

Opposition is wrong in resisting UCC. It's poor politics, runs against Constitution spirit.

The whole point of reviving this proposal is to push the opposition into a photo-op with the conservative leadership. And the opposition is stepping into this trap.

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The Bharatiya Janata Party government's predictable move to reignite the controversy over the Uniform Civil Code has invited predictable responses. Opposition leaders have flayed this move. Questioning the need for the Law Commission to take this up again, several opposition leaders have effectively positioned themselves against the UCC. Muslim organisations have gone a step further and condemned it as a sinister move that is against minorities and the Constitution. The stage appears set for an ideological battle, both tragic and ironic, with the BJP pushing for the constitutional promise of a UCC and the secular politics arrayed against it.

This is exactly how the BJP must have scripted this debate. It is a mark of our times that secular politics retreats from whatever ground the Rashtriya Swayamsevak Sangh (RSS) and the BJP illegitimately encroach upon—Hinduism, traditions, nationalism, and now the UCC. If this retreat must be halted, secular politics must reclaim the principled and progressive position on the UCC. It must assert that the UCC has nothing to do with customs and practices of any one religion; it is about asserting the uniform primacy of constitutional principles of equality between and within religious communities and uniformly ensuring gender justice. It must realise that opposing the idea of a UCC is poor politics. Besides, it is a bad political strategy in the run-up to the 2024 Lok Sabha election.

The rationale behind it

The idea of a UCC has a simple and powerful rationale: equality before the law. If all citizens can be governed by the same penal code, why not apply the same principle to civil code as well? Different communities can enjoy their separate customs and rituals, but how can any community be allowed to violate the fundamental rights of individuals? Can a community's right to religion or culture be allowed to trump the right to equality for the women in that community?

These are not BJP arguments. This was the rationale behind the original demand for UCC by women's organisations. This was the broad consensus within the Constituent Assembly. In fact, there was a proposal to put this provision in the Fundamental Rights that was shelved in the context of Partition. The rationale given above was used by Jawaharlal Nehru, BR Ambedkar and Ram Manohar Lohia when they advocated for the UCC. And this was the ground for the feminist movement to demand the UCC in independent India.

Article 44 of the Constitution contains this non-justiciable Directive Principle: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Those of us who keep demanding that the State must comply with the Directive Principles enunciated in the Constitution cannot suddenly turn their backs to one of these key principles. We cannot say that 73 years after adopting the Constitution, the country is not ready for this idea.

Question the substance, not the label

The opposition to the UCC is also bad optics. The whole point of reviving this proposal, 10 months before the national election and five years after it was thoroughly discussed and rejected by the previous Law Commission appointed by the Modi government, is to open another site for minority bashing. The purpose is to insinuate that the parties like the Congress could shove reforms of family laws down the throat of the Hindus but dare not do the same to the Muslims and Christians. The idea is to push the opposition into a photo-op with the conservative leadership of the Muslim and Christian communities. As in the case of the debate on triple talaq, the opposition is stepping into this trap.

Instead of opposing the idea of UCC, the opposition should question the BJP's misreading of what a 'uniform' civil code would mean. Instead of objecting to the label, the critics should invite a debate on the substance of the proposed UCC. In this, the opposition could learn in this respect from the nuanced and principled position of the feminist movement that stands up to conservative religious orthodoxy as well as the BJP's attempt to appropriate this idea. And it could draw upon the very detailed and cogent reasoning in the discussion paper prepared by the 21st Law Commission.

The BJP plays upon the literal and shallow meaning of the 'uniform' civil code. It assumes that uniformity implies singularity and sameness. So, in this reading, a 'uniform' civil code must mean a single law that must replace the multiple family laws that exist in our country. And that law must contain identical provisions for marriage, divorce, adoption, and inheritance for members of all religious communities. This is the version the BJP wishes to push. And this is the version that BJP critics wish to resist. But this is a misreading of the constitutional directive.

Where the 'uniformity' in UCC lies

The vision of social reformers, intent of the Constitution makers, and demand of the feminist movement invite a deeper reading of what it means to have a 'uniform' civil code. A uniform code is neither identical nor singular; instead, it entails common principles but differentiated rules. This is similar to the well-accepted principle of common but differentiated responsibility in climate justice negotiations. Here, uniformity would mean that all religious and social communities would be subjected to the same set of constitutional principles. No family law of any community would be allowed to violate the right to equality, the right against discrimination, and the idea of gender justice. Any custom or family law that violates these principles would have to go.

At the same time, these common principles may take different forms for different communities, depending upon their existing or codified practices. Unlike Hindu customs, Muslim marriage is a contract based on nikahnama. A 'uniform' civil code need not require Muslims to abandon this, nor would it require Hindus to adopt it. Different communities can continue to follow radically different, even contrary customs and practices relating to marriage, divorce, adoption, and inheritance as long as they do not violate a uniform set of constitutional principles.

The UCC will not happen in one day through a single legislative stroke that erases everything that existed before it. The realisation of UCC in this approach would require three far-reaching legislative changes. First, it would require extensive reform of the existing personal laws as suggested by the 21st Law Commission. That should include restricting and discouraging the legally permissible but infrequent practice of polygamy among Muslims while safeguarding the interest of making provisions to safeguard the interests of women. It would also mean safeguarding the interests of women in the many instances of the legally impermissible but existent practice of polygamy among Hindus and other communities, simplification of divorce and adoption among Christians, and doing away with notice period under the

Special Marriage Act. The Law Commission has also recommended doing away with the doctrine of coparcenary under the Hindu law and tax privileges of the Hindu Undivided Family. All these changes may be resisted by the religious orthodoxy, both from majority and minority communities. But secular politics must stand up to that pressure.

The second legislative change would involve the codification of customs and practices of different communities that are not yet covered by any law. For instance, the principle that the interest of the child must be paramount in any dispute concerning custody or guardianship needs to be included in law.

Third, the scope of the existing Special Marriage Act should be expanded to create a common civil code for those citizens who do not wish to be governed by any of the existing community-specific family laws. A prototype of such a code already exists in Goa and is applicable to all Goan citizens, irrespective of religion. Ambedkar had suggested a voluntary civil code along these lines.

For far too long, secular politics has vacated the ground that the BJP has intruded upon. The UCC must not become one more example of this self-defeating politics. Instead of running shy of the idea, the opposition must demand the UCC along the lines suggested above. Instead of playing to the BJP's script and joining hands with the conservative leadership of minority communities, secular politics must call the BJP's bluff and ask it to present a substantial draft of the proposed UCC.