

Editorial

Uniform Civil Code: An Impetuous Pursuit?

The debatable issue of uniform civil code in India is has once again gained momentum with the Delhi High Court recent order to the centre to take necessary steps for its implementation in the country. The court in its remark mentioned that conventional barriers of caste, community and religion are vanishing in modern progressive India and the society is moderately becoming homogeneous.

Supreme Court in Mohammed Ahmed Khan vs Shah Bano and others (1985) for the first time spoke of a UCC and urged the Central Government to enact a common Civil Code in the favour of national integration. The second time the issue was taken up by the Supreme Court, a decade later, in Sarla Mudgal, President, Kalyani and others V Union of India and others (1995). In this case a public interest litigation was filed to outcast the action of Hindu men, deserting their wives and converting to Islam for the only purpose of marrying a second time without lawful divorce.

The British rulers while crafting the modern legal system for India codified uniform laws governing contracts, crime etc. but continue with the customary and personal laws of the separate communities on the issues of marriage, divorce, adoption inheritance etc. At the time of drafting independent India's constitution, the framers of the constitution intended to have a uniform civil Code for achieving equality and Justice but considering the troubled times, Dr B R Ambedkar, the first law minister of India, remarked that while UCC was advisable, its execution should be put off till more conducive time as then, the entire nation was engulfed in the war of divide. However, of late, in its 2018 report, The Law Commission noted that UCC is neither necessary nor desirable at this stage for India for the very reason that India is a diverse country and to keep matter simplified it is desirable to give way for the administration of separate laws in the country. At this junction, as a secular country, there is nothing secular in today's India. Every religion being practised in India has separate personal laws. People migrating from India to Europe, U.S and other such countries follow UCC despite any religion. Any Muslim or Hindu in such countries do not complain of the wrecking of their religious freedom and call it oppressive. Despite the constitution having a directive principle favouring UCC across India, it is considered as a communal extremist idea and it is an irony that still no attempt has been made for implementing UCC across India. The state of Goa is the only 'shining example' in India of the implementation of a uniform civil code across all religions. Even though in 1961 Goa became a part of the Indian union, the former Portuguese colony decided to continue with the Portuguese civil code of 1867 for all communities in the state. The implementation of a uniform civil code has been in the manifesto of the Bhartiya Janata Party for many years now, while other parties are hesitant and avoiding enforcing UCC across other religious communities for their vested interest and view these community groups as vote banks. The secular civil laws - Indian Contract Act, Partnership Act, Sales of Goods Act, Transfer of Property Act, etc. do follow a uniform code in India. However, several states, have made many amendments leading to diversity in even such

secular civil laws. Currently, many states refused to be controlled by the uniform Motor Vehicle Act, 2019. Moreover, all Hindus, Muslims or Christians are also not governed by one law. Until August 5, 2019, Hindu law statutes in many ways was at variants from Central enactments in Jammu and Kashmir. Kashmiri Muslims' were ruled by a customary law, which differed from Muslim Personal Law in the rest of the country. Among Muslims, registration of marriage laws differs from state to state in India. Marriage registration is optional in West Bengal, Odisha, Bihar and Assam whereas it is compulsory in Jammu and Kashmir, 1981 Act. There are more than 200 tribes in the North East that have their customary laws. The states of Nagaland Meghalaya and Mizoram enjoy the protection of local customs and customary practices. Triple Talaq Act 2019, permission to women of all ages to enter Sabarimala temple, rights of Parsi women marrying non-Parsi man to enter fire temple are few historical judgements by the supreme court challenging the personal law of the religious community in India. In past decades, the Supreme court has often pointed that UCC must be legislated and should not be left on piecemeal verdicts by the court. The ruling government should devise a framework for drafting the content of a UCC taking in confidence all the stakeholders and building a consensus in areas of disagreement. The court should ensure that by no means the UCC should be rolled out as a card for the electoral poll and must be a legitimate secular constitutional exercise.

If a Uniform Civil Code is all about uniformity, it will make the need of religious ceremonies for vouching for validity of marriages; redundant and will do away with the notion of coparcenary property. However, if unity in all aspect is not preferred then that is an acceptance of the imprudence of advocating a UCC without comprehending the details of what it necessitate. At present, whether it is the Constituent Assembly or the Court or the advocates of the UCC, everyone seems to lack a clear perception of what a uniform code should look like.

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