

India : IMSD supports a religion-neutral, gender-just UCC

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- In recent decades, a large and growing number of Muslim countries, including some which call themselves Islamic states, have reformed their family laws.
- Millions of believing, practising Muslims today are citizens of western democracies where there are no separate family laws for Muslims.
- IMSD calls upon secular political parties not to fall in the trap set by the BJP.

Indian Muslims for Secular Democracy (IMSD) supports Article 44 of the Indian Constitution (Directive Principles of State Policy) which postulates, “The State shall endeavor to secure for all citizens a uniform civil code (UCC) throughout the territory of India”.

This is consistent with the Fundamental Rights guaranteed to all citizens under Articles 14 (equality before the law) and 15 (non-discrimination on grounds of religion, caste, sex....) of the Constitution.

In our view a bonafide endeavour must mean encouragement of nationwide discussion and deliberation on the issue aimed at evolving a national consensus and not imposing the codes of any one religion, culture, tradition on all others. In all such endeavours ensuring gender justice must be the prime concern.

In its report published in 2018, the 21st Law Commission had opined that a UCC was “neither necessary nor desirable at this stage”. But the 22nd Law Commission has reignited the issue by inviting the views of the public at large and religious organisations on UCC. Curiously enough, the Commission has not offered any draft of its own for the people to respond to.

The timing of the initiative, the absence of a draft and the fact that the next general elections are less than a year away have understandably led to apprehensions that the motive of the Modi-led

government is suspect. This notwithstanding, IMSD calls upon secular political parties not to fall in the trap set by the BJP.

As usual, Muslim religious bodies including the All India Muslim Personal Law Board (AIMPLB), the Jamiat ulema-e-Hind and the Jamaat-e-Islami Hind have promptly opposed the move calling it “an attempt at polarisation and a diversionary tactic by the government”. According to them, “The proposal is totally against the religious freedom and Fundamental Rights given to the citizens under Articles 25 and 26 of the Constitution”.

What the ulema wilfully ignore is that Article 25 concerning the right to freedom of religion also states, “Nothing in this article shall... prevent the State from making any law “providing for social welfare and reform...”

The personal laws of all religious communities that we inherited at independence were grossly discriminatory against women. In the decades since, there have been a number of enactments ushering in some reforms in the family laws concerning Hindus and Christians. But Muslim religious bodies have staunchly resisted any change, never taken a single step in reforming Muslim Personal Law many of whose provisions are blatantly unjust, anti-women, even un-Quranic.

Contrary to the false claims of the Indian ulema, Muslim Personal Law is not God-given but man made. Millions of believing, practising Muslims today are citizens of western democracies where there are no separate family laws for Muslims. In recent decades, a large and growing number of Muslim countries, including some which call themselves Islamic states, have reformed their family laws. Yet, ironically, in secular India the ulema continue to cling to medieval, patriarchal notions of gender relations in the name of protecting Islam. What they are in fact protecting is simply their own interest and their institutional stranglehold over the community.

The Congress and other secular parties have taken no initiative whatsoever in advocating reforms on the specious plea that “the initiative must come from within the community”. Given the authority structure within the Muslim society, we do not see any such voice from the community in the foreseeable future.

Having lost all hope in their religious leaders ever accepting, let alone initiating change, progressive Muslim women and men have no option but to look to the courts and the government of the day for a religion-neutral, gender-just UCC. Needless to say, a ‘Uniform Civil Code’ is not the same as a ‘Common Civil Code’. Muslims reserve the right to protest against any attempt to impose a majoritarian agenda in the name of uniformity. We therefore appeal to all political parties to see this issue as one of gender justice and stop pandering to the whimsical and antediluvian fantasies of religious clerics.

Among others, IMSD calls for the following reforms to be part of a uniform code applicable to all citizens : divorce only through a court of law including the right of women to initiate divorce, right to judicious maintenance following severance of the marital tie, ban on polygamy and the shameful halala practice, gender-just inheritance and guardianship laws, right to make a will with provision for a minimum percentage of the property to be left behind for heirs, child custody to be based on what is in the best interests of the minor, right to adopt by couples or even by single women or men, “right to marry... without any limitation due to race, nationality or religion” (Article 16 of the United Nations Universal Declaration of Human Rights).

IMSD would also like inclusion of certain positive aspects of Muslim family law. For example : irretrievable breakdown of marriage to be included among grounds for divorce, women’s right to retain her own maiden name and identity after marriage.

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