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Constituent Assembly
and thereafter
on
Uniform Civil Code**



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The ideas of unity and equality have been at the core of what India represents. Yet the existence of personal laws has been creating divisions in the country from the colonial times. The calls for a Uniform Civil Code (UCC) have always been met with resistance since many are under the wrong notion that is a direct assault on their religion and religious practices. In the haste to ensure that religion remains insulated from the interference of the state, what is often forgotten is that it is the issue of gender justice and national integration that have been pushed to the back burner.

It needs to be noted that the early proponents of UCC were women. Among the 15 women, who were part of the Drafting Committee¹ of the Indian Constitution, Hansa Mehta's contribution in trying to make UCC justiciable remains most significant. As a member of Fundamental Rights Sub-Committee, she along with Rajkumari Amrit Kaur, Dr B R Ambedkar and M R Masani stressed on the need for establishing a single Indian identity over multiple religious identities and the role that the state has to play in ensuring this. Dakshayani Velayudhan, the first and the only Dalit woman in the cabinet had also made a strong case for UCC. But their motion did not garner any support as the other members of the Drafting Committee felt that by enacting a common code at that point, India may be seen as renegeing on its promise given to minorities and this in turn might worsen an already volatile situation.

With time, the majority community understood the deeply biased nature of religious laws and subsequently, the government enacted the Hindu Code Bills in 1955-56. Though the original Hindu Code Bill that was wholly supported by Dr Ambedkar could not be passed due to opposition from various quarters, a diluted version which saw the Bill being divided into four parts was passed - : the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act.

¹Priyadarshini Ravichandran, 'The women who helped draft our Constitution,' *Live Mint*

Welcoming the move, Hansa Mehta said, “This Bill to codify the Hindu Law is a revolutionary Bill and though we are not quite satisfied with it, it will be a great landmark in the social history of the Hindus. But since this Bill was drafted, many things have happened and one of the biggest things that has happened is the achievement of our political freedom. The new State is going to be a democratic State and democracy is based on the equality of individuals. It is from this point of view that we have now to approach the problems of inheritance and marriage etc, that are before us.”

Though it was a far cry from the implementation of UCC, it was the first step where one community showed that it was necessary to reform archaic religious practices for ensuring equality and dignity to all. Despite that first step, the many myths surrounding UCC persists even to this day. A look at the Constituent Assembly debates on the topic further reveals that even though India was celebrated for its syncretic culture, there were clear lines drawn in matters of religion from that time and politics of appeasement practiced in the subsequent years gave immunity to certain communities to continue their religious practices even if they were in clear contravention to human rights. The lack of enthusiasm in even starting a debate on UCC should have ideally raised questions on whether it is the idea of India that is getting eroded in the face of vote bank politics, but those voices never found a platform and the issue was time and again suppressed.

Constituent Assembly Debates arguing against UCC

The Constituent Assembly² took up the issue of Uniform Civil Code on 23 November, 1948 as part of Article 35 of the Constitution. There were impassioned debates on the topic with the 24 November 1948 edition of the Times of India describing it as “a series of full-blooded speeches.”

Interestingly, the amendments to the Draft were tabled by five Muslim members – M. Muhammad Ismail, Naziruddin Ahmad, Mahboob Ali Baig, B Pocker and KTM Ahmed Ibrahim. Their dominant view was that the implementation of UCC was

²Constituent Assembly Debates, Lok Sabha Secretariat

“tyrannical” and that the state had no right to “interfere” in the personal laws of any community. They took recourse in the fact that the British had not touched the religious laws of any community and questioned the need for independent India to do so. These points were made after it had become abundantly clear that the British had been following a policy of ‘divide and rule’ which prevented Indians from identifying as a single entity. The bloodbath that followed partition should have acted as sufficient reason to not drive any more wedges in the country and establish an identity that first and foremost stems from being an Indian.

But the Constituent Assembly debate on UCC is indeed an eye opener. It proved that there was always a fine line that divided communities and when it came to matters of religion, the religious identity trumped national identity. The minority communities were especially susceptible to this and the majority community at that time felt it wise to pander to partisan politics than strengthening the foundation of India.

M. Muhammad Ismail was first member to propose amendment to Article 35. He proposed the following proviso to be added: "Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

He argued that the right to follow personal laws is among the fundamental rights and it will be tantamount to interference if the state decides to legislate on matters of religion and culture.

“This secular State which we are trying to create should not do anything to interfere with the way of life and religion of the people. The matter of retaining personal law is nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities,” he said.

“We find similar clauses in several other European constitutions also. But these refer to minorities while my amendment refers not to the minorities alone but to all people including the majority community, because it says, "Any group, section or

community of people shall not be obliged" etc. Therefore, it seeks to secure the rights of all people in regard to their existing personal law. Again, this amendment does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. Now why do people want a uniform civil code, as in article 35? Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people, being free to follow its own personal law will not really come in conflict with others," he added.

The next amendment was proposed by Naziruddin Ahmad. He wanted the following proviso to be added: 'Provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law'."

Taking a broader perspective, he said, "Each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that 'subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.' In fact, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that 'Nothing in this article shall affect the operation of any existing law or preclude the State from making any law

regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), viz. financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in Article 19. I submit, Sir, that we must try to prevent this anomaly. In Article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of law and seek enforcement. On the other hand, by the article under reference we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in Article 19.”

“I submit, Sir, there are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Criminal Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property Act, the Sarda Act and various other Acts. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are

also supposed to be the result of religious injunctions. **I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform.** But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any State would be justified under Article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriage practices in various communities. If we want to introduce a law that every marriage shall be registered and if not it will not be valid, we can do so under Article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?" he added.

This was followed by Mahboob Ali Baig's request for the following proviso to be added to Article 35: "Provided that nothing in this article shall affect the personal law of the citizen."

He opined that the words "Civil Code" do not cover the strictly personal law of a citizen. He said, "The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression "Civil Code", I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

M. Ananthasayanam Ayyangar intervened at this point to state that "It is a matter of contract".

Mahboob Ali Baig retorted that Ananthasayanam Ayyangar has always very queer ideas about the laws of other communities. It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practiced by Muslims and recognized by all authorities in all states. If today Mr. Ananthasayanam Ayyangar is going to say that some other method of proving the marriage is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to the code that is laid down for us for all times in this matter.”

He went on to add that “people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "Civil code".”

B. Pocker supported the motion moved by Baig and called for the following proviso to be added: "Provide that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

Elaborating on the amendment he called for, he said, “It is a very moderate and reasonable amendment to this Article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalman community alone, but from the point of view of the various communities that exist in this country, following various codes of law, with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will note that one of the reasons

why the Britisher, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. I ask, Sir, whether by the freedom we have obtained for this country, are we going to give up that freedom of conscience and that freedom of religious practices and that freedom of following one's own personal law and try or aspire to impose upon the whole country one code of civil law, whatever it may mean, - which I say, as it is, may include even all branches of civil law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?"

He further opined, "In the first place, I would like to know the real intention with which this clause has been introduced. If the words "Civil Code" are intended only to apply to matters procedure like the Civil Procedure Code and such other laws which are uniform so far as India is concerned at present well, nobody has any objection to that, but the various Civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce, etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on these matters which are dealt with by the Civil Courts Acts in the various provinces, well, I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated; and let it not be taken that I am only voicing forth the feelings of the Mussalmans. In saying this, I am voicing forth the feelings of ever so many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now."

"It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the

pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit, Sir, there are ever so many sections of the Hindu community who are rebelling against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny.”

Hussain Imam intervened in the debate and said, “India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the Centre in matters of succession, marriage divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the protection we have given to the backward classes. Their property is safeguarded in a manner in which other property is not safeguarded. In the Scheduled areas, - I know of Jharkhand and Santhal Parganas -- we have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I therefore, feel, Sir, that, in addition to the arguments which have

been put forward by my friends who spoke before me, in which they feel apprehensive that their personal law will not be safe if this Directive is passed, I suggest that there are other difficulties also which are purely constitutional, depending not so much on the existence of different communities, as on the existence of different levels in the intelligence and equipment of the people of India. You have to deal not with an uniformly developed country. Parts of the country are very very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? You must have a great deal of difference. Sir, **I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date.** For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws. Can you have, today, uniform laws as far as a child and a young man are concerned?

“The apprehension felt by the members of the minority community is very real. Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such there is a world of difference between irreligious and non-religious. I therefore suggest that it would be a good policy for the members of the Drafting Committee to come forward with such safeguards in this proviso as will meet the apprehensions genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find a solution for this,” he added.

Counter arguments in Constituent Assembly

From the Constituent Assembly debates that were against the implementation of UCC, it is clear that the minorities felt that their personal laws cannot be legislated on and the state had no right to interfere in matters of faith. A number of arguments that were raised against UCC were taken up in the counter debate

that ensued and many of the fears were dispelled by those who spoke in favour of UCC.

Among the members who felt that UCC was necessary to keep India united, the most vociferous arguments were put forth by K M Munshi. He chose to focus on the two primary arguments that were made against UCC, namely that it infringes on the fundamental rights given in Article 19 and it is tyrannous to the minority. He pointed out that the House has already accepted the principle that “if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.” This in effect meant that Parliament has the right to enact a uniform code at a time it deems fit.

Regarding the argument that the enactment of a Civil Code would be tyrannical to minorities, he quoted the examples of Turkey and Syria to prove that “nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code.”

He stressed that the point of a common code is to ensure that the way of life for the country becomes unified and secular. He questioned how can religion interfere in matters like inheritance and succession which essentially form the tenets of social relations. He said, **enactment of a common code affects Hindus equally and the goal of such a legislation is to protect the fundamental rights guaranteed by the Constitution like ensuring gender equality.** He criticized the isolationist outlook and called for religion to be restricted to spheres that legitimately pertain to it and ensure that the other areas are regulated in the larger interests of national unity.

Munshi also opined that the personal law is part of religion is a mindset that has been perpetuated under the British rule. He gave the example of Allauddin Khilji who made several changes which went against the Shariat when he established the first Muslim Sultanate in India. When the Kazi of Delhi expressed his displeasure in what he saw as blatant violation of the Shariat,

Khilji told him that he is ruling in the best interests of the country and for that if he has gone against the Shariat, the Almighty will forgive him.

Alladi Krishnaswami Ayyar in his debate focused on the argument that religion was in danger and communities cannot live in amity if there is a uniform civil code. He opined that a common code aims at amity and does not destroy it. He said that the differential system of inheritance and other matters will only contribute to the already existing differences among the people of India. The aim is to arrive at a common measure of agreement and take the best practices from every system. He pointed out that the Succession Act under the proposed Hindu Code had drawn upon elements from both the Roman and English systems. **He asked if India should be welded together as a single nation or always kept up as a series of competing communities?**

Addressing the allegation made by Pocker that the Drafting Committee did not know their business, he asked why was there no revolt when the British introduced a single criminal law applicable to all citizens of the country? He also gave the example of the law of contracts that was governed not by the law of the Quran but by Anglo-Indian jurisprudence to drive home his point. He asked if in countries like France and Germany different personal laws are perpetuated or if there is a single unified system? He expressed the hope that in future, there will be a uniform civil code legislated that will run into every aspect of civil law.

Dr B R Ambedkar in his response pointed out that there was already a uniform code of laws covering almost all aspects of human relationship which meant that it was possible to have a uniform civil code in the country. Differing on the argument that the Muslim personal law was uniform throughout the country, he reminded the Assembly of the North-West Frontier Province which followed the Hindu Law in the matter of succession and others till, in 1939, the Central Legislature passed a law to apply Shariat to the Muslim dominated area. Even in the United

Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. He also brought attention to the fact that in North Malabar, the matriarchal form of law, Marumakkathayam Law was applied to both Hindus and Muslims.

Concluding the debate on 2 December 1948 on UCC, Ambedkar said, “All that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. Therefore, no one need be apprehensive of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India ... Sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its powers in such manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad government if it did so”.

He assured the Assembly that the feelings of everyone will be taken into consideration and said that in future, the Parliament may make provisions where the uniform civil code is applied to only those who want to be voluntarily governed by it. In the end, it was decided that the amendments proposed to Article 35 do not hold any merit and it was adopted as it is. This article was later moved to the Directive Principles of State Policy as the makers felt that the nation was not yet ready to accept a common civil code. Thus, the goal of a uniform civil code was enshrined in Article 44 of the Indian Constitution and read thus:

“The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

Debates in the present times

In September 2019³, the Indian Supreme Court lamented that even after 63 years since the codification of the Hindu Law in 1956, the governments in power have failed to take any steps towards implementation of a uniform civil code.

The Muslim Women (Protection of Rights on Marriage) Act, 2019 which abolished the practice of Triple Talaq was seen as a progressive step that would realise the goal of UCC. In its judgement⁴ upholding the constitutionality of banning Triple Talaq, the Court had observed that arbitrary personal laws cannot seek refuge under the rights guaranteed by Freedom of Religion and Equality before Law is supreme. Now the matter is expected to be taken up by the 22nd Law Commission, the formation of which has been officially announced by the government on 25 February, 2020.

Yet the implementation of UCC does not seem to be a goal that can be realized in the near future. Opposition parties like the Congress and CPI (M) have interestingly called the efforts to implement UCC as an offensive attack launched by “communal forces” on the identity of minorities. Though a number of regional parties have come out in support of the statement, it is the stand taken by Congress and CPI (M) that are in direct negation of the values and principles that they have been espousing for so long.

In the case of Congress, it needs to be remembered that Jawaharlal Nehru had clearly stated that UCC will be implemented once the ground is prepared and all parties are taken into confidence. He was of the opinion that changes cannot be imposed from the top and it was the government’s duty to educate public opinion and see to it that the changes are imposed

³‘No steps taken in 63 years on uniform civil code’, says SC, *The Times of India*

⁴Raghav Ohri, ‘Road ahead: End of triple talaq a gateway to Uniform Civil Code?’ *The Economic Times*

only when a community accepts it. He was concerned that many Muslims in the country who decided to stay back at the time of Partition had started believing Jinnah's claims that the Congress rule symbolized "Hindu domination". That is from where the appeasement of minorities first started which continues to leave an indelible mark on Indian polity. By not having the courage to implement UCC, Nehru and others lost an opportunity to create an India that could not be destabilized in the name of religion. Instead, they created divisions and created a country where religious sentiments are used to subvert justice.

In addition to Nehru, Dr Ambedkar had also extended his support of UCC during the course of debates in the Constituent Assembly. So now when the Congress says that UCC will divide the country, it needs to be asked if they are disowning their roots and are going against the secular ideals that they have been espousing for so long. Their own leader, Nehru was not against the implementation of UCC in principle and had made it clear that India need to make its environment conducive for such a progressive step to be taken.

The argument put forth by the CPI (M) evokes further curiosity. A party that claims to strongly stand for the ideals of a classless society and which believes that "religion is the opium of the masses" seems to have sudden concerns about each and every religion being able to preserve its own identity. They seem to have forgotten the basic tenets of Marxism that religion is a tool for oppression. Instead of supporting a reform that is in line with their proclaimed principles, the fact that they think, such a reform will be an assault on the country's pluralistic and cultural identity should be seen in the context of them following a partisan agenda.

In the current debates about UCC, there is a wrong notion that is getting perpetuated that it will be a step against Muslims of the country. There cannot be a more flawed argument than this. The implementation of UCC would affect all communities equally and it is not a targeted exercise against any one community. Even though reforms were made in the personal Hindu Laws, it

is not without problems. An issue that have been discussed time and again is the registration of Hindu Marriages. Unlike in Islam where marriage is considered a civil contract, Hindu marriages are sacramental even though efforts have been to add the elements of contract into it. This means that the onus is on the persons getting married to prove that they have followed all religious ceremonies and their marriage has religious and legal validity. In a country where customs vary with every region, this particular provision has given rise to a lot of confusion on what are the customs that constitute a legally valid marriage. Also, it needs to be noted that it was not until 2005 that the Hindu Succession Act was amended to give daughters the right to demand partition of parental homes.

When it comes to Christianity, the Indian Christian Marriage Act, 1872 stipulates that a woman has to wait for two years before she can file for divorce. The fact that a Christian marriage is sacramental further adds to the woes of the women. These are clear indications that what a common code does is to address the issues that perpetuates inequalities in society and realise the goal of an egalitarian and just nation.

As Rajkumari Amrit Kaur⁵ had pointed out during the deliberation of the 12-member sub-committee constituted to look into the issue of UCC, 'free practice' could legitimise 'anti-social practices' such as Sati, purdah and devdasi customs and nullify laws such as the one favouring widow-remarriage. It is important to deliberate on this topic to understand its implications. A system where multiple people are involved and where they are allowed to come out with their own rules would mean that a platform is being provided to reinforce deep seated biases. In such a scenario, it is often the women who are robbed of their agencies. And what this essentially paves way for is a complete descent into anarchy.

What it also needs to be understood is that UCC is meant to legislate social relations as pointed out by K M Munshi. Matters of marriage, divorce, succession and adoption should ideally

⁵Vaibhav Purandare, 'One Nation One Code,' *The Times of India*

have nothing to do with religion as it forms the very foundation of human society. Religion concerns the spiritual space and is something that should remain deeply personal. It is one's relationship with a higher power that cannot be defined and dictated by rules and regulations.

The argument that has often been put forth against the implementation of UCC is that it is a provision under the Directive Principles⁶ and no law can supersede the fundamental rights guaranteed in the Constitution. The reference here is to Articles 25 to 28 that give everyone the right to practice his/her own religion as propagated by their own religious laws. But the same Constitution has vested Parliament with the right to make laws throughout the territory of India under Article 245. This means political will is the only factor necessary to make UCC a reality.

The question that needs to be asked is which are the fundamental rights that require greater protection. Article 14, 15 and 21 ensure equality and dignity for all and protect citizens against all forms of discrimination. Despite constitutional remedies available, a progressive nation like India has been perpetuating gender injustice in the name of religion. Parallel judicial systems have been allowed to continue which goes against the values of democracy and nation-building.

The abolition of triple talaq was an opportunity for the government and society to initiate the debate on UCC. Yet, a progressive step has over the years been reduced to being hailed as a reform in the personal law. It was also forgotten that to sustain the moment it was necessary to continuously engage with the general public to elicit their opinion as well as to make them understand that UCC will not interfere with religion in any way.

Perhaps it is here that RSS can play a prominent role in setting the tone for the public discourse. What is often forgotten is that, Shri Guru Golwalkar, the late Sarsangchalak of the RSS had

⁶'Why India needs a Uniform Civil Code,' *Legal Services India*

said in an interview to the Organiser in 1972⁷ that he did not believe that UCC was necessary for promoting the cause of national integration and for promoting national unity, what is needed is harmony and not uniformity. He urged the Muslims to evolve their old laws and stated that the urge for reforms should come from within communities. In the subsequent years, the Sangh understood that UCC was a necessary step that will erase all the existing disparities in personal laws and bring about a system where judiciary will be the deciding authority on every issue that comes in the civil sphere. The primary reason for pushing this reform was to give women an equal footing in all matters and religion is not used as a tool for their oppression.

This is contrary to the perception that the call for UCC is a deep-seated conspiracy of the Sangh to turn into a homogenous society. The merits of the demand are seldom discussed on any public forum. The Constituent Assembly debates that had so staunchly argued for a common code where RSS had no role to play are forgotten many a times. It is interesting to note that those who supported UCC hailed from diverse backgrounds⁸. It was a Dalit (B R Ambedkar), a devout Hindu (K M Munshi), a Parsi (Minoo Masani), a second-generation Sikh who converted to Christianity (Rajkumari Amrit Kaur) and a Gujarati Nagar Brahmin (Hansa Mehta) who felt that UCC was necessary to attain the goal of national integration. It was and still is a demand that transcends all religions and should be viewed from a strictly humanitarian perspective.

Instead there are multiple attempts to paint the idea in communal colours. The All India Muslim Personal Law Board (AIMPLB) which was formed in 1972 to make certain that there are no changes in the Muslim Personal Law submitted a petition against UCC with 48.1 million signatures to the Law Commission of India on 13 April, 2017 rejecting any change in their laws. Ironical here is the fact that the main source of guidance for

⁷Zafarul-Islam Khan, 'Uniform Civil Code – A Muslim Point of View,' The Milli Gazette Online

⁸Vaibhav Purandare, 'Uniform code will hurt harmony, minorities argued to make a case for personal law,' *The Times of India*

Indian courts on matters related to Muslim Personal Law happens to be a book named, *Principles of Mahomedan Law*⁹, which contains Shariat-related judgements of British courts, was compiled by Dinshah Fardunji Mulla, a Parsi. The codification of Shariat based on the Quran and Hadis began at the time of Khalifa, almost 30 years after death of Prophet Mohammed and it continued evolving for nearly 100 years. Also, the laws are not uniform across sects and reflect the local culture and traditions of Arabic societies of those times.

From this it is clear that even Shariat which the Muslims now say cannot be amended is a product of the times it was conceived in. It is imperative for every community to usher in changes according to the way society and the definitions of traditions and culture evolve. Here before voicing opinion against UCC, it may bode well to go back to colonial times to see why despite the *Lex Loci* Report of 1840 which emphasized the need for uniformity in the codification of Indian law, it was still recommended to keep the Hindu and Muslim personal laws outside of any such codification. This was done with a clear intent of creating a permanent wedge between Indians. As pointed out by Dr Ambedkar, there were several regions in India that were not under any strict personal laws. A Muslim majority region like the North West Frontier Province was following the Hindu Personal laws. Such unity and integration in the long run would have arrested the expansionist ambitions of the British at a very early stage. So today if a particular community believes that UCC is targeted against them, it is important they see it in the right historical context before coming to conclusions of their own.

There have been some powerful voices raised within the Muslim community in support of UCC. Dr. Tahir Mahmood in his book *Muslim Personal Laws 1977* had strongly advocated for the framing of a common civil code. He had cited that many Muslim countries have outlawed polygamy – a practice that snatches

⁹ Ratan Sharda, 'True secularism demands a Uniform Civil Code,' *Lawyers Club India*

away the self-respect of women. After the passing of Hindu Code Bills, a noted Islamic scholar Asaf Ashar Ali Fyzee¹⁰ had urged the government to constitute a special committee for examining the personal laws of the Muslim community. More recently, the Governor of Kerala and noted scholar Arif Mohammed Khan had quoted the Pakistani Muslim scholar Syed Abul A'la Maududi to state that the Mohameddan law is very different from the Islamic Shariat and the unjust laws have immensely destroyed the domestic lives of Muslims. The calls for changes are definitely emanating from the community, but they are still too feeble to reach the larger public.

The way forward

Various courts have been approached regarding UCC. The Delhi High Court has asked the Union government to file its response. The conditions have never been more conducive to initiate a nation-wide debate on UCC. The opportunity has presented itself with enough time for the Centre to start awareness camps on what exactly UCC entails. The root cause for opposing UCC lies in illiteracy that is prevalent. In the case of minorities, this is even more pronounced because if a section of them is educated, their formative years were spent in religious schools and their thoughts have already been moulded in a particular way. It is this vicious chain that the government and civil society need to break in order to usher in reforms that open up minds to new possibilities and help in erasing the artificial barriers.

There are between 200 to 300 personal laws that are operative in India at present. The numbers are staggering and point towards a fragmented society where there is chaos and injustice. In a country where women hailing from a particular religion have no qualms in blocking a major road in the national capital in the name of protecting India's constitutional values, it is rather astounding that none of them ever thought of working towards life and dignity for all. How can women who claim to be so self-aware accept being treated as second class citizens in a society that they hold so dear? Why have voices never been raised

¹⁰Dina Nath Raina, *Uniform Civil Code and Gender Justice*

against polygamy and the fact that according to Islamic laws, the property is divided in the ratio, 2:1 with two shares to the boy and one to the girl?

The argument that UCC will not work in a country as diverse as India has been flawed from the beginning. One state in India, Goa, has been having a common family law based on the erstwhile Portuguese civil law and even after its annexation in 1961, the state continued to implement the common code. Goa has 65 per cent Hindu population and 25 per cent Christian population, there have been no issues raised till date on its implementation.

India has definitely taken a step in the right direction with the implementation of the Special Marriage Act, 1954 which permits any citizen to have a civil marriage outside the realm of personal laws. It has addressed many of the inherent wrongs of the religious laws. But such a law will be effective only if people voluntarily chose to shun the personal laws in the interests of a just society and consolidated nation.

Amrit Kaur¹¹ along with M R Masani and Hansa Mehta as members of the Fundamental Rights Sub Committee had in a letter to Sardar Patel said, “One of the factors that have kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life.” They were of the view that UCC should be guaranteed to the Indian people within a period of five or ten years. Yet even after 70 years since the Indian Constitution came into force, UCC remains a distant dream. The time has come for the nation to come together and advocate for a cause that will do away with all barriers and ensure that each and every person gets the dignity and respect that he/she truly deserves.

¹¹Shiva Rao, *The Framing of India's Constitution: Select Documents II*