

All India Secular Forum
 Memorandum on UCC to 22nd Law Commission
 July 13, 2023

Contents

	Page
Introduction	1
A. Constituting Law Commissions for Political Gains	2
B. UCC Opposed by Nation-wide Diverse Communities, not only by Muslims: Need to come out of the Politically motivated & Misleading Hindu-Muslim Binary Trap	3
C. Constitutional Protection to Diversity and Inviolable Sanctity of the Federal Rights of the States/UTs	6
D. UCC: India’s Rich Diversity & Plurality vs. Uniformity	8
E. Constituent Assembly & Constitution: Citing Constitution only when Convenient ...	9
F. UCC: The Way Forward	11

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Introduction

1. The 21st Law Commission – after comprehensive consultation, research and analysis of the implications of UCC for the whole of India – recommended that "***Uniform Civil Code is neither necessary nor desirable***. . . . reason being that as India is a diverse nation, consists of various religions, beliefs and faiths and therefore various personal laws exist, and keeping this in mind the Commission has suggested various changes in personal laws rather than codifying all the personal laws into a secular law [like UCC], as doing so would violate the fundamental rights guaranteed by the Constitution [emphasis through **bold fonts** in this Memorandum is ours].”

Acting on “the reference” of the Ministry of Law and Justice, dated June 17, 2016, the 21st Law Commission began “examining” the “vast matters” of the UCC and prepared a detailed report after conducting research and holding consultations with experts. Two years later on August 31, 2018, the Commission published a 182-page-long [consultation paper](#) on “Reform of Family Law”.

The above assessment of the 21st Law Commission that “***UCC is neither necessary nor desirable***” has not been questioned or countered to date by either the Supreme Court or the 22nd Law Commission. Notably, the 22nd Law Commission has not so far placed in the public domain its critical evaluation of the Report and recommendation of the 21st Law Commission.

Hence, the Public Notice issued nation-wide by the 22nd Law Commission inviting opinion on UCC does not make any sense at all. This raises serious concerns regarding the very intention of both the 22nd Law Commission and the Central Government at whose direction the aforesaid Public Notice was issued.

A. Constituting Law Commissions for Political Gains

The following six Paragraphs (i.e. No. 2 to No. 7) draw upon an elaborate Online interview with Mumbai-based Ms. Flavia Agnes, an eminent and widely acclaimed scholar of family laws and women's rights activist lawyer.

Source: <https://thewire.in/rights/ucc-bogey-muslim-bashing-electoral-needs-flavia-agnes>

2. Ms. Flavia Agnes has questioned the timing and intention of raking up the Uniform Civil Code in the context of the forthcoming general elections in 2024. Interestingly, the Modi government has done nothing in the past 4 years on the suggestions of the 21st Law Commission Report that called for ending gender discrimination and removing unequal property rights in all family/personal laws *irrespective of the religion or culture*. Yet the controversial issue of the UCC is being whipped up to serve political needs.

3. According to her [Agnes], the call for seeking opinions on the UCC aims at agitating the Muslim leadership and reaping political dividends for the ruling party. Through Muslim bashing, the ground for furthering right-wing politics is being prepared, she says. "As the issue gets controversial, it will be benefiting the ruling party [through religious polarization of its Vote Bank]. This is the main purpose of calling for opinions. The whole idea is to bring the UCC controversy into the political arena in the context of the elections that are coming soon," Ms. Agnes said.

4. Ms. Flavia Agnes even questioned the intention of the 22nd Law Commission to solicit people's views on the UCC, even as the previous Law Commission's compressive report on the same issue is gathering dust. As she put it, "The issue of UCC has been decided by the 21st Law Commission. But the 22nd Law Commission is again asking whether you want UCC. . . !"

5. The 21st Law Commission report contains a lot of suggestions for ending discrimination and giving economic rights to women *while opposing the imposition of the UCC*. For example, on the first page of the consultation paper, the 21st Law Commission made it clear that no consensus could emerge on the UCC, and therefore, the need of the hour is **"to preserve the diversity" without contradicting the fundamental rights**. The consultation paper said:

"In the absence of any consensus on a uniform civil code the Commission felt 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."

Crucially, the 21st Law Commission not only called the UCC “**neither necessary nor desirable,**” but also supported ending gender discrimination and doing away with inequality:

“This Commission has therefore dealt with discriminatory laws rather than providing a uniform civil code which is neither necessary nor desirable at this stage. 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.”

6. Ms. Agnes said that it [the 2018 consultation report], “concentrated on economic rights” and “non-discrimination”. The 21st Law Commission report . . . aimed at “weeding out” discrimination *wherever it existed in various personal laws*. Moreover, it underscored the fact that the *Hindu undivided family property* was “discriminatory” against women but it was used for “tax-evasion only by Hindus” and called for ending this practice.

7. According to her, “The main concern of the 21st Law Commission was that the *Hindu undivided family property* should be scrapped and the tax benefits to Hindus should be taken out. Similarly, it also suggested the *codification of Muslim Personal Laws regarding property rights and the difference between Sunnis and Shias should not be there*. Women and widows including child-less widows should get their property rights. There are also suggestions regarding **Christians and Parsis**. If a **Parsi** marries outside the Parsi community, she loses her right. The recommendation was that such practices should not be permitted. **Regarding Christians**, whatever discrimination regarding widows and inheritance exists, it should go. Even regarding the **Special Marriage Act**, whatever discrimination is there, that should be taken out. . . . another key suggestion of the 21st Law Commission was about *the division of matrimonial property upon divorce* – which does not exist anywhere in law and it recommended “*equal division of property acquired after marriage*”. *Four years after the publication of the report, the Union government has not moved a finger!*

B. UCC Opposed by Nation-wide Diverse Communities, *not only by Muslims*: Need to come out of the Politically motivated & Misleading Hindu-Muslim Binary Trap

8. A *false impression* is being deliberately created and nurtured that UCC is opposed/resisted only by Muslims. However, as will be elaborated below, the reality is that a broad section of India’s diverse communities ranging from **Laddakh** (Boudh) to **Lakshadweep** (Muslim) and **Kachchh** (Kachchhi Hindus) to **Kohima** (Christian multiple Naga tribes), protected by the Constitution (See Section ‘C’ below), resolutely resist UCC since it will *hegemonise and dismantle* their family/personal laws, *rooted historically in rational, equitable and socially just cultural framework as enshrined in the Constitution*.

Voices of Protest to Imposition of UCC from India’s Diverse Geo-cultural Regions: Fighting for ‘Unity in Diversity’, *not Uniformity*.

Source: <https://scroll.in/article/1052115/why-the-uniform-civil-code-has-few-takers-in-the-north-east>

Meghalaya: The Khasi People

A common civil code, its critics say, would lead to the dilution of the special privileges that the Constitution guarantees to tribal communities in the North East and elsewhere in the country too. Here are some examples. These special entitlements, enshrined in **Article 371** (A, B, C, F, G, H) and **the Sixth Schedule** of the Constitution, allow for a certain degree of autonomy to communities to function under their customary laws. Guwahati-based social scientist Walter Fernandes explained: “Their [tribal communities] customary law will be affected and that is basic to their identity.”

Among the first to voice dissent to PM Modi’s proposal during his speech at Bhopal on June 27, 2023 was **Meghalaya Chief Minister Conrad Sangma** (A BJP Ally). Speaking to reporters in Shillong, Sangma said that a “**common civil code was antithetical to the ‘Idea of India’ whose strength and identity is its diversity.**”

“As a political party, we realise that the entire North East, as a matter of fact, has got unique cultures,” said Sangma, who helms the National People’s Party, a key ally of the Bharatiya Janata Party in the region. “***We want these to remain and not be touched.***”

The provisions of the Sixth Schedule apply to almost the whole of Meghalaya, save some pockets in the capital Shillong.

National People’s Party parliamentarian WR Kharlukhi broadened Sangma’s concerns. “Meghalaya is a **matrilineal society** and clans are named after the woman,” he said. “In marriage, too, we have our own law. ***Even the British could not change our system.***”

The state’s civil society groups have also reacted sharply to the proposal. Any move to tinker with the customary laws would lead to agitations, they have [warned](#).

The Khasi Students’ Union (KSU) on Monday *asked the Centre to thoroughly examine its decision to implement the Uniform Civil Code (UCC)* and warned of anti-Citizenship Amendment Act (CAA)-like protests if the Centre remains adamant.

The Khasi Hills Autonomous District Council (KHADC) has unanimously passed a resolution, urging the Centre ***not to implement the UCC in the Sixth Scheduled areas.***

Agnes Kharshiing, the president of the Civil Society Women’s Organisation, said if the government were to implement a common code, ***it should ensure that local traditions and customs were not done away with.***

“***The Constitution is for the people of India and not to please some political powers,***” said Kharshiing, alluding to the BJP, which is a strong votary of a uniform civil code.

Nagaland: Multiple Naga Tribes

‘One-size-fits-all approach’

Source: <https://morungexpress.com/unequivocal-opposition-to-ucc-gains-momentum-in-nagaland>

In Nagaland, where [Article 371A of the Constitution](#) confers special protection to the state’s customary practices, the proposal of a Uniform Civil Code has been met with [fierce opposition](#).

In a strongly worded statement, the Hoho, the apex body of the Nagas, said any attempt to enforce “**a one-size-fits-all**” approach would undermine the constitutional provisions, unique history, and indigenous culture and identity of the Nagas, as well as the principles of *unity in diversity* in the country”.

K Elu Ndong, general secretary of the outfit, lashed out at the proposal. “*The so-called majority or Hindu laws cannot be acceptable nor applicable to the tribals,*” Ndong told *Scroll* over the phone. “*Let Hindus first remove the caste system.*”

Another Naga civil society outfit went to the extent of issuing an [open threat](#) to burn down the houses of all 60 legislators in the state.

The ruling Nationalist Democratic Progressive Party, an ally of the BJP, has also taken a strong stance on the matter. “*Implementing the UCC will have a negative impact on the freedom and rights of the minority communities and the tribal people of India and it will have adverse results for national integration,*” it said in a [statement](#).

The imposition of a common code, the statement added, “*has the serious potential to threaten the peaceful environment.*”

Mizoram

‘Majoritarian’ project

Source: <https://morungexpress.com/unequivocal-opposition-to-ucc-gains-momentum-in-nagaland>

Mizoram, which was the first state in the country to pass a [resolution](#) opposing a uniform civil code, in February, continues to stick to its guns. Mizoram is governed by the Mizo National Front, a constituent of the BJP-led National Democratic Alliance that administers India.

A vast majority of the tribal-majority state enjoys the protection of [Article 371G of the Constitution](#) – which, like Article 371A in Nagaland, guarantees certain customary rights to the Mizos.

The state's lone Rajya Sabha MP K Vanlalvena, who belongs to the ruling Mizo National Front backed by the National Democratic Alliance, said *the realities of India meant a common civil code was untenable.*

"The citizens of India are not common," he said. "*We are different tribes and communities. Different tribes have different customary laws and cultures so we should not have the same civil law.*"

Aizawl-based political scientist Joseph K Lalfakzuala said *a uniform civil code pandered to the "majoritarian" idea of marriage, divorce, inheritance, and adoption. It was, he claimed, "against the basic structure of the Constitution".*

"The politics behind the motivation to implement UCC can be understood in terms of the *[Hindu] right wing's agenda to please the majority community,*" said Lalfakzuala. "*The UCC is non-accommodative in nature.*"

Sikkim

In Sikkim, too, [protests](#) have broken out following PM Modi's speech in support of a uniform civil code. Civil society groups have said such *a common code would be detrimental to the interests of the local communities that enjoy certain concessions under Article 371 F of the Constitution.*

A retreat by BJP?

With the resistance in the North East growing by the day, the Centre seems to be taking a step back.

On July 3, 2023 during a meeting of the Parliamentary Standing Committee on personnel, public grievances, law and justice convened to discuss the matter, BJP MP and the Chairman of the Parliamentary Standing Committee on law and justice, **Sushil Kumar Modi**, reportedly said that the [tribal population](#) in the North East and other parts of the country should be outside the purview of the uniform civil code.

The only way forward is to acknowledge and internalize the Founding Principle of India – *Unity in Diversity*. This is the key lesson we learnt from Indian people's historic Freedom Struggle of more than 150 years against British Imperialism. India can ill afford to dilute, devalue or distort this invaluable lesson.

C. Constitutional Protection to Diversity and Inviolable Sanctity of the Federal Rights of States/UTs

Article 1(1): India, that is Bharat, shall be a Union of States.

Article 371A: Special provisions with respect to the State of Nagaland

– (1) Notwithstanding anything in this Constitution, –

(a) no Act of Parliament in respect of –

- (i) religious or social practices of the Nagas,
- (ii) Naga customary law and procedure,
- (iii) administration of civil and criminal justice involving decisions according to Naga customary law,
- (iv) ownership and transfer of land and its resources,

shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

Article 371G: Special provisions with respect to the State of Mizoram

– (1) Notwithstanding anything in this Constitution, –

(a) no Act of Parliament in respect of –

- (i) religious or social practices of the Mizos,
- (ii) Mizo customary law and procedure,
- (iii) administration of civil and criminal justice involving decisions according to Mizo customary law,
- (iv) ownership and transfer of land,

shall apply to the State of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides.

Provided that nothing in this clause shall apply to any Central Act in force in the Union Territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986.

Constitutional Sanctity of the Federal Structure & Federal Rights

Family/Personal Laws in the Concurrent List: Restriction on the Centre to pass a Law (e.g. UCC) relating to Family/Personal Laws without duly consulting the States/UTs

Seventh Schedule (Article 246): List III – Concurrent List

Entry No. 5: Marriage and divorce, infants and minors, adoption, wills, intestacy and succession, joint family and partition, all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

Entry No. 6: Transfer of property other than agricultural land, registration of deeds and documents.

Entry No. 13: Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

Entry No. 15: Vagrancy, nomadic and migratory tribes.

D. UCC: India's Rich Diversity & Plurality vs. Uniformity

Source: <https://www.tribuneindia.com/news/nation/if-one-family-cant-run-on-2-laws-how-can-the-nation-pm-modi-pitches-for-ucc-in-poll-year-520705>

In first public remarks on the need for a Uniform Civil Code (UCC) in an election year, Prime Minister Narendra Modi on Tuesday said **“if one family cannot run on two laws, how can a nation?”**

Source: <https://www.hindustantimes.com/india-news/family-nation-not-same-ucc-cant-be-forced-chidambarams-criticism-101687921313249.html>

Former Finance Minister Sh. P Chidambaram said the comparison between a family and the nation to justify Uniform Civil Code like PM Modi did in his address to the party workers in Madhya Pradesh, *is flawed*.

He continued: *"A family is knit together by blood relationships. A nation is brought together by a Constitution which is a political-legal document.* Even in a family, there is diversity. The Constitution of India recognised diversity and plurality among the people of India,"

Notably, the Constitution provided ample provisions for these ideas i.e. diversity and plurality to flourish (See Section 'C' above). However, in recent years, the 'majoritarian' political project reinforced the retrogressive idea of uniformity. This has tended to act against India's rich diversity, thereby imposing uniformity as a hegemonic notion in all spheres of life including politics, media, education, religion, philosophy, culture, law, literature, fine arts and even scientific research (e.g. the NRF agenda of NEP, 2020). This trend is pushing diversity and plurality in the oblivion and uniformity is incrementally occupying the democratic space. ***Ironically, it is diversity and plurality that has been the hallmark of the civilization in ancient India!***

The evidence for this unacceptable and tragic but 'popular' phenomenon is frequent coining of the following irrelevant, meaningless and misleading political slogans by the ruling dispensation:

'One Nation, One Law'

'One Nation, One Election'

'One Nation, One Entrance Exam'

'One Nation, One Language'

'One Nation, One Religion'

'One nation, One Philosophy'

'One Nation, One Knowledge System'

'One Nation, One Leader'

This is precisely why UCC as a ‘**Majoritarian Project**’ is fast gaining political traction without even examining the impressive and rich diversity in family/personal laws, as revealed above in Section ‘B’. Such misconceived slogans do irreversible harm to the society and the country while the people suffer.

E. Constituent Assembly & the Constitution: Citing Constitution Only When Convenient

Since the Hon’ble Prime Minister declared recently his agenda to implement UCC in line with the 2014 BJP Manifesto, the party leadership as well as Senior Ministers are claiming that they are doing only what the Constitution directs the state to do. This claim needs to be viewed in perspective.

UCC in Constituent Assembly

UCC was debated in depth in the Constituent Assembly in which members representing various religions and cultural roots participated enthusiastically. Yet a consensus could not be reached. This is the likely reason why UCC was ultimately placed in Part IV of the Constitution and not in Part III. There is another significant reason why UCC was not enshrined as a Fundamental Right in Part III. It was argued that the Constituent Assembly debating UCC was not an elected body. Hence, it won’t be appropriate if a controversial issue like UCC is pushed in the then assembly. It was agreed to wait for the then forthcoming first Lok Sabha election and let the elected body consider and debate UCC to approve it as a Law.

a) We are now told that it is **Article 44 in Part IV** of the Constitution that provides for UCC which is cited below for reference:

44. Uniform civil code for the citizens. – The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Observations & Questions

(i) UCC is in BJP’s Manifesto since 2014. Yet, why has the issue of UCC not been a priority agenda for the BJP’s Central Government for the past 9 years?

(ii) If UCC is in Constitution, why has the BJP’s Central Government not implemented the recommendations of the 21st Law Commission in its 182-page-long [consultation paper](#) (August 31, 2018) on “Reform of Family Law”?

The 21st Law Commission Report unambiguously called for ending gender discrimination and removing unequal property rights in all family/personal laws *irrespective of the religion or culture*.

The consultation paper said:

“In the absence of any consensus on a uniform civil code the Commission felt 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.”

(iii) Which of the recommendations of the 21st Law Commission's Report (2018) have been implemented by BJP's Central Government in the past four years? If no action was taken in 4 years, does it not imply that BJP is not committed to protect women's property rights?

(iv) Notably, Article 44 does not '*direct the State*' to implement UCC. Rather, it asks the State to '*endeavour to secure*' for the citizens a uniform civil code." This is not because UCC is not in Part III (Fundamental Rights) of the Constitution.

Hence the Question: What '*endeavour to secure*' UCC for the citizens has been made *in the past 9 years?*

The Supreme Court, in a number of its acclaimed judgments, has unambiguously ordered that Part IV (Directive Principles of State Policy) must be read in '*harmonious construction*' with Part III (Fundamental Rights) of the Constitution. The Supreme Court has further clarified that whereas Part IV stipulates the '*goals of the State*', the Part III provides the '*means to achieve*' those goals. In this sense, the provisions in Part IV are also to be perceived as binding on the State, just as is the case with Part III.

It is in this perspective that we draw the attention of both the Central Government and the 22nd Law Commission to the following questions:

(a) Presently, BJP's Central Government is citing Article 44 in order to justify its decision to enforce UCC since now UCC has become a political urgency to polarize the votes on religious grounds in the context of the impending Lok Sabha elections in 2024. How can this stance be justified even when UCC is being widely resisted by diverse geo-cultural communities from various parts of the country (See Section 'B' above)?

(b) As revealed above, the attention of the Central Govt. has now been drawn by Article 44, though belatedly. However, Part IV of the Constitution comprises several Articles of crucial significance from the standpoint of socio-economic well being of the society and fulfillment of the Constitutional vision of India as enshrined in the Preamble.

Some of the Selected Articles of Part IV that deserved priority attention of the State

Article 38(2): Minimise and endeavour to eliminate inequalities in income, status, facilities & opportunities.

Article 39 (a): Secure that men and women equally have right to adequate means of livelihood.

Article 39 (b): Secure that Ownership and control of the material resources of the community are so distributed as best to subserve the common good.

Article 39 (c): Secure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. ***[If this Article was implemented, there would have been neither Adanis and Ambanis nor the impoverished millions of citizens sleeping on the city pavements!]***

Article 39 (d): Secure that there is equal pay for equal work for both men and women.

Article 39 (e): Secure that the health and strength of workers, men and women, and the tender age of children are not abused

Article 39 (f): Secure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 46: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the SCs and the STs, and shall protect them from social injustice and all forms of exploitation.

Question: During the past 9 years, which of the Articles of Part IV listed above drew the political attention of BJP's Central Government and the State policy was directed towards fulfilling the agenda inherent in the said Article?

Clearly, None of the Articles listed above were implemented or even cited in the public domain since these called for a socialist ideology leading to equitable distribution of wealth which is why citing them was inconvenient. In contrast, Article 44 is being widely cited by the political establishment since UCC has become essential for retaining power in and beyond 2024.

F. UCC: The Way Forward

1. Let us all be vigilant to ensure that the Constitution is pursued and implemented diligently, without any dilution or distortion whatsoever.

2. The Federal Structure and Federal Rights of the States/UTs are duly honoured by involving the State & UT governments in drafting UCC with their rich variations, diversity and plurality, thereby liberating India from the idea of UCC that has the potential of causing avoidable social tension and being harmful to the integrity of India.

3. ***No single religion or culture should be ever perceived as the only source of knowledge in drafting UCC.*** On the contrary, there is every reason to draw upon the rich traditions of the tribal and other communities in general and the north-eastern tribes in particular for their roots in rationality, equality and social justice. To take an example, the Khasi Tribe (also Jaintia & Garo tribes to varying extent) of Meghalaya can be a model for UCC since it is a matrilineal society with the following outstanding features:

(a) The woman, not the man, has a natural Right to property since her birth;

(b) After her marriage, it is the husband who shifts to her home and lives there;

(c) Both the wife and the husband have equal right to take a decision to divorce and/or remarry;

(d) There is no concept of illegitimate child at all as she/he belongs to the whole family;

(e) All issues of tension between the wife and the husband are resolved, to begin with, in a meeting of the whole family chaired by the Grand Mother;

(f) If the issue is not resolved to the satisfaction of both the wife and the husband, they would go to the Village Darbar where their issue would be resolved in an open meeting of the entire village;

(g) If either the wife or the husband are still not satisfied, they can approach the higher level District Council of the Khasi Tribe. Hence, there is no need to approach the regular Courts.

4. Learn from the rich and rational cultural traditions of the Nation-wide Geo-cultural Diversities and incorporate their rational features in enriching and transforming UCC, *including the Hindu Code Bill, if needed.*

5. Draw upon the 21st Law Commission's hitherto ignored findings and recommendations (See Section 'A' above) and incorporate them in the process of building a national discourse on UCC.

6. As recommended by the 21st Law Commission,

(a) *“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.”*

(b) “Weed out” discrimination wherever it exists in various personal laws, irrespective of the religion or culture, instead of imposing a Uniform Civil Code on the entire country and causing avoidable socio-political tension and fragmentation.

This is a win-win agenda for all religious and cultural communities across the country for social transformation and reconstructing India as per the Constitutional vision enshrined in the Preamble – an India that secures to all its citizens:

JUSTICE, social, economic & political;

LIBERTY of thought, expression, belief, faith & worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

Key Lessons for UCC Discourse

CELEBRATE DIVERSITY!

INTERNALISE THE SENSE OF DIVERSITY!

ENRICH & PRESERVE DIVERSITY!

and

LEARN FROM DIVERSITY!

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