To,

The Chairperson,

Law Commission of India

Sub: Response to public notice soliciting vies regarding the subject matter of Uniform Civil Code

Sir,

This is in response to your public notice dated 14 June 2023 soliciting public comments on the concept of a Uniform Civil Code. As acknowledged in your notice, the 21st law commission had conducted a similar exercise between 2016 and 2018, following which it had come out with a detailed Consultation Paper.[1] The said Consultation Paper had premised its discussion on the basic principle of respect for India's diversity and pluralism, concluding that the enactment of a Uniform Civil Code (UCC) was "neither necessary nor desirable",[2] further stating at the outset that "… the Commission has endeavoured to best protect and preserve diversity and plurality that constitute the cultural and social fabric of the nation."[3] It seems pertinent to reproduce another important finding of the Law Commission carried in the Consultation Paper, which underpins the rest of the recommendations made by it:

> Resolution of this conflict does not mean abolition of difference… 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.[4]

While we retain certain reservations with regards to some of the recommendations laid out therein, we also believe that the said document could have formed the basis for any

[1] 'Consultation Paper on Reform of Family Law', Law Commission of India, 31 August 2018 (Hereinafter referred to as the 'Consultation Paper')

[2] Para 1.15 of the Consultation Paper

[3] Ibid, at Para 1.1

[4] Ibid, at Para 1.15

further deliberation around the issue. This is especially so due to its clarity on the question of pluralism in Indian society, assuring that any attempt at formulating a Uniform Civil Code would not proceed with an intention to abolish the differences of faith and belief of various communities.

It therefore comes as a surprise to us that a fresh exercise is being carried out in a manner that seems to disregard the findings of the document prepared by the previous Law Commission. Instead, the Consultation Paper seems to have been set aside and completely ignored in the official discourse around UCC. It is also hard to ignore the timing of the exercise chosen by the current Law Commission. With less than a year to go before the general elections, any outcome of this consultation is all but certain to cause a political controversy, as already evident from the manner of reactions elicited by the publication of the Commission's public notice.

The Law Commission cannot claim to be stoically unaware of the contentious nature of the issue undertaken by it for deliberation, as well as the manner in which certain political actors can deploy it as a lightning rod for polarisation. Any serious deliberation on the question of reform of personal laws needs to be undertaken with a sensitivity and care that allows for a nuanced and impartial consideration of its myriad underlying issues. We must state with regret that the timing and manner of the Law Commission's public notice and its consultation process does not inspire our confidence in the Commission's ability to lead such a considered discussion.

Question of Uniformity in the civil code

Before setting out our proposal, we must also highlight that the precise meaning of a 'Uniform Civil Code' is vague and unclear. In official discourse, it is often articulated as a legal code that would operate to the exclusion of all religious and customary laws in the domain of matters relating to marriage, divorce, succession and the like. However, it is not at all clear that this was the meaning envisioned by the framers of the constitution in Article 44, which only lays down that the state shall "endeavour" to "secure for the citizens a uniform civil code". However, the constitution is silent on important questions regarding the nature and scope of such a code. Will it be mandatory or voluntary? Will it prohibit the exercise of all prevailing religious and customary laws and practices, such as the civil and taxation laws governing the Hindu Undivided

Family, or will it be in the nature of a law like the Special Marriages Act, 1954 which only applies to those who register under it? It seems important to reproduce here an oft-cited passage from Dr B.R. Ambedkar's address to the Constituent Assembly on the question of the Uniform Civil Code:

> It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary… so that the fear which my friends have expressed here will be altogether nullified...] This is not a novel method.[5]

Until such time as the law commission or other relevant body clarify such outstanding questions, it would be impossible to provide a fair and comprehensive opinion on the question of UCC.

Idea of Uniformity contradicts India's diverse and plural social, cultural and religious heritage, as well as Constitutional ethos of 'Unity in Diversity'

India is a multi-religious and multi-cultural society, where various communities follow diverse religious beliefs, customs and practices in the domain of personal laws. It is not only a question of the major religious groups such as Hindus, Muslims, Sikhs, Christians, Buddhist etc, but scores of local, tribal and indigenous communities - some spread out over one or more states while others confined to a small area - that all have their own set of laws, customs and practices governing their daily life. Some of these are given constitutional protection under various articles contained in Part XXI of the Constitution, while others are recognised by the legal system under the rubric of customary law. The idea of a Uniform Civil Code that will be formed to the exclusion of, or overriding, these diverse religious and customary laws clearly stands in contradiction with our established legal tradition and also poses a threat to social comity and harmony. The idea of 'Unity in Diversity' does not envision uniformity that ends all differences, but a unity that is formed by taking all the different shades together.

[5] Constituent Assembly debates, Volume VII, 3 December 1948 p. 1979.

Personal law of various communities exist as a facet of their Fundamental Rights under Article 25 (Freedom of Conscience) and Article 29 (Right of a minority to protect its distinct culture) of the constitution. It is a well settled principle of law that where Fundamental Rights collide with directive principles of state policy, it is the exercise of Fundamental Rights that shall prevail, since they are expressly guaranteed by the constitution. Therefore, any manner of enacting the directive principle contained in Article 44 shall be ultra vires of the constitution, if it conflicts with a citizen's rights under Article 25 or Article 29.

Muslim personal law is considered part of obligatory religious practice by Muslims

As far as the question of Muslim personal law is concerned, it must be clarified that adherence to Islamic law in matters such as marriage, divorce, succession and related matters is considered a religious obligation by Muslims, and is considered an essential facet of the 'practice' of their religion, which is protected by Article 25 of the Constitution. It is submitted that before making any legislative enactment that would effect Muslim personal law, the legislature is first required to consider whether Islamic law places any religious obligations upon its adherents concerning the matter under consideration. If Islamic law does indeed create a religious obligation regarding the issue under consideration, it would plainly be protected by the right under Article 25 of the Constitution. Further, any move to codify and amend facets of Muslim personal law would have to make certain choices with regards to the different schools of thought within Islamic jurisprudence, picking one over the other. This is a task for which the legislature seems plainly unsuited and can only be carried out by an organic process of debate and discussion among the experts in the field of Islamic law.

It is often seen that individual cases of violation or abuse of personal law are highlighted and hyped in media as well as political discourse to create an impression of widespread iniquity in the conduct of Muslim personal law in India. Such stereotypical depictions are clearly biased and politically motivated in nature, and must not be considered when deliberating upon serious legislative issues. In the event of any individual cases of violation or abuse of law, there are enough provisions and mechanisms within Muslim law itself, for the courts to be able to intervene and provide relief and justice to the concerned parties. It is also submitted that any social evils present in society are not

confined to any one part of the society, and that the correct way of dealing with such evils is through a process of determined social reform that has the confidence and endorsement of different communities, and not through blanket and indiscriminate legislative diktat.

Utility of community-based Alternative Dispute Resolution mechanisms

Over the last two decades, the legal system in India has been readily adopting a move towards alternate dispute resolution mechanisms, in order to lessen the burden on the courts as well as make dispute resolution economical and timely. In this regard, the operation of community based mechanisms like *darul-qaza* have also been recognised by different courts, with the Supreme Court even ruling that their decisions would have the legal effect of an arbitral award. Such mechanisms are extremely useful for the common people, who are able to settle their disputes in a cost-effective and timely manner. The operation of a UCC must not be allowed to cast a shadow over such community-based efforts, forcing people to run to courts for the settlement of all their disputes.

Conclusion

At the end, it is submitted that any imposition of a Uniform Civil Code to the exclusion of faith-based and customary practices in a multi-religious and multicultural country like India would not only by undesirable, but also pose a threat to the very fabric and cohesion of society. Further, it must be underlined that any process of reform or review of personal laws would only be sustainable and least disruptive if it is lead from within. Any imposition of reforms by way of legislative diktat would cause unforeseen disruptions and may prove to be counter-productive to achieving the aims of justice, apart from being plainly violative of the right of an individual to be governed by the call of their conscience.