

Decoding the Uniform Civil Code

The democratic experiment in as hugely diverse a country as India has indubitably been pulled off notwithstanding many prophets of doom declaiming 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 racking the brains of the social scientists and keen observer of the nation-building process is the issue of the Uniform Civil Code (UCC).

The desirability of a UCC in this country has evoked more passions than a reasoned debate. Now the point is, 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 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 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, point out critics, not only undermine 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.

The supporters, who for the moment are mostly from the people on the right side of the political spectrum, however, think otherwise. 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. 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, etc., 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 Koranic laws relating to crimes and evidence have been supplanted by the secular Indian Penal Code and the Indian Evidence Act, 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. 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 a secular and democratic country.

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 realised. 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 remove the chaff from the grain. Any forcible imposition 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 jeopardise the nation-building process.

So, a thing as controversial as a UCC should wait for an opportune time to come and in the meantime, the leadership, both intellectual and political, should try to evolve a consensus on the issue. It would be better if the initiative comes from within the Muslim community. 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.

Salient Points

- A UCC would be needed to aid the nation-building process.
- Supreme Court made it clear that UCC does not impinge upon the 'right to religion'.
- Law, after the Shah Bano Case, chipped at the basic human rights available to Muslim women.
- As Muslim personal laws have been changing in the Islamic countries they should be changed in a secular India.
- If Goan Muslims can live under a UCC so can the Muslims from the rest of India.
- A UCC is definitely desirable. But any forcible imposition of a UCC would be against the democratic and secular ethos.
- India should wait for an opportune time and in the meantime, the leadership, should try to evolve a consensus.

Glossary

Indubitable: that cannot be doubted

Ontology: the branch of metaphysics that studies the nature of existence or being as such

Clinging: to be or remain close

Dint: force

Flinch: to shrink under pain

Muck raked: to search for and expose real or alleged corruption

Chaff: worthless matter

Mar: to disfigure