

BREAKING DOWN THE CODE

The deadline to send views on the Code ended last week. The Law Commission has so far received nearly 46 lakh responses, well below expectations. On June 14, it had initiated a fresh consultation process on the Code by seeking views from stakeholders, including public and recognised religious organisations, on the politically sensitive issue. Is the Code anywhere becoming a reality?

By Dr Chanchal Kr Singh, Dr Mritunjay Kumar and Aastha Naresh Kohli



THE debate and discussions have gone on endlessly. The 21st Law Commission, the term of which ended in August 2018, examined the issue of Uniform Civil Code (UCC) and solicited the views of all stakeholders on two occasions. Subsequently, a consultation paper on “Reforms of Family Law” was issued in August 2018. “Since more than three years have lapsed from the date of issuance of the said consultation paper, bearing in mind the relevance and importance of the subject and also the various court orders on the subject, the 22nd Law Commission of India considered it expedient to deliberate afresh over the subject,” the panel had said.

The quest of UCC for personal laws in India has resurrected from the living stream of history.

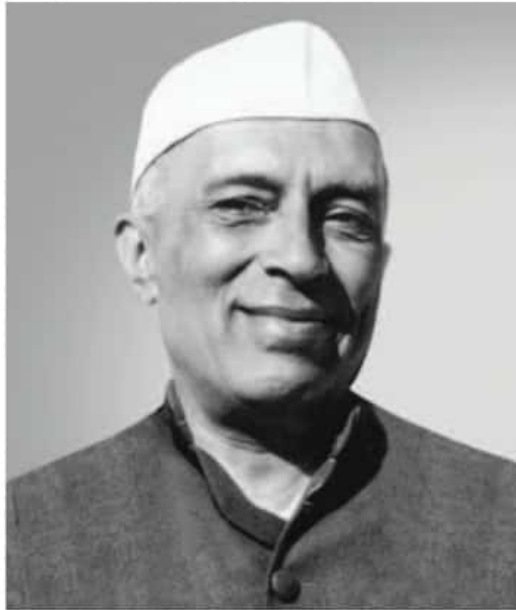
Under the Constitutional scheme, it was constitutionalized as one of the non-justiciable Directive Principles of State Policy under Article 44 of the Indian Constitution.

Its implementation, however, for the whole India has not been hitherto taken seriously by the successive governments. The present central government has taken a keen interest to revive the discourse before the next general election. Recently, the 22nd Law Commission of India has sought opinions from religious organizations and general public to suggest policy measures required to be taken to bring a UCC for Indians in personal law.

Notably, there is a misperception in the general masses and intellectuals that India lacks a UCC. In fact, the British Raj already brought many of the uniform laws in colonial period, including the Civil Procedure Code, which may be termed as UCC. Though, they intentionally did not affect the personal laws for Hindus, Muslims and other communities due to deep attachments of Indians with personal laws, which originated from mythical and religious world-life. It is a well-established fact that one of the immediate reasons for the Indian rebellion of 1857 against the British East India Company was hurting the religious sentiments of the people. This may be one of the reasons why the British Raj kept the personal laws out of their reformative policy. Though, few customary practices, like tradition of sati, were abolished in the process of modernization.

The Republic of India was established by a secular Constitution whose audacious aspirations were guided by the cherished ideals that emerged during the long struggle of the Indian independence movement. The reforms in personal laws were one of the chief agendas of the first government of independent India, but the government of the day intentionally omitted to bring reformative policy with respect to Islamic and other personal laws. One of the reasons may be the immediate experience of partition of India at communal lines.

The Nehru government, however, was committed to bring reforms in Hindu personal laws. Initially, the government failed to pass it and the then law minister, Dr BR Ambedkar, resigned from the cabinet. The first government after the general election under the leadership of Jawaharlal Nehru



again brought the Hindu Code Bills which were incrementally passed by the Parliament during 1955 to 1958. But, many of the conservative voices opposed the move on the ground that such a step would affect Indian cultures and social traditions. The selective reforms in Hindu personal laws were taken seriously by the RSS and its affiliated political organizations, and these organizations questioned the secular credentials of the Nehru government.

From this historical experience, the demand for UCC has echoed not only in the successive manifestos of the BJP, but also many times in the Supreme Court of India in its judgments, including *Mohd. Ahmad Khan vs Shah Bano Begum* and *Sarla Mudgal vs Union of India*, emphasising to bring and implement UCC. But its resolution has not reached any agreeable conclusion till yet.

One of the prominent views advanced by scholars is that a UCC cannot be developed in a multicultural society like India. Especially, since the personal laws are deeply rooted in religious rituals and myths, and any change in such law will affect the culture in which a particular community is sharing a life-world.¹ However, there is a possibility to bring certain features from the personal laws of each community to develop a common Code for all Indians. Such a Code would be based upon humanistic postulates which have evolved in the history of human societies since time immemorial. This approach ►

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may solve the long quest to achieve gender justice with respect to personal laws in India. Every claim, however, which is based upon the belief that the perfect sense of gender justice may be achieved once for all time is a misconceived idea.² The concept of reform signifies the formation and re-formation of ideals and practices incrementally. Every step towards elimination of inequity, unfairness, and discrimination will lead towards more just and fair personal laws.

There is another perspective that one set of personal laws may be developed for all the communities living in India. Such an idea is opposed by various groups on the ground that any such attempt will affect the idiosyncratic cultures whose source of existence is personal laws. There are various tribes in India whose life-worlds are different from the dominant classes, and uniformity in personal laws will only affect the plurality of cultures, which is guaranteed by Indian Constitution through various provisions, including V and VI Schedule.³

The Chief Justice of India, Justice DY Chandrachud has recently remarked that the Indian constitution is “an essay in plurality”.⁴ In the *Sabarimala* judgment, Justice Indu Malhotra questioned the possibility of harmony between the Constitution’s commitments for pluralism with judicial intervention into the internal religious affairs.⁵ On the other hand, in many judgments, the Supreme Court of India and High Courts have been endorsing to bring a UCC in personal laws. The contradictory approach of the Court has only allowed a theoretical quicksand around which “to be” or “not to be” is often postured vis-à-vis UCC. This attitude is associated with post-modernism. Jürgen Habermas has conceptualized this attitude as “performative contradiction” of postmodernism.⁶

The whole eco-system over planet Earth is a unique exemplification of unity. Unity, however, does not symbolize uniformity or similarity. Unity is the profound language of nature, but its unity is composed out of enriching diversities of forms.

Law is not an otherworldly discipline. Especially, human laws are especially deeply embedded in psychic structures and func-



tions of human beings. The profound insecurities emanating from a “possessive culture” has compelled human societies to demand sameness or uniformity of identity and experience. Anything strange is condemned and unwelcome for a mind who seeks the continuity of past experiences. In this context, the debates around UCC in India have stimulated to bring uniform structure and values of law at the cost of displacing the long-rooted customs and usages, have been hitherto practiced and imbibed by Indian societies, and legitimized by mythical explanations or religious traditions.

The third possible alternative may be the bifurcation of rituals from the secular interests, while former may be allowed to be practiced subject to conditions that those rituals do not violate the constitutional principles enshrined under part III of the Constitution, and latter may be uniformly codified keeping in mind the higher ideals of the Constitution which are required to be achieved. Any such Code would not be, however, a finished product, which will bind the future generations for perpetuity. The process of reform will continue alongside the values which determine the necessity of reforms in personal laws.

The quest for UCC is profoundly connect-



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ed with a Constitutional desire to bring modernized reforms in customs and religious practices. The Constituent Assembly cautiously subjected the freedom to practice, propagate and profess religion by the principles of equality, liberty, autonomy and dignity. Article 25 (2) (b) of the Constitution allowed the restrictions on religious freedom in order to bring “social welfare” and “reform” in the society. Article 25 (2) (a) mandated the state to regulate the secular aspects of religious practices.

Taking clue from these Constitutional provisions, the policymakers of the country may develop a secular character of code under Article 44 of the Constitution in the subject matter of proprietary interests usually involved in inheritance, succession, marriage, divorce, adoption, guardianship, maintenance, gift and the management of religious places for prayer and worship, etc., and the rest of other religious and mythical rituals in personal laws may not be touched, so that a peaceful co-existence of diversified Indian cultures may be ensured.

Every perspective either against a UCC or in its favour cannot be treated as an infallible answer. The middle path in a Buddhist sense or golden mean what Aristotle expoun-

ded is the right answer—the harmonization of Constitutionalized reforms of personal laws and radical plurality of culture for which India is known for in the world. ■

—The article is co-authored by Dr Chanchal Kr Singh, Associate Professor, HPNLU Shimla; Dr Mritunjay Kumar, Assistant Professor; and Aastha Naresh Kohli, Research Member

¹ Government of India, 21st Law Commission of India, *Consultation Paper on Reform of Family Law 7* (Aug 31, 2018).

² Amartya Sen, *The Idea of Justice* 100 (2009).

³ Rahul Karmakar and Abhinay Lakshman, *The Infinite Variety of Custom, The Hindu* (July 8, 2023).

⁴ Upendra Baxi, *Cruelty vs Culture: Re-Writing the Magna Carta of the Rights of Nature? India Legal* (June 12, 2023).

⁵ *Indian Young Lawyers Association and Others vs State of Kerala and Others* (2019) 11 SCC 1, Para 457, 478–481.

⁶ Martin J. Matustik, *Habermas on Communicative Reason and Performative Contradiction* 47 *New German Critique* 143–146 (1989).