

# Uniform Civil Code: But what about Gender Justice?

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Gender justice in the modern Indian nation was amongst the key concerns for our founders, as was secularism and social justice. These and such other concerns found reflection in our Constitution. The idea of Uniform Civil Code as put forward by Nehru and Ambedkar emanated from this. However, there was strong opposition to it from sections representing different religions.

The Constituent Assembly debates provide evidence of how some elected representatives belonging to the Hindu faith opposed the Uniform Civil Code, calling it an attack on ancient Indian civilization and culture. Agitations by sadhus and such other religious figures forced the abandonment of the bill prepared by Ambedkar. Finally, the Uniform Civil Code found mention in Article 44 in the Part IV of the Constitution, the Directive Principles of State Policy.

The debate on Uniform Civil Code has been revived especially since it featured in the BJP manifesto in 2014. Religious organisations affiliated to the Sangh Parivar as well as several MPs have been demanding the UCC vociferously. On the other hand, Muslim religious organisations have been maintaining a stoic silence over the issue, wishing that it would just go away. Their opposition to the UCC is clear. The recent observation by the Supreme Court asking the Centre to come out with its position on the UCC in three weeks' time has brought this contentious issue to centrestage. Evidently, justice for all citizens irrespective of gender and religion is uppermost for the apex court, as is upholding the Constitutional guarantee of right to religious freedom.

Overall, the debate over Uniform Civil Code has become hugely politicized, even vitiated. For one, the credentials of both sides, those proposing it from the Hindu Right and those opposing it from the Muslim orthodoxy, remain questionable on the issue of gender justice and position of women in society. There is enough evidence about both sides being highly patriarchal and conservative in their worldviews. Frankly, nobody believes gender justice to be their concern.

There can be no imposition of a UCC as this would be a clear violation of Article 25 of the Constitution, which gives the right to all citizens including minority citizens to have personal laws based on tenets of their respective religions. Those affiliated to the Sangh Parivar need to make public a draft of the proposed Uniform Civil Code. The Indian public needs to know, are they calling for abolition of the Hindu Marriage Act, 1955? Do they want to do away with the Hindu Succession Act, 1956? Are they unhappy with the Hindu Undivided Family [HUF] and are suggesting secular taxation laws in the country?

Similarly, the Muslim orthodoxy will have to relent from the conservatism and rigidity displayed since Shah Bano case in 1985. This attitude and mindset needs to be discarded totally. There is urgent need for a gender-just reform in the Muslim personal law, based on the Quranic values of equality and justice and in line with Article 25 of the Constitution. Real problems such as triple talaq and under-age marriages can be solved through such reform. Like the Christian and Parsi minorities, Muslims too have a right to a codified law

that regulates all aspects of marriage and family. Several Muslim countries have codified personal laws and yet the Muslim orthodoxy has stone-walled any move towards reform in India. This must change.

The Bharatiya Muslim Mahila Andolan (BMMA) has prepared a draft of the Muslim personal law which it released in the public domain in June 2014. The draft based on the Quranic injunctions and Constitutional values calls for abolition of oral unilateral divorce, polygamy, practise of halala and muta marriage. It lays down age of marriage of a Muslim woman and man to 18 and 21 and wants Muslim women to get at least the groom's annual income as her mehr at the time of marriage.

The draft law declares the mother, along with the father, to be a natural guardian and custodian of children, hence the custody of children does not automatically go to the father as is the case now. The draft also lays down the roles and responsibilities of the qazi and the arbitrators and calls for compulsory registration of Muslim marriages. BMMA hopes to take this draft to Parliament.

The Uniform Civil Code is meant for all communities, not just Muslims. There should be a debate over personal laws of all communities and whether they are willing to give up their respective personal laws. For all practical purposes, there is an optional civil code existing in the form of Special Marriages Act, 1954, which provides a secular option to couples who choose.

The Supreme Court observation has emanated from the need to bring about a gender-just legal framework and not from a desire to impose personal laws on different communities. This must be read as such and not as encouragement for hinduization of all laws and social practices. The Centre needs to remember that national integration cannot happen by a common family law but by treating all citizens equally. There can be no imposition of any kind as this would impinge on the religious freedom and secularism principles enshrined in the Constitution. Nor would different socio-religious communities accept this.

**This document has been taken from the website of Bhartiya Muslim Mahila Andolan (BMMA): <https://bmmaindia.com/2016/01/03/uniform-civil-code-but-what-about-gender-justice/>**