

ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION

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To

The Member Secretary,

Law Commission of India

4th floor, Lok Nayak Bhavan,

Khan Market, New Delhi.

This is with reference to the Public Notice issued by you on the 14th of June 2023 eliciting views on the need for a UCC again. We write to you on behalf of the All India Democratic Women's Association (AIDWA), a women's organization with a membership of more than a crore across the country. Women in our country have been suffering for centuries under the burden of patriarchal and discriminatory personal laws in all religious communities. We are not in favour of a UCC as just having uniform laws will not result in women getting equal rights or in wiping out the discrimination inherent, in various degrees, in these laws. This is because uniformity per se does not mean equality and cannot be equated with equality and justice for women. We also feel that uniformity is neither necessary nor desirable in India today.

Our organization has dealt with issues of personal law for the last 40 years and is actively engaged in each State in dealing with personal law cases of women in various Legal Cells. AIDWA has unequivocally stood for reform and for equality and non-discrimination in each personal law and has campaigned for reform in the personal laws of all communities. For instance, amongst other reforms, it has actively participated in bringing about reform in the Hindu Succession Act; in the Indian Divorce Act relating to Christians and in the campaign against Triple Talak. All these reform efforts have taken place along with and in consultation with members of the various communities particularly women of these communities. AIDWA has followed a two-pronged strategy of supporting reforms within each community and in bringing about common laws where there is a gap in personal laws or when such laws are necessary to do justice to women. Thus, AIDWA has participated in the struggle for and supported the reforms in Dowry Laws, The Prohibition of Child Marriage Act, the Law against Sexual Harassment at the Work Place and the Law against Domestic Violence which also gives the right to residence and monetary compensation, apart from other Laws.

We are surprised that the 22nd Law Commission is again examining the issue of a Uniform Civil Code as the 21st Law Commission had already categorically expressed its views against it. The 21st Law Commission, in 2018, had also agreed with our view that a UCC was neither desirable or necessary to align personal law with the fundamental rights of women including substantive equality. The 21st Law Commission had taken extensive evidence on the issue, carried out extensive research, participated in many seminars and discussions, and had then opined that the time was not ripe for a UCC as stated below;

“Various aspects of prevailing personal laws deprive women. This Commission is of the view that it is discrimination and not difference which lies at the root of inequality. In order to address this inequality, the Commission has suggested a range of amendments to existing family laws This Commission has therefore dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage. Most countries are now moving towards recognition of difference, and the mere existence of difference does not imply discrimination, but is indicative of a robust democracy.”

We do not understand the need to engage in this exercise again through a vaguely worded notice which provides no blueprint of what the Law Commission has conceptualized. Further, by asking for opinions within an extremely limited period of a month we feel that this is not a serious attempt to get the opinions of various organizations and people working on the issue, but is just a formality. It seems that the Law Commission has an agenda to somehow recommend a UCC as the BJP Government of various States and the Prime Minister himself has recently spoken in favour of it. We are also surprised that the Law Commission has specifically asked only various religious bodies for their opinion. The UCC is an issue which concerns women’s rights and equality and the Law Commission should prioritize all those working on the issue including women of the communities. The present exercise therefore to re-examine the issue at the behest of the government is to bring about a UCC against the wishes of most women’s organizations and groups and the minority communities who had not asked for it. It is clear that this agenda is also being actively pursued by various BJP led governments in States like Uttarakhand who have openly declared their intention to bring about a Uniform Civil Code.

The present government has a bad track record as far as reforms for women’s equal rights are concerned. It has never prioritized gender justice or carried out a single reform for women. Despite several demands to reform some of the Hindu personal laws, for instance, no action has been taken by the Government to change these laws and bring equitable laws for these women.

We strongly feel that the UCC is merely an attempt to undo the existing Muslim Law and laws which come under the Sixth Schedule, pertaining to the tribal areas. In keeping with democratic norms, this can only be done after extensive discussions with the communities involved.

We have seen how Muslim girls have been targeted for exercising their choice to wear a Hijab, and how this has affected their fundamental right to education. Also, the Central Government without protecting the rights of divorced Muslim women, initiated the law to put Muslim men in jail with an obvious communal intent for a practice that the Supreme Court

had already declared null and void. Muslim youth who have been in consensual relationships with Hindu women have been targeted and jailed in several fictitious cases of 'Love Jihad'.

We apprehend that on the pretext of re-examining the need for a UCC, the effort will largely be to bring in uniform laws which will be majoritarian laws, and not laws which give substantive equal rights to women. As said earlier, uniformity of law by itself will not result in equality for women, and in fact will probably result in duplicating Hindu laws and its gender biases on all communities

Hindu women in our country have suffered because they do not have equal guardianship rights over their children. They also do not have equal rights over marital property. This is property which is acquired by either party during the subsistence of a marriage, and several countries recognize that women have an equal share in this property. Recently a Judgement of the Madras High Court recognised the equal value of a woman's household work and held that she was entitled to an equal share of the assets acquired by the parties, whether she had financially contributed towards them or not. However, despite several women's organizations and groups asking for this, there has been no response from the government.

Another law which our organization and others have been demanding is a stand-alone and comprehensive law to deal with crimes and killings in the name of honour. This law was envisaged to punish both members and extended members of the family as well as community panchayats, who torture and harass young couples and deny them their choice in marriages and relationships. Though AIDWA gave proposals for such a law in 2005 and also to the present Government, nothing has been done.

Similarly, Hindu and other women do not have equal land rights in agricultural property in some states, including Uttar Pradesh and Uttarakhand. Both these states exclude married daughters from inheriting these properties on specious grounds. Though the Hindu Succession Act was amended in 2005 to remove an exception which exempted agricultural land from the purview of the HSA, the inheritance to agricultural land continues to be governed by some state laws which actively stop women from this inheritance. In fact, these laws have been placed in the Ninth Schedule of the Constitution with the intention of keeping them outside the purview of courts. The Hindu Succession Act also contains an unfair and unjust provision for succession to a woman's self-acquired property which privileges her husband's heirs over her own in the absence of her husband and children. However, this has also not been amended.

Similarly, we had suggested that the Special Marriage Act be amended to remove the one-month notice and waiting period for a marriage to take place under it. This would facilitate more secular marriages and marriages by choice. It is well known that the one-month notice period, in fact, gives time to all sorts of objections by members of a girl's or boy's family, who do not want the marriage to take place.

These are some of the suggestions that have been made for several years by us and other women's organizations to bring about equal rights for women. However, previous and the current Government have consistently ignored these demands. On the other hand, some State governments have raised the bogey of Love Jihad and brought about draconian anti-conversion laws to stop inter-faith marriages by choice and are now seeking to bring about a Uniform Civil Code for the sake of uniformity, per se. There is also talk of a law for divorce

on the ground of irretrievable breakdown of marriage. However, this would leave most women without any means of survival unless they have an equal right to marital property and proper maintenance laws.

India has a rich tradition of both plural family laws and common laws in areas in which family laws don't exist. As stated earlier the Dowry Prohibition Act, the Commission of Sati (Prevention) Act, the Prohibition of Child Marriage Act, the Protection of Women from Domestic Violence Act are common laws which apply to all communities, as can a law on the crimes and killings in the name of 'honour' and a law on equal rights to marital property. Simultaneously, reforms within personal laws should take place at the behest of members particularly women of the concerned community and the women's movement.

We request the Law Commission not to re-examine the issue merely because the Government is determined to bring about a UCC.

Given our experience in the field, we would also like to give oral evidence to the Law Commission when it calls us. We feel that women's organizations and groups and others concerned with the issue must be widely consulted by the Law Commission, particularly women from the minority communities and Tribal women before it decides to recommend a UCC.

Yours sincerely,

P. K. Sreemathi

President

Mariam Dhawale

General Secretary
Legal Advisor

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