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CULTURE, DEBATES, DEMOCRACY, FEMINISM, GENDERS, GOVERNMENT, IDENTITIES, LAW, POLITICS, RELIGION

## Response to Law Commission of India on UCC: Feminist Working Group on Law Commission Submission on the UCC

19/07/2023 | NIVEDITA MENON | LEAVE A COMMENT

*In response to the LCI 's invitation to "stakeholders, including public and recognised religious organisations" to share their views on the Uniform Civil Code, some feminist groups and individuals came together in Delhi on July 4-5 2023 to draft a considered response. The UCC has been debated in feminist circles for decades, and a broad consensus has gradually emerged since the 1990s that gender justice and not uniformity should be the focus of reforms of laws pertaining to family, whether governed by Personal Laws (religious communities) or customary laws (Scheduled Tribes). The following response emerged on the basis of these discussions, which in turn drew on the long history of serious engagement with the issue in feminist circles for decades.*

To,

The Hon'ble Chairperson and members,

Law Commission of India

14 July 2023

**Sub: Response of feminist, queer and women's rights groups and individual feminists to Public Notice of the Law Commission of India dated 14/06/2023, soliciting views on the Uniform Civil Code (UCC).**

Respected Chairperson and members of the Law Commission of India,

We, the undersigned, write to you as representatives of feminist, queer and women's rights groups, as well as concerned citizens, who have been working on issues related to gender justice and equality for women from diverse communities across the country. We draw upon our collective experience over many decades, as we respond to the current discussion on the proposed Uniform Civil Code.

**Our submission is in three parts:**

1. Concerns related to the procedure adopted to initiate these discussions by the Law Commission of India (LCI).
2. Comments on substantive issues of uniformity, equality and non-discrimination vis à vis gender justice.
3. Governing principles for any efforts towards gender justice for all

### 1. CONCERNS RELATED TO PROCEDURE, ITS INTENT AND IMPACT

We write to express our grave concern regarding the public notice issued by the LCI soliciting views and ideas of the "public at large and recognised religious organisations on the UCC." Our concerns are as follows:

**a) Ironically, despite the call of the LCI inviting ‘views’ from the public, there is complete lack of information about**

(i) what would actually constitute this Uniform Civil Code

(ii) how it would conceive of “uniformity” in matters of marriage, divorce, custody, adoption, maintenance, inheritance, etc across diverse communities, historico-geographic locations, and irrespective of marital status, and

(iii) how the LCI envisions its implementation

**b) In the absence of any concrete proposal, outline or framework or adequate time for the public to respond, what should have been a serious public engagement, has been reduced to an opaque process marked by political rhetoric and social media campaigns.** Vested interests, ranging from temple associations to Resident Welfare Associations, and others are spreading a highly communalised campaign in favour of *the idea of a UCC that specifically targets religious minority communities*. Given the track record of the BJP-led government in power, serious apprehensions are being expressed by religious minority groups, tribal and Adivasi communities across the country about the intent and remit of the proposed exercise. It is extremely disappointing that the LCI, the foremost statutory body for legal deliberation in India, with an almost 200 year old history of law reform, has issued this notice in such a casual and cavalier manner. Initiating an ill-informed and undemocratic process on an issue that is complex, sensitive, and that has been contested for decades.

**It is even more worrisome that the current LCI has raised this topic without any substantial reference to the 21st LCI report of 2018 on the very same issue.** In its Consultation Paper on “Reforms of Family Law,” the 21<sup>st</sup> LCI made several recommendations on the matter of gender equality and concluded that, “Uniform Civil Code is neither necessary nor desirable at this stage as it would be counter-productive for the harmony of the nation,” and suggested that “reforms in personal laws should be done by amendments and not by replacement.” Further, by identifying that “discrimination and not difference that lies at the root of inequality the 21<sup>st</sup> LCI had prioritised ‘gender equality *within* each religious community, rather than *between*”

**Therefore, the current notice dated 14/06/2023 that simply states the 22<sup>nd</sup> LCI ‘considered it expedient to deliberate afresh’ without clarifying what warrants a rethink, betrays a complete lack of seriousness on a matter that impacts the life of many, particularly women citizens.** It only carries a vague reference to ‘various court orders’, without even bothering to specify which court orders and what issues they raise. In the absence of clear terms of reference, it appears that the present endeavour is more of a ‘political exercise’ than a ‘legal’ one.

**c) It is deeply troubling that the LCI has specifically sought “views from the public at large and recognised religious organisations” to the UCC.** Furthermore, this reveals the erroneous presumption that the Indian people can be divided en masse only into religious groupings; and that these groupings can only be represented by religious leaders and so called “recognised religious organisations.” Consequently, the notice fails to recognise or acknowledge that the primary members who are impacted by such laws are women from across religious, caste, Adivasi, and tribal communities, gender minorities, atheists and agnostics. Hence such a call only serves to reinforce the patriarchal belief that they are not the primary stakeholders in gender-just family law reforms – which makes this a deeply discriminatory process. Pertinently, the term “recognised religious organisations” finds no reference in the Constitution or any other statute, that governs the secular constitutional Republic of India.

**Amplifying the confusion surrounding the UCC have been contradictory and conflicting public declarations by the government.** In Bhopal on 2 July 2023, Prime Minister Narendra Modi claimed that India needed a UCC as the country could not run with the dual system of “separate laws for separate communities.” Then on 7 July, 2023, Home Minister Amit Shah assured the Chief Minister of Nagaland that, “the government is actively considering exempting Christians and certain tribal areas from the proposed Uniform Civil Code (UCC).” The Chairperson of the Parliamentary Committee on Law and Justice, Sushil K Modi has also stated that the exemption would extend to states under Article 371 such as Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram and Arunachal Pradesh. *If that is so, what parts of the nation and which communities is the proposed UCC meant to bring ‘uniformity’ to? Who will it protect with gender justice?*

## 2. COMMENTS REGARDING UNIFORMITY, EQUALITY AND NON-DISCRIMINATION VIS À VIS GENDER JUSTICE.

**a) It is important to reiterate that in a country as plural and diverse as India, the lived realities of people within and across communities are very varied.**

(i) Exceptions accommodative of customary laws and practices are found and included within most religious laws.

(ii) Contrary to popular perception, the UCC if drafted adhering to the principle of uniformity, will have implications for and impact on all religious personal laws for Hindus, Muslims, Christians, Parsis, etc as well as the secular law.

(iii) It will have ramifications on all customary laws, as well as tribal and Adivasi community practices protected under Schedule V and VI of the Indian Constitution – practices that are not only around family and marriage, but also around how land and resources are held and used as shared by communities.

(iv) Additionally, any new UCC will also affect the existing UCC already in force in Goa – which in itself requires more analysis and understanding.

**b) The rights of those marginalised by gender vis à vis the state and the economy, in the familial, social, legal and political domains remain deeply unequal, determined as they are not only by religion, but also by caste, class, ethnicity, dis/ability and sexuality. The very idea that uniformity, applied across such hierarchies, can guarantee or imply equality is fallacious and misleading, and insidiously opens the door for majoritarian tendencies.**

**c) In relation to laws relating to marriage, the position of the Central government remains contradictory.**

(i) The Solicitor General of India, representing the Union of India in hearings of *Supriyo @ Supriya Chakraborty v. Union of India*, WP(C) No. 1011/2022 on the matter of marriage equality, vehemently argued against any change or interference with marriage laws, stating that it would impact more than 157 legal provisions, across statutes that govern the domains of family, marriage, inheritance, adoption,

(ii) Further, the Central Government in the marriage equality matter before the Supreme Court also asserted that marriage is a religious institution and despite codification of personal laws, it is a “sacrament” and thus, the “sanctity” of personal laws must not be interfered with.

**This complete volte face is quite revealing that in the name of uniformity, the same Union of India is rejecting all personal laws and proposing one omnibus law to address *all* issues relating to gender equality in the domain of the family!**

**d) On the matter of ending unequal rights/discrimination against women, the present government’s stance continues to be selective, problematic and lacking** c Take for instance the much discussed issue of polygamy among Muslim communities, around which much of the current propaganda around UCC is centred. The National Family Health Survey – 5 (2019-20) reveals the prevalence of polygamy is 2.1% among Christians, 1.9% among Muslims, 1.3% among Hindus, and 1.6% among other religious groups. Yet, the focus remains on prohibiting polygamy within Muslim communities, without any apparent intent to secure the rights of women in such bi- or polygamous marriages across communities. Therefore we question whether the government is propounding the UCC to ensure justice for all women, or use this as an occasion to target one community as being discriminatory to women, even though data reveals a different reality.

**e) Additionally, there is no indication of how the proposed UCC intends to address legal changes since 2018 to ensure non-discrimination in matters in the private domain, such as:**

(i) The recognition of the rights of transgender persons, through the NALSA Judgment, 2014, and the consequent Transgender Persons (Protection of Rights) Act, 2019.

(ii) Emerging and changing concepts of marriage, family, and kinship as being articulated in society and through the courts by those most affected by family laws across community identity.

(iii) Petitions challenging the constitutionality of restitution of conjugal rights as a matrimonial remedy, and the practice of *nikah halala* as well as those related to marriage equality, which are pending before the Supreme Court of India.

**As women, our lives and our freedoms are in myriad ways impacted by growing political majoritarianism, as well as the disturbing growth of community and state conservatism in which inter caste, inter religious and even intra gender partnerships, friendships and marriages are being violently opposed. As feminists from diverse locations, we are uncompromisingly committed to a notion of equality *not* uniformity, and affirm women's autonomy within and outside the structures of marriage and family.**

### 3. GOVERNING PRINCIPLES TO ENSURE GENDER EQUALITY AND JUSTICE

It is crucial that all efforts of law reform recognise, and are based upon the understanding that:

**(i) Taking into consideration patriarchal forms of gender imbalances and discrimination the domain of marriage and family *must be one in which marginalised/minoritized stakeholders in the family and community*, such as women within and outside the institution of marriage, queer and transgender persons, persons with disabilities, etc must have equal rights, accruing from marriage, divorce, guardianship, inheritance and other matters related to family laws and the rights so secured must be accessible and protected, so that the same can be enjoyed.**

**(ii) Further, rights secured by law, must be ensured with corresponding state responsibilities. The role of the state is crucial and critical** in securing civil, political, social, economic and cultural rights to all women, especially women from marginalised communities and locations. Without an assurance of a robust and respectable social security granted to citizens, especially those in conflict with their families, there can be no access to, and implementation of, gender justice. Basic entitlements of food, shelter, education, health, livelihood, pensions, etc., are a mandate and obligation that the State has to assure through substantive positive measures and enactment as evidence that it is serious about gender justice.

**(iii) Any reforms towards gender just family laws must draw upon the best gender just practices from across diverse religious laws and customary practices, harmonised with present day lived realities.**

**(iv) The legal system must be based on principles of accessibility and affordability for gender justice and equality to be realised, especially for those from marginalised communities.**

**(v) The personal autonomy, bodily integrity and capability for independent decision making of all adult persons must be respected.**

**We urge the Law Commission of India to re-consider this deeply problematic, and opaque process on a matter of deep import.** Such an extraordinary rush to complete the process in 30 days after a whole five years since its last findings in 2018, seems to point to the process being guided more by political considerations and malafide intent, rather than gender justice, as is being claimed.

**We urge the Law Commission to call for a series of meaningful public consultations across the country** to reconceive what gender equality would look like in the face of all the widely varying laws, customs and practices across the country. Given the cultural and religious diversity, any changes in personal and customary laws are bound to be complex, and need to be done in an open, transparent, democratic and inclusive manner within the framework of the Indian Constitution. These consultations could then inform much needed changes in all discriminatory personal as well as secular civil laws.

**As the 21<sup>st</sup> Law Commission rightly stated**, *"The issue of family law reform does not need to be approached as a policy that is against the religious sensibilities of individuals but simply as one promoting harmony between religion and constitutionalism, in a way that no citizen is left disadvantaged on account of their religion and at the same time every citizen's right to freedom of religion is equally protected."*

Given the deep polarisation on the issue and the systematic targeting of specific communities, the onus is on the LCI to create an atmosphere conducive to reasonable dialogue and consultations with a wide spectrum of all those who will be most impacted by any such legal amendments. **Without that, women and other vulnera-**

**ble stakeholders in whose name this exercise is purportedly being conducted, will be silenced and invisibilised yet again and the entire exercise will simply serve some vested political interests.**

**Finally, we do believe that the Law Commission should engage with various civil society organisations of those marginalised in the family system. And when you finally do so we would be willing to come and discuss with you.**

### **Feminist Working Group on Law Commission Submission on the UCC**

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