

The trap of personal laws

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The Supreme Court recently asked the government to file a copy of the report of a committee that is inquiring into personal laws relating to marriage, divorce and custody. Unsurprisingly, the uniform civil code (UCC) debate has been revived. The nationalists want a UCC to further their cultural majoritarian project. They cite the directive in Article 44 of the Constitution requiring the state to “endeavour to secure for the citizens a uniform civil code”. The All India Muslim Personal Law Board (AIMPLB) sees the continued existence of Muslim personal law as a symbol of a distinct Indian Muslim identity and an area of law with divine sanction and, therefore, beyond the purview of temporal government. It uses the constitutional guarantee of the “right freely to profess, practise and propagate religion”.

Between these intransigent outposts stands the baffled liberal citizen. She worries about the AIMPLB’s indifference to another constitutional right in Article 15, which prohibits the state from discrimination on the grounds of sex, and rejects the claimed divine immunity because it is contrary to public reason. She is also skeptical of the Hindu right’s hypocritical use of the anti-discrimination argument, given its predilection to enforce gender norms and indifference to the discriminatory tax implications of the Hindu Undivided Family. Often forgotten are nuanced interventions by the Bharatiya Muslim Mahila Andolan, the All India Muslim Women Personal Law Board, Awaaz-e-Niswaan, and countless individual litigants.

Making an original discursive contribution to this quagmire is not easy. Farrah Ahmed's excellent new book, *Religious Freedom Under the Personal Law System*, does just that. Ahmed demonstrates personal laws actually harm rather than preserve religious freedom.

Ahmed's counterintuitive claim is easiest to appreciate in the context of smaller religious groups, such as Sikhs, Jains and Buddhists, who are miscategorised by the personal law system and force-fitted into a religious identity they don't themselves recognise. This misrecognition is a problem because the system claims to apply your laws to you. For these groups, the system is clearly failing to achieve its own stated objective. Groups such as Baha'is are worse off, as they are simply ignored by the personal law system — they are deemed too insignificant to even be misrecognised, and have to contend with non-recognition. This is a serious criticism of a system defended primarily in terms of the supposed protection it offers to religious minorities.

The second miscategorised group are atheists, rationalists and agnostics. According to the last census, that is 2.87 million Indians. Unofficial polls suggest a much higher number. The personal law system, except in some areas, doesn't have an exit option for non-believers. A religious identity is forced upon you, whether you like it or not. Thus the personal law system stands in the way of the enjoyment of freedom from religion.

Most interestingly, Ahmed argues the personal law system also violates the religious autonomy of believers of those faiths which it does recognise. When people get married, divorced, inherit property, make gifts, bequeath property, etc, they often have to do so in accordance with their (state-determined) personal law. But religious people are likely to have a wide range of mutually incompatible views about what their religion requires. The personal law system cannot possibly accommodate all these diverse viewpoints. It has to choose one or a couple of religious interpretations to apply by law. The result is that those whose interpretations vary from that of the state must follow religious forms and practices they might deeply disagree with. The heterodox believer is forced to act according to religious beliefs not her own. The system simultaneously injures and insults her religious freedom: It forces her to follow practices inimical to her faith because the state claims that her faith requires them.

Religious freedom and pluralism are the supposed virtues of the personal law system. Ahmed convincingly shows that, in fact, they are casualties. However, she also warns that the enactment of a UCC in the current context may reflect exclusively majoritarian norms, and would reinforce the stereotypes that constitute the subtext of much of this debate: That Muslim men are violent and barbaric, Muslim women are oppressed and helpless. She points instead to a contractual system that allows persons to elect their norms, choose religious arbitration or mediation if they wish, restrained by threshold legal protections against oppression, as a possible way forward. These arguments demand serious engagement.