

Is India reedy for a uniform civil code?

POINTS TO DEVELOP 1. Constitutional provision is a directive, not a compulsion.

Is the tie ripe for such a code?

Pros and cons.

Opposition mainly from conservatives and vested interests.

5.A step- by – step approach is necessary, with each community's code being gradually reformed.

Article 44 of the Indian Constitution states that “the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”. This being one of the Directive Principles of State Policy. Clearly the “endeavor” cannot be forced upon any community or communities. However, a genuine question is whether it is not high time that our country adopted uniform civil code. With the supreme Court's reminder to the Government of its duty to enact such a code, the issue has once more moved into the limelight, Generally speaking, there has not been such a hullabaloo over the need for a uniform civil code in India this time around. Reformists within each religious community having a personal law its own are unanimous in defending the significance of such a code. But then, it is realised that there are a number of important questions to be addressed before such a code can become a reality. One of the foremost and most significant of these questions is whether that present time is ripe for ushering in a uniform civil code in our country?

At the time of India's independence when the country was also partitioned, it was thought better to leave the issue of a uniform civil law to later years when the country would attain a certain level of political and social stability. This was also important to reassure the minorities that their right would be safeguarded in post-independent India. However, India has completed 50 years of independence now. It is time the issue is tackled.

The argument often extended in support of this view is that is in a country where the principle of equality of all citizens is enshrined in the Constitution. Different sets of personal laws for different religious communities militate against this very principle. Different rules of civil law on the basis of religious identity do not justify the secular credentials of our country. Personal laws are civil laws that deal with matters such as marriage, divorce, custody, adoption, inheritance, etc. they

relate to disputed within relations of a social or commercial nature only. In a society, the law for dealing with such disputes ought to be the same for all. Also, personal laws, be they Hindu, Muslim, Christian or Parsi, mete out unfair, treatment to women. Thus, there is a need to replace them with a common law that dispenses with such discrimination against women at the earliest. If the Hindu law discriminates on the basis of gender on the issue of property, a husband has unilateral and arbitrary right of "triple talaq" under the Muslim Law. Under the Indian Christian Marriage Act of 1872, a Christian husband can get divorce by proving his wife's adultery but the wife has to prove her husband's adultery along with incest, bigamy, cruelty, change of religion or any of the other mentioned criteria. Parsi personal law, till very recently, denied converted Parsi women, and not converted men, burial at the Tower of Silence in Mumbai. At a time when reforms for strengthening the position of women in society is being given the utmost significance and attention, what is urgently needed is a new civil code that would eliminate discrimination against women in society.

There are several arguments also to defend the view that this is certainly not the right time for India to adopt a uniform civil code. In India, unlike in many other countries in the world, religion is not just a casual term for reference. People in our country attach a lot of importance to religious life- in other words, religion plays a primary role in the lives of the people. But at that same time, the country recognizes the existence of many religious and religious communities. Thus, any code meant for the civil governance of the various religious communities ought to take into consideration their beliefs and sentiments and should not offend any community. All this means that a common civil code would be possible only after a lot consultations and deliberations which in all like hood, would take a long time. So now is not the time to implement a common code, especially when the problem does not just involve religious groups but also others. The Scheduled Tribes, for instance, have expressed reservations about such a code, fearing it would intrude into their lives by allowing property to move outside their tribes. Such apprehensions, in one sense, are quite natural given that our country has witnessed uneven social development of different sections of the people.

The opposition to enforcing a common civil code in India, especially at this point of time, arises not only from conservative elements within each religious community but also from vested interests. Many minority forces fear erosion of their own religious values and the enforcement on them of the provisions of the personal law of the majority community. The fear has grown with the years owing to the growth in communal tension with the passage of time since India's independence. Their fears are being aggravated by the play of vested interests, mainly political parties and leaders, whose only major concern is the caste votes

or religious vote banks. It is feared, and rightly, that any debate on the establishment of a common civil law would be hijacked by politicians seeking to communalise the issue to gain personal interests.

It is argued that there is nothing wrong with the way things are now- believers of different religions having their own set of personal laws. And why a uniform 'civil' code when the country is yet to have uniform laws in a number of other areas? The time is ripe for uniform income tax laws, for instance, which can be set up without much difficulty now – at a time when the issue is becoming a matter of controversy between the Centre and states.

Rather an option that would work to advantage at the moment would be that of updating each community's laws, which would in turn pave the way for a common civil code. Thus, the change, any, will come from within the community.

The whole issue of adopting a common civil code is tricky. Such a possibility can be envisaged only in the long after intra- community campaigns to mobilize opinion in its support. In other words, it cannot be hustled through. At the time of formulating the code itself which is bound to be a Herculean task, a draft should perhaps be prepared and made public so that any misgivings about the law are removed at that initial stages itself.