



Amidst the shrill noises for Uniform Civil Code, which again having been coming amidst attacks on minorities, what can or what does uniformity translate into? Does uniformity mean anything at all? Can there be unity in diversity or not? Is Uniformity always about equality? Can uniformity not translate into uniformity in discrimination? These are questions that are flying in the wind in the context of debates on whether or not there should be an uniform civil code for India.

Two salient arguments advanced for Uniform Civil Code, are that it is required to set right the discrimination in Muslim law against women, and that Goa is a shining example of uniform civil code. Both arguments are seriously problematic. And it seems that by repeating these arguments a thousand times, they acquire the force of truth.

Take the first example. That an uniform civil code is required to set right the discrimination against Muslim women in Muslim law. Now what one does not understand is why we are only talking of discrimination against women in Muslim personal law alone. Is there no discrimination against women in Hindu law? Or in Christian law? Or in secular law?

When courts are deciding cases of what should constitute the conjugal domicile, is it not made out that the conjugal domicile is the one that the male spouse shall determine? Is this not a discriminatory provision? So if this provision is uniformly applicable across communities, does it not become a case of uniformity in discrimination?

Or take Goa's family law which provides that the management of the matrimonial property is the prerogative of the male spouse. Now Goa does have a law that is largely uniform across religions, though there are some provisions which are different based on the religion one professes. But yet it has a discriminatory provision such as the one stated above? So are we batting for uniformity in discrimination?

The irony of all the discussions is a jingoistic hype around Uniform Civil Code, but nobody is discussing what they want the content of the law to look like, or what they want the process of accessing the law to be. Or what affirmative and special provisions they would like to see for the marginalized stakeholders in the family such as women, children, differently abled.

As a matter of fact, the goebelsian note has reached such proportions that a professional litigant for uniform civil code who has file various petitions including one that calls for rights to adoption across communities has cited Goa's uniform civil code as a model to follow. The irony is that Goa's laws do not provide for adoption. And where adoption is provided for is in the Customs and Usages of Gentile Hindus, and in that the conditions for adoption include not

having a male child!



Uniform Civil Code: Does 'Uniformity' make a difference?

One has also to be mindful that the members of the judiciary hail from a society that is deeply patriarchal, and may wittingly or unwittingly reflect those patriarchal tendencies. So a woman claiming her full rights, upon divorce, to half of the matrimonial property towards which she may have slogged for and contributed to in kind, she would be perceived as someone who is greedy for property and accumulation of assets. What of men who habitually make claims of their in-laws' property for which they have not laboured for a single day, just because the concept of matrimonial property allows them to make the claim?

Therefore, at the cost of repetition, it needs to be stated that the parameters of the discussions need to change. It matters little whether a law is uniform across religions or not uniform across religions. Though there is a much publicized judgement recognizing the rights of transgenders to their identity, and also decriminalising homosexuality, there is no change effected in the family laws of Goa, for instance. The laws still talk of marriage being an union between two persons of different sex. The laws still talk of procreation as a goal of marriage.

To add to it, laws like the mundkar law, do not consider a married daughter as part of a family, and it has taken a judgement of the High Court to recognize that a married daughter if she is staying with her parents in the mundkarial house of her parents upon marriage, is entitled to be also considered a mundkar of that house. However, this criteria of residence is not applicable to the male offspring of the mundkar. If residence be the criteria, it must cut both ways. One might also want to ask whether residence should actually be the criteria in the matter of inheritance of mundkarial right.

While Goa's women are often cautioned about the importance of their signature and to use their power to determine the course of property interests, by their signature, this power pales into insignificance with newer forms of property, where an application for transfer of the share certificate, can simply be signed only by the spouse in whose name the flat stands, which despite all the progressive laws, translates into the property standing in the name of the male spouse on most occasions.

So also, daughter's and daughter-in-law's voices are seldom considered in mutation exercises. There is a restriction on what extent of their assets parents can will away, but this is observed in the breach, and mutation authorities are happy to overlook these breaches and simply transfer the survey records in the name of the person in whose favour the property has been willed, without looking for documentation of whether the other children have got their mandatory share in the property. There are no clear guidelines on the basis of which mutation is to be carried out, resulting often in miscarriage of justice for daughters and daughter-in-laws who are sought to be illegally excluded. Added to this is the fact that

details of husband's properties or sources of income are often not available to the woman and only recently some help has been forthcoming from the Courts to ensure that such information is disclosed. However, even those directives do not keep Goa's laws in mind, in terms of understanding that even if properties are jointly owned because of the concept of matrimonial property, the controls are left with the male spouse.

Therefore there is no proper synchronisation of laws, and yet we go to town proclaiming that the Goa laws are superior and that they are uniform. It is high time we asserted that we want just laws and uniformity per se does not make any difference, and chanting the slogan in these times, may in fact send women of minority communities into a shell.

(First published in *O Herald*, dt. 8 March 2022)



Share this...

