jus cogens* so pledged by the international community worldwide to keep pace with the well-established trend across the world since the same is likely to get internalized by the Indian judiciary.[33] In a series of human rights related judgments,[34] the apex

30 Cf. David D. Buck, "Forum on Universalism and Relativism in Asian Studies: Editor's Introduction", 50 (1) *The Journal of Asian Studies* 29-34 (February 1991). *Available at:* http://www.jstor.org/stable/pdf/2057473.pdf last visited on April 4, 2017.

31 *Supra* note 11.

32 Art. 13(3)(a) of the Constitution of India, 1950.

33 See, the Charter of the United Nations, 1945, the Universal Declaration of Human Rights, 1948.

court has reiterated its position since long back that, in the absence of legislation to the contrary to give effect to human rights regimes India has otherwise ratified, all these human rights, while yet to get enacted by the Parliament under article 253 of the Constitution- are *ipso facto* operative with the national legal regime of India to offer respect for international law and treaty obligations under article 51(c) of the Constitution.[35] Also, these judgments cover custom or usage of the community regime under article 13(3)(a) of the Constitution. Thus, rogue communities no longer afford to run kangaroo court under banana regime nowadays.

Reference to the three-decade old apex court pronouncement- albeit *obiter dictum*- may be taken as beginning of the end for this effort since uniform civil codification debate was thereby brought back to life after four decades of our tryst with destiny.[36] After the court put its observation on record, fundamental change in circumstance took place to turn the context upside down as the then appeasing political regime got replaced by aggressive one with poles apart realpolitik of its own to push codification toward a newer goalpost. Same is the case in case of judicial policymaking as well. In the *Shah Bano* case, codification debate revolved around the contentious epicentre of gender justice. A wake-up call thereby got issued by the judiciary for codification after article 44 of the Constitution.[37] Indeed, the call fell on deaf ears with the result that the *Shah Bano* judgment got defused by subsequent legislation out of realpolitik

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34 *Peoples' Union of Civil Liberties* v. *Union of India,* (1997) 1 SCC 301, *Available at*: http://www.judis.nic.in/supremecourt/imgs1.aspx?filename=14584. Also see, *Vishaka* v. *State of Rajasthan* (1997) 6 SCC 241. *Available at*: http://judis.nic.in/supremecourt/imgs1.aspx?filename=13856 last visited on April 6, 2017.

35 *Ibid.*

36 It is also a matter of regret that art. 44 of our Constitution has remained a dead letter. … There is no evidence of any official activity for framing a common civil code for the country. 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. A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bail the cat by making gratuitous concessions on this issue. It is the state 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. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning.
Md. Ahmed Khan v. *Shah Bano Begum* (1985) 2 SCC 556. *Available at:* http://www.judis.nic.in/supremecourt/imgs1.aspx?filename=9303 (last visited on April 7, 2017).

37 *Ibid*.

of minority appeasement;[38] what prompted to decline of problematic political regime of selective secularism through electoral defeat. The consequent majority backlash that prompted the rise of contemporary right-wing regime to usurp the seat of power, therefore, appears more a defeat of earlier regime.

Nowadays, after the *Shayara Bano* judgment,[39] epicentre of the codification debate underwent paradigm shift to spearhead majoritarian justice in heterogeneous society. What went worse, two otherwise *bona fide* normative canons of policymaking, *e.g.* article 44 of the Constitution, and *Shayara Bano* pronouncement by the Apex Court, appear to get deployed by the right-wing force to smokescreen majoritarian politicking undercover. Apprehension thereby appears to get deployed by those tricksters- who wish to take resort to the similar means- to smokescreen conservative politicking within the community undercover and thereby perpetuate their atrocity with impunity in the name of customary practice while rest of the world underwent a metamorphosis to render the same redundant. Thus, both sides getting political in the stand-off put the proposed codification to peril either way. If the same is accomplished by force, the same ought to defeat democracy while the same is one among the basic features of the Constitution; if the same is put to perennial wish list, the same ought to offend social justice while the same constitutes another basic feature of the Constitution. In either way, codification or not, the same appears win-win game for bigot militancy regimented for both sides of the fence to override non-discrimination (read equality) despite the same legislative intent getting apparent in course of proceedings recorded in the Constituent Assembly Debates.

The proposed codification, in the absence of broad consensus, appears a dicey choice for the statecraft in course of the making of public policy- mentioned as state policy after the Irish legacy- under article 44 of the Constitution. In the given crossroads of religion and politics, codification appears more political than juridical for both: those in the street and those in the seat of power alike. No wonder that otherwise secular regimes turned deaf ears on consecutive calls for codification by the judiciary

38 The Muslim Women (Protection of Rights on Divorce) Act, 1986.

39 *Shyara Bano* v. *Union of India*. 2017 (9) SCALE 178, *Available at*: http://supremecourtofindia.nic.in/pdf/jud/Supreme%20Court%20of%20India%20Judgment%20WP(C)%20No.118%20of%202016%20Triple%20Talaq.pdf (last visited on Aug. 26, 2017).

to bring in reforms for Muslim personal law.[40] Interestingly enough, reforms in Hindu personal law got initiated by these otherwise secular regimes even while the judiciary went too conservative to this end.[41] The position is set to get further articulated with arguments advanced in its favour.

In course of judicial policymaking, however, persuasive call for codification is not devoid of problematic since the same appears naïve enough, falls short of judicious, and thereby unwittingly stuck to the same pitfalls of selective secularism otherwise.[42] Even in its recent judgment, the apex court quashed triple talaq since the same is bad in Muslim personal law rather than the same being squarely inimical to provisions vis-à-vis gender justice under the Constitution; an observation to expose another side of the same coin.[43] No wonder that the right-wing force took the same as clarion call. Perhaps for the first time in 70 years of constitutional governance, government pays heed to call for codification by the judiciary since the judgment rings right tune to right-wing regime in right time (in tandem with its electoral manifesto)[44] rather than getting righteous out of its merit. For instance, the court did away with the relevance

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40 *Supra* note 39. Also, *Sarla Mudgal, President*, *Kalyani,* v. *Union of India* (1995) 3 SCC 635. *Available at*: http://judis.nic.in/supremecourt/imgs1.aspx?filename=10742(last visited on April 8, 2017).

41 *Deena Lal* v. *State of Rajasthan,* Rajasthan High Court, 9 December 1987. *Available at:* https://indiankanoon.org/doc/852299/ last visited on April 10, 2017.

42 What is more disconnecting, even disturbing, is the way the UCC is invoked routinely, almost reflexively, by judges pronouncing on cases involving Muslim personal law- whether maintenance or triple talaq or bigamy- but never when confronted with the inequalities of Hindu personal law in court. Thus, in Sarla Mudgal case, the Supreme Court judgment dealt with bigamy from point of view of the provision for polygamy in the Muslim personal law, which was represented as being main reason for Hindu bigamy. The judgment ignored the high incidence of Hindu bigamy that exists even without recourse to Muslim personal law. It also ignored the fact that in allowing Hindu marriage rituals to be the sole proof of marriage, the lacunae in Hindu personal law have combined with the judiciary's own interpretation to facilitate bigamy. They also did not ask for the strengthening and uniform application of the existing penal provisions for prosecution of bigamy or for better laws on divorce. Urvashi Butalia and Zoya Hasan, Reversing the Option: Civil Codes and Personal Laws, 31(20) *Economic and Political Weekly*, 1180 (May 18, 1996). *Available at*: https://www.jstor.org/stable/4404139?seq=1#page_scan_tab_contents last visited on April 9, 2017.

43 What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well. Kurian Joseph, *J.*, in Shayara Bano. *Supra* note 39.

44 BJP believes that there cannot be gender equality till such time India adopts a Uniform Civil Code, which protects the rights of all women, and the BJP reiterates its stand to draft a Uniform Civil Code, drawing upon the best traditions and harmonizing them with the modern times.
Uniform Civil Code, in Election Manifesto 2014, Bharatiya Janata Party, New Delhi at 41. *Available at*: http://www.bjp.org/images/pdf_2014/full_manifesto_english_07.04.2014.pdf last visited on April 17, 2017.

of religious practice merely because of continuity of the same for long.[45] Likewise, if the court pronounces similar position on Hindu personal law, whether and how far the same may get welcomed by the right-wing regime raises a moot point to this end since the position does not suit to the regime. Even the earlier regime demonstrated selective secularism, albeit reverse side of the coin, in late 1980s. After *Shah Bano* judgment, while the apex court initiated reforms in Muslim personal law, the regime neutralized the same by a subsequent legislation to the contrary.[46] In the next year, after the Rajasthan High Court granted mass bail to all those accused in the *Sati* case,[47] the same regime initiated reforms in Hindu personal law by a subsequent legislation to this end.[48] Thus, all hitherto regimes offer the carrot to one and the stick to other; thereby practise selective secularism in a way or other.

Rather than getting suggestive either way, prudence lies in minute revisit to all three guiding principles *vis-à-vis* directive principles under article 37 of the Constitution and thereby empower those in the seat of power to set the Constitution at work in its letter and spirit.[49] Thus, reading in between the lines, UCC appears fundamental in the governance of the country and it shall be the duty of the State to apply uniformity in making laws. Therefore, besides codification, a constitutional alternative lies in applying uniformity while making laws rather than making self-contained code as suggested in article 44. If the end constitutes a concern, means ought not to get fixed by the majoritarian whim and fancy to gross detriment of customary legal regime followed by the minority until the same offends basic features of the Constitution as the same constitutes uniform code in final count. As it is mentioned earlier, and hereby reiterated, uniformity is required to attain unity; while the same is circumscribed by two qualifying criteria: diversity in societal context, and integrity in juridical context, with occasional overlap *inter se* to get rhetoric of unity as organic orchestration of all irrespective of creeds as otherwise *bona fide* identity for

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45 Merely because a practice has continued for long, that by itself cannot make it valid if it has been expressly declared to be impermissible. Kurian Joseph, *J.*, in *Shayara Bano*.

46 *Supra* note 38.

47 *Supra* note 41.

48 The Commission of Sati (Prevention) Act, 1987.

49 The Constitution of India, 1950, art 37: application of the principles in this part. The provisions contained in this Part shall not be enforceable in any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
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themselves in course of private lifeworld. The legislative intent appears clear and unambiguous from naïve reading of the Preamble to the Constitution: unity and (sic.) integrity; thereby insisting upon the conjugal presence of both; not either of them in isolation. Therefore, unity devoid of integrity ought to get vitiated by drudgery, if not vagary, of evils and thereby set to unfold Pandoraôs Box to put secularism- another basic feature of the Constitution- to peril. The Constitution being social contract, its practice deserves the same legacy to engage all stakeholders in course of negotiations and thereby arrive at agreement vis-à-vis codification. Once they get agreed, the code takes little time to get enacted. Even in the absence of code, those willing to attain functional uniformity may do so if they embrace secular statutes, e.g. the Special Marriage Act, 1954, the Indian Succession Act, 1925, and the like. If there is will, there are ways as well.

V Conclusion

Rather than top-down approach for a self-contained code, prudence lies in bottom-up approach in policymaking through building the consensus on uniformity. After all, all these directive principles were construed to have constituted the building blocks of state policy and the same is written in clear and unambiguous language in headline of the chapter (part IV) itself. Application of state policy in the law-making process constitutes public policy of India. Also, the same is mentioned in the Constitution; the fundamental law of the land. Taken together, UCC may also be read to have constituted as public policy for the state to follow for better state governance rather than deducing (read reducing) the same into a code in literal sense of the term amidst the whirlpool of widespread apprehension; in the given context of vigilantism followed by remedial course through resort to stick in literal sense of the term. Thus, despite juridical potential, codification cannot get imposed by the right-wing regime since the same ought to defeat democracy; while the same constitutes a basic feature of the Constitution. Since time immemorial, as the same is mentioned earlier as well, even greatest of the great rulers like Asoka and Akbar did not take coercive recourse to the extent of imposition of civilian practices on their subjects; the same may get construed as cultural heritage of India.

In the given circumstance, the principle of uniformity may get inserted with slow yet steady approach- through amendments in laws for the time being in force rather than

as standalone piece of legislation in itself. The practice appears in vogue since long back, *e.g.* the Special Marriage Act, 1954 got enacted three decades after the Indian Succession Act, 1925 to follow the same legacy and thereby create space for those willing to get adhered to uniformity without much ado for the codification. A systematic slow-yet-steady proceeding toward clustered codification for uniformity- rather than crocodilesô cry for *de novo* code to get born with fire and fury of those from the minority- is likely to grapple with errant patriarchs inside a creed better; with the same law of the land- albeit in bits and pieces- getting used as cane to tame them as and whenever occasions arise. Thus, object and purpose of the codification under article 44 of the Constitution may get served sans resort to legislative bricks and mortars for another piece in the house already crowded by statutes. To conclude with Humbert Wolfe: [50]

> ñ*Making innumerable statutes, men*
> *Merely confused what God achieved in ten*ò.

[50] As quoted in P. St. J. Langan (ed.), *Maxwell, Interpretation of Statutes* (special Indian edition), Sweet and Maxwell, London, 1969.