

DEBATE ON UNIFORM CIVIL CODE

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Article 44 of the Directive Principles in the Constitution says the “State shall endeavour to provide for its citizens a Uniform Civil Code (UCC) throughout the territory of India.” The objective of this endeavour should be to address the discrimination against vulnerable groups and harmonise diverse cultural practices. The stand taken by B.R. Ambedkar in the Constituent Assembly debates has survived the years. Dr. Ambedkar had said a UCC is desirable but for the moment should remain voluntary.

The Law Commission of India notes that the tracts of the Constituent Assembly debates reveal a lack of consensus on what a potential uniform civil code would entail. While many thought the UCC would coexist alongside the personal law systems, others thought that it was to replace the personal law.

There were yet others who believed that the UCC would deny the freedom of religion. It was this uncertainty that led it to be included in the Directive Principles of State Policy rather than the chapter on Fundamental Rights in the Constitution.

The codification of personal laws have historically generated protests. The Hindu Code Bill, one of the foremost pieces of social legislation, had triggered enormous opposition.

The debate on the UCC is centred on the argument to replace individual personal customs and practices of marriage, divorce, adoption and successions with a common code. Those in favour of one code argue that it will end discrimination in religions. Detractors contend that it will rob the nation of its religious diversity and violate the fundamental right to practise religion enshrined in Article 25 of the Constitution. In fact, they hold that a state action to introduce the UCC is against the quintessence of democracy. The secular state is, after all, an enabler of rights rather than an inhibitor in sensitive matters of religion and personal laws.

Legal experts say that the Supreme Court missed an opportunity to decide on the issue in 2017 when it outlawed triple talaq without addressing the core issue: whether personal law practices should prevail over the fundamental rights of life, dignity and non-discrimination. The Constitution Bench’s judgment was the product of an October 2015 decision of a two-judge Bench of the court to take *suo motu* cognisance of the discriminatory practices against Muslim women. This Bench pointed out that it had been 30 years since the court, in the Shah Bano case, urged the government to frame a common code to “help in the cause of national integration.”

The Constitution Bench’s judgment came about a year after the Law Commission, in a novel move in October 2016, published a “questionnaire” to test the waters on the UCC. It wanted to see whether the nation was ready for it. The questions included “what measures should be taken to sensitise society to a common code or codification of personal law,” and would the UCC ensure “gender equality.”

In the Shah Bano case, the court lamented that Article 44 remained a “dead letter.” Chances are that it may continue to remain so. In its consultation paper last week, the Law Commission chose codification of personal laws over the UCC as a way to end discrimination within religions. Codification of various practices and customs would make them ‘law’ under Article 13 of the Constitution. Any ‘law’ that comes under Article 13 should be consistent with the fundamental rights, the Law Commission has reasoned. This would protect the plurality of religions, too, and

may be the way forward for the near future. In fact, the Law Commission has suggested in no uncertain terms that the UCC is “neither necessary nor desirable at this stage in the country.” It said a unified nation does not necessarily need to have “uniformity.”

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