

A just and equal code

The argument for a uniform civil code (UCC) is irrefutable in a modern nation state as long as it is rational, non-discriminatory and promotes social equality and gender justice. Multiple legal codes flout the principle of equality before the law.

Neither Hindu nor Muslim personal law is divinely ordained. Both are products of the Indian legal system as it evolved under the Raj. In 1955-56, Parliament passed a series of acts to reform legal practices governing Hindus during British rule. These collectively constitute Hindu Personal Law. Muslim Personal Law was codified by the Central Legislature in 1937 in order to impose uniformity throughout British India. Parliament could have revamped it in the 1950s as it did Hindu law but for Jawaharlal Nehru's belief that the Muslim minority, who were traumatised post-Partition, should not be made subject to the decisions of a Hindu-majority legislature. Nehru wanted the demand for reform to come from Muslims. Unfortunately, in part because of the Congress's co-option of the most conservative Muslim leaders, this never materialised. Even the reform of Hindu law was almost derailed thanks to powerful conservative Hindu opponents such as President Rajendra Prasad. Nehru had to make many concessions, including retaining tax benefits for the Hindu Undivided Family (HUF), to get it passed. The UCC must eliminate the HUF.

The refusal of Muslims to adopt changes in their personal law was in large part the result of post-Partition insecurity, which was aggravated when Hindu communal forces became the foremost proponents of an UCC. Most Muslim Indians are ignorant of the fact that from the 18th century onwards, British judges decided cases involving Muslims based on their meagre understanding of Islamic legal texts. This corpus of legal precedents came to be termed as Anglo-Mohammedan Law, which forms the basis of Muslim Personal Law. Muslim leaders also refused to recognise that precedents from the classical age of Islam were products of their historical context and not necessarily valid across time and space. Prophet Muhammad was a social revolutionary. In order to understand his teachings, we must distinguish between essential Islamic principles and the historical circumstances in which they were applied. The implementation of Islamic precepts must be sensitive to changing times.

One deciphers two principal socio-moral lessons in Islamic teachings: gender justice and social equality. At a time when girl children were buried alive at birth, the Prophet declared that women could inherit property and that a wife's assets belonged solely to her. The Koran clearly states that all human beings are equal. Consequently, Muslim Indians should have no qualms about accepting a UCC that promotes gender justice and social equality and does not discriminate on the basis of religion or caste.

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