

## **Decoding the Uniform Civil Code**

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The democratic experiment in as hugely diverse a country as India has indubitably been pulled off notwithstanding many prophets of doom claiming to the contrary at the time of her inception. But still there remain a host of issues to be attended to and to be tackled, the issues, which sprung up in the social churning that followed. And one of such issues staring us right in the face and raking the brains of the social scientists and keen observers of the nation-building process is the issue of the Uniform Civil Code (UCC). And the entire ensuing discourse evolving on UCC has progressed along lines which have baffled and bamboozled more than helping a clear-cut understanding of the issue. It is also true that without the latter, it would be difficult to think of any solution to the problem. And after the recent Supreme Court observations over the desirability of a Uniform Civil Code, it would be worth its while to find out the pros and cons of the same.

The desirability of a UCC in this country has evoked more passions than a reasoned debate. Pitched battles have been fought between the two sides (i.e. those favouring and opposing such a UCC) on the op-ed pages of newspapers and magazines and oratorical fireworks have suffused the screens of the 'idiot-box'. Now the point is a UCC such an important thing the absence whereof might undermine the very ontology of the Indian nationhood. Definitely not. After all, we have survived those stormy and fateful fifty-five years without the UCC being there in place. But does that mean that we would never need one in future. The answer is again in the negative. A UCC would be needed to aid the slow but steady pace of our nation-building process.

Its opponents argue that such an instrument might interfere with the 'freedom of religion' guaranteed under Part III of the Indian Constitution and thereby may compromise the secular principle enshrined therein denting the entire edifice of this nascent nation. Though Supreme Court in its recent observations has made it clear that a UCC does not impinge upon the 'right to religion', its opponents would immediately pounce to counter any such separation of the two. It was this 'right to religion' argument, which saw a Muslim woman named Shah Bano losing a legal battle to those religiously clinging to the sanctity of the Muslim personal law. The ensuing law brought by the Rajiv Gandhi Government did keep the secular state away from fiddling with such personal laws, distorting and devaluing the law of the land in the process. The government legislation that followed very clearly denied a fundamental right to a section of its citizenry by discriminating between Muslim woman and those from other communities. So, what is now available to all the women just by dint of being an Indian citizen is barred to a Muslim woman. Such a discrimination, pointed out critics, not only undermined our secular structure by showing

the state to be siding with a particular religious community but also chipped at the basic human rights available to Muslim women, thus, denigrating their very humanity.

The supporters, who for the moment are mostly from the people on the right side of the political spectrum, however, think otherwise. They advance the same argument of secularism saying that by siding with a particular community, the state has already acted in a partisan manner and thereby, compromised the secular principle. Hence, the allegation of pseudo-secularism. They argue that if the state is really secular then it should have treated all the religious communities equally. After all, that is what secularism is all about. But by favouring a particular community over the other, the state has dented the secular structure of the state. If that is not so, they say, why did the state interfere with only the Hindu personal law leaving the rest to be administered by their own personal laws. They believe that such moves not only erode the credibility of the state as a neutral actor but also negatively impact the larger interest of the country. Such state actions not only deprive a section of the citizenry their basic human rights, but also chips away at the unity and integrity of the country.

Matters such as marriage, succession, inheritance et al are secular matters as the Supreme Court also opined in its recent observations and deal more with the mundane than the religious aspects of life. By yielding on such matters, the state has inadvertently been encouraging the obscurantist and orthodox section of the Muslim community rather than listening to the more progressive and liberal section from the same. In fact, many aspects of the civil rights are already codified under the Civil Procedure Code, the Evidence Act, and the Transfer of Property Act and all the sections of the Indian citizenry are administered under these laws without exception. So, when the secular Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act have supplanted the Koranic laws relating to crimes and evidence, why should the other spheres of secular existence be immune to change? A minority of people should not be allowed to pick and choose the laws they want to be administered under. After all, change has been the law of nature. The tenets of Islam were formulated in a specific spatio-temporal context and should not stand still in a changed time and context, more so when the winds of change suffused with democratic urges and liberal ethos are sweeping the entire globe in the wake of globalisation and liberalization unleashed with Alvin Toffler's Third Wave. What perplexes the votaries of a UCC is the fact that when Muslim personal laws have been changing in the Islamic and predominantly Muslim countries including Indonesia, Pakistan, Malaysia and Turkey, why should they not be changed in a secular India. After all, in Goa, a UCC has been in force from the day of the Portuguese rule and is equally applicable to the entire population there including Muslims. If Goan Muslims can live under a UCC without any hitch or hiccup, what keeps the Muslims from the rest of India from accepting such a UCC, they argue.

It has been pointed out that the Article 25, clause 2 very lucidly says that the state will have the right to regulate any secular activity related with religious practices. And when the state has done so with the Hindu community, it should not flinch from doing the same with other communities. After all, there is no guarantee in the Constitution of India to protect the personal laws as such and when the Muslims joined the Union of India, there was no agreement between the Muslims and the Government that the personal laws would not be tinkered with, more so to the detriment of the very principles which make the foundation of the Indian state. But the opponents of the UCC argue that such a guarantee or agreement is implied in the very secular principles which

predicate the Indian state and it is this implied commitment to religious freedom and secularism that prompted Muslims to stay on in India in the hope that their cultural and religious rights despite their being a minority would not be trampled upon and would be safe and secure in a secular and democratic country.

There is another opinion, which believes in having a full-fledged debate over this issue only after the finally prepared draft of UCC is there in place for discussion. The people sharing such opinion believe that it would be very difficult to come out with a consensual draft UCC, as there would be a lot of divergence among the Hindus themselves keeping in view the sundry divisions among the Hindus. They feel that it would be very difficult to come out with uniform civil code, which could surmount and survive such divisions among the Hindus. After all, which UCC would permit a marriage between the niece and the maternal uncle, as is the norm among Hindus in south India or exempting from taxation an undivided family as is done for Hindus? This section feels that Hindus would be worst sufferers of a UCC and would resist the most as and when it comes out. It is felt that UCC being an emotive issue that it is, there are vested interests which rakes the issue every now and then to derive political mileage out of the same.

The discourse on a UCC has proceeded along the above dialectical lines for long and we are yet to find out as to what might be desirable and worthwhile in the prevailing circumstances. While almost all argue that a UCC is definitely desirable and would go a long way in strengthening and consolidating the Indian nationhood, they differ on its timing and the way it should be realized. In fact, much of the muck raked in the intellectual and political circles emanate more because of a prejudiced and partisan mindset as well as the constraints of a competitive party politics where the number game force reason out of sight making it difficult to separate the chaff from the grain.

Any forcible imposition, as the people on the right (as opposed to people on the left) demand, of a UCC would not only be against the same democratic and secular ethos to strengthen which they demand a UCC but would mar the entire gains we have made so far as a nation-state. It would very negatively jeopardize the nation-building process. Our consociational polity has derived strength from the fact that we have so far successfully been able to build a nation-state by accommodating various interest groups through consensual dispensing of concessions and so far non-existence of a UCC has not in any way prevented the unleashing of developmental energies of our country. The very fact that so far we have very well done without such a UCC also means that we can keep on doing without it in future as well. So, a thing as controversial as a UCC should wait for an opportune time to come and in the meantime, the leadership, intellectual, political and religious, should try to evolve a consensus on the issue. It would be better if the initiative comes from within the Muslim community itself.

In fact, a beginning has already been made what with the clerics and intellectuals from the Muslim community starting a debate on changing some aspects of the Muslim personal laws. One only hopes that a broad consensus would be arrived sooner than later and when we have achieved that we would have achieved yet another milestone on our way to transformation from a state-nation to a nation-state.