

# COMMUNIST PARTY OF INDIA (MARXIST-LENINIST) LIBERATION

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New Delhi

11/7/23  
HC

## **SUB: CPI(ML)'s submission to the 22<sup>nd</sup> Law Commission about the Uniform Civil Code**

The 22<sup>nd</sup> Law Commission of India has issued a public notice to solicit the views of the public and "recognised religious organisations" about the Uniform Civil Code. The notice states that: *"Initially the 21<sup>st</sup> Law Commission of India had examined the subject on Uniform Civil Code and solicited the views of all the stakeholders through its appeal along with a questionnaire dated 07.10.2016 and further public appeals/notices dated 19.03.2018, 27.03.2018 and 10.4.2018. Pursuant to the same, overwhelming responses have been received by the Commission. The 21<sup>st</sup> Law Commission has issued the consultation paper on "Reforms of Family Law" on 31.08.2018. Since more than three years have been lapsed from the date of issuance of the said Consultation Paper, bearing in mind the relevance and importance of the subject and also the various Court orders on the subject, the 22<sup>nd</sup> Law Commission of India considered it expedient to deliberate afresh over the subject. Accordingly, the 22<sup>nd</sup> Law Commission of India decided again to solicit views and ideas of the public at large and recognized religious organizations about the Uniform Civil Code."*

The Public Notice that has been issued calls upon the public and "recognised religious organisations" to provide views and ideas about the UCC, does not speak to what the exercise chooses to achieve and provides no justification for this exercise or the elevated status to "recognised religious organisations" over other civil society organisations.

### **Consultation Paper of the 21<sup>st</sup> Law Commission:**

In June 2016, through a reference by the Government of India, the Law Commission was entrusted with the task of addressing the issues concerning a Uniform Civil Code. On 31<sup>st</sup> August, 2018, the Law Commission of India, headed by Chairman Justice (Retd) B. S. Chauhan, brought out a Consultation Paper on Reform of Family Law that dealt in detail with the Uniform Civil Code and the need for reform of personal laws. The Commission at the outset notes that

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while “various aspect of prevailing personal laws disprivilege women”, it is “discrimination and not difference which lies at the root of inequality” and finds that the “best way forward may be to preserve the diversity of personal laws but at the same time ensure that personal laws do not contradict fundamental rights guaranteed under the Constitution of India.”

The Law Commission recognized that “women must be guaranteed their freedom of faith without any compromise on their right to equality”. It emphasized the need to celebrate the diversity of Indian culture, while also ensuring that specific groups or marginalized sections of society are not disadvantaged in the process. It emphasized the need for reforming family laws across religions to ensure gender justice, rather than implementing a Uniform Civil Code (UCC), which it said was “neither necessary nor desirable at this stage”

The 21<sup>st</sup> Law Commission made various practical recommendations in regard to Marriage and Divorce, Custody and Guardianship, Adoption and Maintenance, and Succession and Inheritance and suggested reforms in the personal laws of all religions as well as the secular laws to remove the disadvantage women face. However, till date none of the recommendations have been implemented.

Personal Laws across religions contain provisions that are discriminatory towards women and violate the fundamental tenet of equality guaranteed by the Constitution. However, the belief that a “Uniform Civil Code” is an answer to this would be patently incorrect. It is imperative to acknowledge that the root cause of inequality lies in discrimination and not in difference. Any attempt to amend personal laws must have as its focus the need to address the inequality in order to ensure the Constitutional guarantee of equality, rather than imposing uniformity. What is required is law reform and institutional reform that will lead to gender justice.

The present exercise of the 22<sup>nd</sup> Law Commission aims to revive a settled debate on the necessity and desirability of UCC. With only a generic statement in the public notice that “more than three years have been lapsed from the date of issuance of the said Consultation Paper”, and a vague assertion about the “relevance and importance of the subject”, there are no compelling reasons presented for redoing the entire exercise and that too within such short period.

#### **Report of the High Level Committee on the Status of Women in India (HLCSW) chaired by Dr Pam Rajput:**

The High Level Committee on the Status of Women in India (HLCSW) chaired by Dr Pam Rajput, which submitted its Report in June, 2015, undertook a comprehensive study on the status of women, to evolve appropriate policy interventions. It also looked at the issue of personal laws and the Uniform Civil Code and provides a guiding principle on how to approach the issue of inequality of women in personal laws and states: “... The approach should be not one of ensuring that there is one law for all, but rather, that all women, whether they choose to be governed by secular laws or their personal laws, enjoy equality which the Indian Constitution promises them. This requires addressing several aspects in the legal domain in specific ways rather than a diktat of ‘uniformity’, which is conceived of in fundamentalist/majoritarian ways.”. The Report further notes that “There is a need to address discrimination not only *de jure* but also *de facto*,



*which necessitates State to adopt laws, policies and practices and undertake proactive, measures and affirmative action in order to obliterate these discriminatory provisions and practices. Thus, all personal laws should be in tandem with the principle of equality. Women are working and contributing to the family and society in many ways and it is high time the State recognizes the unpaid contributions of women in their families, The State should enact laws in areas of matrimonial property in which no personal laws exist and ensure women's rights to the property and assets in the natal and as well as in the matrimonial home."*

The Report also made recommendations pertaining to personal laws of all religions in aspects regarding marriage, custody, maintenance and inheritance and also in secular laws to eliminating the disadvantage faced by women.

In a significant observation, the High Level Committee on the Status of Women in India highlights that Article 44 of the Constitution, which calls for the State to endeavour to secure for a Uniform Civil Code, has been given new meaning where various laws such as the Protection of Women from Domestic Violence Act, 2005, the Prohibition of Child Marriage Act, 2006 and the Medical Termination of Pregnancy Act, 1971 have been brought in that are universally applicable to women from all communities. Thus it sees that the way to safeguard women's rights could be seen as two pronged – one by enacting laws such as those mentioned above, which are universally applicable to women of all communities, irrespective of their religion, and second through introduction of a particular aspect for reform in all existing laws.

We note that the Law Commission has, to date, ignored this report.

#### **Actual steps towards gender justice:**

The 21<sup>st</sup> Law Commission's Consultative Paper found that mere uniformity would not necessarily mean equality and equity, and "a 'united' nation need not necessarily have 'uniformity' it is making diversity reconcile with certain universal and indisputable arguments on human rights."

The need today is law reform and institutional reform that will lead to gender justice. It is imperative that any steps towards bringing about changes in personal laws is first de-linked from the Uniform Civil Code. What is needed today is law reform keeping in focus the principles of equality, personal autonomy, dignity, non-discrimination, liberty, inclusivity and Constitutional morality. Such reform must ensure that discriminatory provisions in personal and secular law are removed and brought in line with these principles. This means that when it comes to the right to divorce, adoption, guardianship and succession, both men and women should have equal rights. It is also necessary that reform is brought in that addresses (dis)honour killings, ensures protection to inter-caste and inter-faith couples, recognizes the autonomy of women to decide their partners, and recognizes same sex and transgender marriages and relationships.

While fully supporting the demand to reform personal laws to uphold women's equality and dignity, the bid to open the debate on 'Uniform Civil Code' must be viewed with caution and opposed in the current communal climate. The manner in which the BJP frames the issue of Uniform Civil Code and reforms in personal laws suggests that they are concerned more with

imposing a communally-defined majoritarian uniformity on minorities in the country, rather than address concerns of gender justice.

The communal framing of the debate does serious damage to the urgent questions of gender justice. It is important to recognize that the discourse around the uniform civil code is being brought in to merely exploit and communalize the issue and target religious minorities, and has nothing to do with gender justice.

#### **Adivasis and other cultures:**

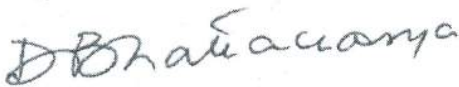
The UCC will potentially severely compromise the unique customs, usages and practices of Adivasis and is another effort to forcibly bring these communities into the Hindu fold. This will also dismantle the Constitutional privileges and protections given to Adivasis. Further there are constitutional limits (Articles 371A to 371I) on the Parliament to interfere with the customary laws and practices of Scheduled Tribes particularly in the North Eastern states.

It is for this reason that Adivasis across the country have expressed serious reservations over UCC and warned against any interference with their customs and traditions.

The widespread apprehension and opposition to the UCC proposal from different quarters across the country once again underscores the need for extensive deliberations among all stakeholders to thrash out a collective agreement and consensus on the subject. This is the spirit with which the framers of the Constitution had included the subject as one of the directive principles of state policy under Article 44 wherein the state was mandated to strive to secure it for all citizens. We should also remember that Dr Ambedkar had wisely advised to keep the civil code voluntary. The reopening of the UCC agenda without outlining what it would entail has already created a lot of confusion and reinforced communal polarisation and demonisation of certain sections of the society. Legal reform is a continuous agenda and any hurried attempt to foreground the issue without sufficient time and discussion is highly unwarranted, especially when the republic is approaching a general election.

***We therefore see no reason to reopen the agenda in violation of the well thought-out advice of the 21<sup>st</sup> Law Commission. We are all for legal reforms to ensure equality and gender justice in all communities and regions, and we strongly oppose any move to disregard the cultural diversity of India in the name of imposing any uniformity on all. The idea should be to ensure equality and reconcile it with diversity and not pit one against the other.***

Thanking You,



**Dipankar Bhattacharya,  
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