

THE PROGRESSIVE WAY

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In a consultation paper released recently, the [Law Commission of India has boldly said that a uniform civil code](#) (UCC) is neither feasible nor necessary at this stage.

Beyond uniformity: on ruling out a uniform civil code

The response must come as a shock to those in support of a “one nation, one law” tagline. The divide between the socialists and liberals is clearly visible. ‘Legal pluralism’ and ‘radical libertarianism’ are well-recognised scholarly traditions. There is a consensus that the state is not the only source of law. History has many instances of pluralistic legal systems where multiple sources of law existed.

Therefore, the Law Commission has rightly recognised the plurality of diverse personal laws and proposed internal reforms in personal laws to make them compatible with the constitutional provisions of equality and non-discrimination.

One hopes that religious communities in general and Muslims in particular will now as a first step initiate meaningful dialogue on internal reforms in personal laws.

The Supreme Court has been advocating the enactment of a UCC, perhaps without fully appreciating the ground realities. For instance, Justice Vikramajit Sen in *ABC v. State* (2015) observed: “Our Directive Principles envision the existence of a uniform civil code, but this remains an unaddressed constitutional expectation.” Here, the court was not dealing with some religious or personal law but with a statutory provision of the Guardians and Wards Act, 1890. Thus the reference to a UCC was unwarranted. In *Sarla Mudgal* (2015), the Supreme Court made observations that those who stayed back after Partition knew that India believes in one nation and therefore no community can claim separate religious laws. Loyalty to the nation and uniformity in laws are not related to each other.

Even in the Constituent Assembly, there was division on the issue of putting a UCC in the fundamental rights chapter. The sub-committee on this was so sharply divided that the matter was eventually settled by vote. It finally held that the provision was outside the scope of fundamental rights and thus non-justiciable. We need to appreciate the distinction between justiciable and non-justiciable rights. B.R. Ambedkar explicitly said in the Assembly, “No government can use its provisions in a way that would force the Muslims to revolt. If a government acts thus [imposing a common civil code], such a government would be insane in my opinion.”

We need to appreciate that in Article 44, the framers of the Constitution have used the term ‘uniform’ and not ‘common’ because ‘common’ means one and same in all circumstances whatsoever and ‘uniform’ means ‘same in similar conditions’. It is an erroneous perception that we have different personal laws because of religious diversity. As a matter of fact, the law differs from region to region. It seems the framers of the Constitution did not intend total uniformity in the sense of one law for the whole country because ‘personal laws’ were included in the Concurrent List, with power to legislate being given to Parliament and State Assemblies. Preservation of legal diversity seems to be the reason of inclusion of Personal Law in the Concurrent list. The Law Commission has given due weightage to this diversity.

What is the debate on uniform civil code all about?

It is a myth that we have uniform criminal laws. States have made amendments to the Indian Penal Code (IPC), 1860, and the Code of Criminal Procedure, 1973. For example, Punjab recently introduced Section 295AA to the IPC — life term in all sacrilege cases.

Another myth is that Hindus are governed by one homogenous law after the enactment of the Hindu Code Bill. It is also true of Muslims and Christians. The Constitution itself protects the local customs of Nagaland. It is repeatedly mentioned that Goa already has a uniform code. But Hindus there are still governed by the Portuguese Family and Succession Laws. The reformed Hindu Law of 1955-56 is still not applicable to them. In the case of Muslims, the Shariat Act 1937 has not been extended to Goa. Thus they are governed by Portuguese and Shastric Hindu law, and not by Muslim personal law. The Special Marriage Act (a progressive civil code) has not been extended to Goa. Even in Jammu and Kashmir, local Hindu law statutes do differ with the Central enactments. The Shariat Act is also not applicable and Muslims continue to be governed by customary law which is at variance with the Muslim personal law in the rest of the country.

It is distressing that no one talks about the non-implementation of other Directive Principles which are far more important than the enactment of a uniform code. What about the right to work, living wages, distribution of community resources to sub-serve the common good, avoidance of concentration of wealth in few hands and the protection of monuments?

Amendments to a community's personal law with a view to bringing about changes for its betterment is one thing; but to tinker with the enactment with the sole purpose of introducing 'uniformity' is quite another. Just laws are far more important than uniform law. Piecemeal reforms should be the way forward.

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Last week Ram Kadam, a BJP MLA from Maharashtra, told the men in an audience that if they were interested in women who didn't reciprocate the feeling,

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