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- Member, Parliamentary Standing Committee on Personnel, Public Grievances and Law & Justice
- Member, Parliamentary Committee on Privileges
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Date: 03.07.2023

To,
The Hon'ble Chairman & Members,
22nd Law Commission of India
4th floor, Lok Nayak Bhawan,
Khan Market,
New Delhi - 110003

Through
The Hon'ble Chairman,
Parliamentary Standing Committee on Personnel,
Public Grievances, Law and Justice,
Rajya Sabha Secretariat,
Parliament of India,
Room No 415, Block B, Parliament Annexe Extension Building
New Delhi - 110001

Ref: Queries regarding the implementation and recommendations of the Law Commission of India's Consultation Paper on Reform of Family Law dated 31.08.2018

Respected Hon'ble Chairman and Members of the 22nd Law Commission,

Vanakkam!

I am writing to you to raise certain queries with regards to the Public Notice dated 14.06.2023 and regarding the implementation and recommendations of the Law Commission of India's Consultation Paper on Reform of Family Law dated 31.08.2018. It is to be noted that the Union Law Ministry had formally requested the Law Commission on 17.06.2016 to examine matters pertaining to the Uniform Civil Code ("UCC"). Pursuant to the request, the 21st Law Commission spent two long years hearing stake holders, holding consultations and have painstakingly published a Consultation Paper dated 31.08.2018, setting out its position and views on the UCC.

While so, why is the 22nd Law Commission reopening public consultation vide notice dated 14.06.2023? Is this the sanctity accorded to the paper of the 21st Law Commission chaired by a retired Supreme Court Judge? One can understand if decades have passed since a consultation paper, and the society and laws have changed, warranting a re-look. But reopening an issue that was studied in depth for almost two years and extensive consultations by the previous Law Commission only five years ago is strange, to say the least. All that needs to be done is the Law Commission finalising its report based on the Consultation Paper dated 31.08.2018. Further consultation means that the present Commission is attempting to dilute the findings in the Consultation Paper dated 31.08.2018 of the 21st Law Commission of India which was not in favour of the Uniform Civil Code. In the consultation paper dated 31.08.2018, the 21st Law Commission has expressed the view that the Uniform Civil Code is not preferable. It was recognized that cultural diversity should not be compromised, and implementing a uniform code may discourage many individuals from utilizing the law altogether.

When there are many issues pending consideration before the Law Commission of India, why is the Commission taking upon itself to reopen a concluded issue relating to Uniform Civil Code? To the public at large, it seems a response to the call of the ruling BJP party at the centre to implement the UCC, with one eye on the 2024 General Elections.

BASIC OPPOSITION TO THE UCC

It is apposite to mention here that the UCC was placed under Article 44, which falls under the Directive Principles of State Policy, and not made part of the binding articles was because of the severe opposition within the constituent assembly itself. The constituent assembly recognised that such a code, which will have an adverse effect on the diversity of the country should not be an enforceable provision. It is a slippery slope to demand forceful enforcement of all DPSP provisions.

India is a diverse nation, having religious, cultural and linguistic diversity like none other. As per a report, India is home to 398 languages, out of which 387 are actively spoken and 11 are extinct. Even within Hinduism, there are several sub-cultures, each with their own unique identity, tradition and customs. If you take one set of personal laws and apply it with brute force to all religions, sub-sects and denominations, it would destroy their uniqueness and diversity.

I also wish to highlight another crucial factor. Marriage is not just a civil union in most religions. In Christianity for example, marriage is a sacrament. It is a



facet of religion, that is why it is called the sacrament of holy matrimony. It has to be consecrated by an ordained priest, in the presence of members of the Church, in a manner specified by the Catholic Church. Therefore, if the UCC provides for marriages to be registered before an authority like Registrar, it denigrates and desecrates a holy sacrament. That apart, Christians have a practice of having marriage counselling before consecrating a marriage. A UCC will be the end of this practice. Ultimately therefore, the UCC targets religious practices and interferes with the free practice of one's religion.

The irony is that proponents of UCC see it as 'pro Hindu' but it could do damage to Hindu rights and customs also. Right now, for a Hindu marriage, there need not be a registration. A marriage solemnised in a Hindu temple, by following customary practice – be it tying a *thaali* (in Tamil culture) or seven steps around the fire is sufficient proof of marriage. These customary marriages will no longer be recognised under a UCC, which will recognise only registered marriages before a civil authority.

So ultimately, such a code would infringe upon the freedom of religion guaranteed by Article 25 of the Indian Constitution, not just for minorities but also the majority religion. Secondly, Article 29 protects the right of minorities to preserve and protect their distinct culture. There is a legitimate fear that a uniform code would destroy the unique culture and traditions of minorities.

In that sense, India's secularism is at risk because of the UCC, wiping away the unique traditions and cultures of minorities with one personal law. This is against the basic structure of the Constitution, which contemplates preservation of India's unique diversity. The minority communities want to preserve their uniqueness. This is the true intention of secularism – to allow them to be different.

I am not against civil unions. Those who, out of their own choice and volition want to be joined in a civil union without a religious flavour are already free to do so under the Special Marriages Act, 1954. Atheists and inter-faith couples can have recourse to the Special Marriages Act. The problem comes when the Union takes away that choice for those who want to be bound by personal laws and want to be bound by religious customs.

The Supreme Court of India has also repeatedly held that 'a united nation need not necessarily have uniformity'. In *T.M.A Pai Foundation v. State of Karnataka and Ors.* the Hon'ble Supreme Court held that the essence of secularism in India is recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together



so as to form a whole united India. The following paragraph sets out the spirit of unity in diversity:

158. The one billion population of India consists of six main ethnic groups and fifty-two major tribes; six major religions and 6,400 castes and sub-castes; eighteen major languages and 1,600 minor languages and dialects. The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, plays an important part in making of the whole. The variations of the colours as well as different shades of the same colour in a map is the result of these small pieces of different shades and colours of marble, but even when one small piece of marble is removed, the whole map of India would be scarred, and the beauty would be lost.

The implementation of a Uniform Civil Code will destroy the diversity of the nation.

Another misconception is that the UCC is being opposed only by religious minorities. This is a classic case of misdirection, to project the UCC as a Hindu-Muslim issue. Even within the Hindu religion, certain groups like tribal groups do not want UCC. For instance, the Rashtriya Adivasi Ekta Parishad, a tribal group, approached the Supreme Court in 2016 seeking protection for their traditions and strict practices from the potential effects of a Uniform Civil Code. Tribal customs are unique and cannot be boxed in with other Hindu customs.

CONCERNS ABOUT STATE'S LEGISLATIVE POWER:

The State's power to legislate is also an important matter. Matters such as marriage, divorce, inheritance, and property rights fall under the Concurrent List of the Constitution, which allows both the central and state governments to legislate on these subjects. However, Article 44 stipulates that a Uniform Civil Code will be applicable to "citizens throughout the territory of India", suggesting that States may not have the power to amend it. That apart, even for subjects in the concurrent list, once a Union enacts a law, the State cannot vary such law except by the assent of the President of India. The Union will therefore have an upper hand and the UCC enacted by it will be law throughout India.



MIS-DIRECTION THAT UCC SECURES EQUAL RIGHTS:

Another argument that the proponents of UCC put forth is that the UCC will remove undesirable practices like polygamy or that it will pave the way for equal inheritance of property by women. This is also an argument without substance. When it comes to reforms to promote equality, amendments can be made within personal laws itself – like how the Hindu Succession Act was amended to give women equal share over the father's and husband's properties. What I am objecting to is the total removal of religious sanctity from holy covenants like marriage and treating it like a registration of property.

SIXTH SCHEDULE

Sixth schedule of the constitution deals with the provisions as to the administration of Tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram. There are provisions that allow for complete autonomy on matter of family law which can be adjudicated by local panchayat, which can follow their own procedure. These are all special provisions for the people in Tribal states. Art 371(A) to (J) and the sixth schedule of constitution of India provides certain protections to certain States of Assam, Nagaland, Mizoram Andhra Pradesh/Telangana, Arunachal Pradesh, Goa and Karnataka relating to certain protections.

The Uniform Civil Code consultations thus run counter to the constitutional protections given to these states and especially tribal people who have their own customary law and tribunals.

CONCLUSION

In conclusion, the opposition to UCC is because it desecrates the holy sacraments like marriage, which should be within the domain of religious institutions when it comes to marriage between believers. Civil codes can be applied to atheists or inter-religious marriages as is already the case of the Special Marriages Act, 1954. While the idea of a Uniform Civil Code may seem appealing on the surface, it is crucial to consider the negative impact it could have on our diverse society. Preserving religious freedom, respecting cultural diversity and avoiding unintended consequences should be considered. Instead of thrusting a uniform code, we should focus in encouraging dialogue, understanding and gradual reforms within communities through social engineering to weed out undesirable practices. It is through these means that we can strike a balance between individual rights, freedoms and communal



harmony. Similarly, we must aim for uniformity in rights rather than laws. We can always take steps to protect women's equality by amending personal laws. These are extremely prescient findings and suggestions already given by the 21st Law Commission of India and there was no reason to redo the entire exercise at the cost of state exchequer and wastage of time again by 22nd Law Commission.

The Hon'ble Chairman of the Law Commission would be very much aware of the public reaction to the Hijab Ban judgement passed by the Hon'ble Karnataka High Court. We must draw on that experience to understand that when dealing with deep rooted religious faith, we cannot adopt a cut and dry approach but must act with compassion, understanding and patience.

De hors the above, I request the Law Commission of India to furnish me with the following details in connection with the Consultation Paper on Reform of Family Law dated 31.08.2018 by the Law Commission of India –

- What was the expenditure incurred by the Law Commission of India in consultations, meetings, publishing questionnaire etc. for the Consultation Paper dated 31.08.2018?
- List of participants, respondents and consultants who participated in the consultation resulting in the Consultation Paper on Reform of Family Law dated 31.08.2018.
- What steps have been taken in accordance with the many recommendations and suggestions which are highlighted in the Consultation Paper dated 31.078.2018 by the 21st Law Commission of India?

I, therefore request the Hon'ble Chairman and Members of 22nd Law Commission to address my queries and concerns *supra* and give a suitable reply to the Standing Committee before you undertake any efforts on the above subject so as to save prevent wastage of public money, resources and time and oblige

Thanking You



P. Wilson

Member of Parliament, Rajya Sabha

Member Parliamentary Standing Committee on Law and Justice