

The UCC? Feminist Interventions

During the course of the past few months the debates and discussions around the issue of the 'Uniform Civil Code' (UCC) have intensified within feminist and other progressive forums. This is in part due to the fact that the national and state elections are looming near and hence the possibility of such a code being brought into existence, especially if the Hindutva parties succeeds at the polls, is a near reality. Several organisations concerned with promoting women's rights have recently developed proposals for reform that attempt to move beyond a demand of a UCC.

Some of the positions being taken on the UCC amongst feminists were presented recently at the Indian Association of Women's Studies Conference in Jaipur. The All India Democratic Women's Association (AIDWA) reaffirmed its commitment to equal rights for women of all communities. They are concerned with the recent attempt by hindu and muslim fundamentalist parties and individuals to frame the issue of the UCC within the narrow framework of "communal and partisan interests." They point out that the interests on both sides are limited to "a framework of uniformity between communities, " that is, between "Hindus, Muslims, Christians, Buddhists, tribals and so on," and ignores the issue of "uniformity within communities i.e. between men and women..." Yet they remain committed to the view of UCC as a political goal. AIDWA is of the view that the BJP demand for a UCC is a tool for imposing a "Hindu code on all the religious minorities in line with its commitment of establishing a Hindu Rashtra." It argues that the BJP stand is directed towards imposing national integration through the eradication of distinct religious identities of the minority communities. AIDWA also attacks the stand of muslim fundamentalists who regard any intervention with personal laws as an attack on religion itself. They argue that the muslim practices of triple talaq and polygamy are violative of human rights and support the initiatives taken by Islamic scholars and muslim women to lobby for the reform of their personal laws.

AIDWA is anxious to take the debate on personal laws and a UCC out of the realm of "communal propaganda" and is of the view that this can be done by separating religion from politics. In this respect they advocate the banning of the use of religion for political purposes and making it an electoral offence. It also advocates a gradual approach towards strengthening the legal position of women in all communities through the introduction of piecemeal legislation. It favours drastic reform of the personal laws of all communities. AIDWA's specific strategies involve lobbying for reforms in areas of matrimonial property rights for women, compulsory registration of

births, deaths and marriages, and domestic violence. In addition, AIDWA supports reform of the personal laws from within a community.

A second proposal, promoted by Majlis, a women's legal and cultural centre in Bombay, has taken a categorical stand against any attempt to develop a uniform or common civil code. Majlis recognises that the UCC has been used by communal forces to attack the identity of religious minorities. It criticises the attempts of the Bar Council of India as well as the ILS law school in Pune to draft a uniform code as being mere extensions of current hindu laws. Such efforts, according to Majlis, have failed to "address the newer issues which have been confronting women in litigation process i.e. protection of economic rights upon marriage and divorce."

According to Majlis, such drafts focus primarily on practices of the muslim community, in particular, triple talaq and polygamy, and criticises the media for confining the debate within these parameters. Majlis states that the term (uniform civil code) has become associated in the public mind with changing the discriminatory practices of the muslim minority community. In its view, "[E]ven women's organisations and human rights groups" have simplified the issue and restricted it to this context. In addition, the courts, through decisions such as *Shah Bano* or *Sarla Mudgal*, have reinforced such an approach. It points out how the BJP-Shiv Sena government in Maharashtra has stated that it will follow the recent Supreme Court directive in the *Sarla Mudgal case* to enact a uniform civil code. All of these attempts have intensified the communalisation of the debate, and is the primary reason why Majlis opposes such a stand.

Majlis states that the notion that the hindu personal laws are more egalitarian than the laws of other communities is not borne out in reality when it comes to women's economic rights. The hindu woman has great difficulty in pursuing her economic rights upon divorce or separation, which is only intensified in the context of a woman belonging to a minority religious community. Given the prevailing communal environment, and the fact that economic rights are critical for most women, Majlis advocates a two pronged strategy. It argues in favour of focusing on "smaller, specific and focused statutes which will address some of the immediate problems faced by women - in particular in the realm of economic rights and protection against domestic violence. Majlis argues that these "smaller specific legislations will not communalise the issue and at the same time protect the interests of women." Secondly, it is in favour of supporting law reform from within each community in order to deflect attention away from the "communalised demand for a uniform civil code."

The Peoples Movement for Secularism,(PMS) is a group of activists and academics, concerned with the issue of secularism. A working group was constituted to look specifically at women's equality rights within a secular framework. PMS has also critiqued both the existing problems with opting either for a Uniform Civil Code as well as problems with the strategy of advocating reform from within a community. It challenges the implications of a UCC which is based on a "mechanical notion of integration of different communities through uniformity of laws" and also links " integration with the achievement of a modern nation-state" Such an approach in concerned primarily with uniformity based exclusively on the criteria of the personal law and not with respect to social life as a whole. Secondly, as the UCC was linked primarily with the creation of a national identity in the 40's and 50's, it has deflected attention from the question of women's rights, until 1975, when the Committee on the Status of Women attempted to make women's rihgts more central. Like the other groups, PMS is highly critical of the way in which the UCC has been appropriated by the Hindu Right, and used as a means to attack and undermine the identity of religious minorities while at the same time reinforce existing gender relations and roles. The UCC has become increasingly associated with a means to pronounce judgement on the gender discrimaton existing within the muslim community. Finally, the UCC reinforces the public/private distinction by focusing exclusively on the private and domestic, familial matters.

PMS further critiques the approach which advocates reform of personal laws from within each separate religious community. Such an approach, they argue, denies to women the very rights that the community claims - that is - to "self-determination, autonomy and access to resources." They also pose no challenge to the patriarchal interpretation of religion and the gender inequality that it promotes. It further promotes a homogenous construction of community and hence, is subject to the same critique as the UCC as a means for constructing a national unity. It finally offers no space for individual dissenters within a community who are either non-believers or refuse to be governed by unjust laws. PMS points out the way in which this approach gives priority to the rights of the community over women's individual rights. This approach has not challenged the "patriarchal and institutional power of religious leaders" and sets limits on who are the recognised "agents of reforms, on the terms of these reforms as well as on the strategies for such reforms."

PMS argues that any efforts at reform must be linked to the larger debate on womens' equal rights. The group thus proposes that the focus of the debate be shifted to a wider discussion on women's equal rights in both the public and private sphere for securing gender justice. It advocates legal reform beyond the personal law, which would cover "not only equal rights for

women within the family in terms of access to property, guardianship rights, right to matrimonial home etc.” but also “ equal wages for equal work, crèche facilities at the work place, anti-discriminatory provisions in recruitment, promotions and job allocation...” This should be accompanied by social security measures and an affirmative approach to promoting women’s economic rights. The group envisages that such a law would be applicable to all those who are born as or become Indian citizens. However, in order not to negate the personal laws, the group proposes that the individual be given a choice to opt out of the secular law and choose to be governed by his or her personal law. They stress that the individual would continue to enjoy a religious identity without being subject to the laws of that community unless he or she chooses such an option. Although the group is aware of the limitations of law reform, it sees its proposal as promoting and ensuring the “principle of democratic choice and initiates a democratic process for the assertion of rights....”

All three approaches illustrate how the debate on the reform of personal laws and the Uniform Civil Code is getting more sophisticated. All three approaches recognise that the rise of the Hindu Right has made feminist support for a UCC considerably more complicated. As a result, some groups advocate abandoning the strategy of the UCC altogether. Others suggest that the strategy of pursuing the UCC simply needs to be made more complex. Yet, each approach attempts to grapple with what ought to be done given the communalisation of the UCC - that is - how to develop a creative approach to the issue without falling into the problems that have been created around the support for a Uniform Civil Code.

The rekindled interest in the question of the UCC, and these new proposals, represent the importance of continuously encouraging public debate on this issue and creating spaces where from where new ideas can emerge. The current monopoly that the Hindu Right enjoys with respect to this issue, makes the need for such debate all the more urgent and critical. In the spirit of fostering further critical debate, I make some preliminary comments on each of these proposals.

As regards the approach advocated by Majlis, there is no doubt that support for women’s economic rights is crucial and trying to focus on these rights is important. However, it is not entirely clear why focusing on economic rights, is going to be any less controversial than focusing on other rights within the family. The Hindu Code Bill was strongly in favour of women’s economic rights, yet it was precisely this issue that became profoundly controversial. Economic rights touch upon issues of inheritance, matrimonial property, and the economic independence of women. Despite years of promoting formal equality for women in the public sphere, these issues

remain very threatening in terms of altering the gender dynamics within the so-called private sphere - the family. This is not to say that the focus on economic rights is misplaced, but simply to draw attention to and anticipate the controversies that are likely to erupt as a result of such a focus, which will not be immune to communalisation. One of the very cases that Majlis refers to, *Shah Bano* was after all concerned with women's economic rights.

Similar problems are likely to plague the other proposals. AIDWA is of the view that the way to achieve substantive equality for women is through piecemeal legislation on areas affecting *all* women. AIDWA's goal remains equal laws for women. Yet it presumes that such equality can only be achieved if it is completely disassociated from religion. The problem once again is that the areas which it seeks to promote women's equality in the short term, - matrimonial property, registration of marriage and domestic violence - cannot be disassociated from religion. AIDWA's position assumes a solidarity amongst women on certain issues on the basis of gender, and ignoring the fact that issues of gender cannot be separated from religious identity, nor should women be forced to choose between the two. Furthermore, the legal reforms proposed by AIDWA are all located in the private sphere and are thus likely to be contested and divisive.

The PMS proposal tries to confront discrimination that women experience on the basis of their gender, religious, class and other identities, by advocating a regime of reform based on substantive equality. Presumably such a regime would be accompanied by the appropriate corrective measures that would address the historical disadvantage that women have experienced not only because of their gender, but also because of their class, caste and religious identities. In this regard, the PMS proposal does not assume a common experience amongst women, but proposes a model that can perhaps be used to address the ways in which the differences between women have been used to disadvantage them in different wages. However, having set out a broad proposal of equality and recognition of difference, the PMS reverse optionality clause once again draws attention to and to some extent confines debate to a focus on personal laws and religious identity. Furthermore, it is unclear as to when this new regime is to come into operation - at the time of birth, marriage or at the time of enactment of the laws. The proposal may be more acceptable should it come into operation at the time of birth, while temporary measures addressing existing gender discrimination are formulated during the interim.

The issue of gender equality has not been beyond controversy. Once again the debates of the Constituent Assembly reveal that there was much less discomfort when the issue of gender equality remained confined to the public sphere. However, when it came to gender equality within

the public sphere, this provoked a major controversy. Although it was okay to talk about formal equality in the work place, politicians were not so amenable around the issue of gender equality within the family.

All three positions are concerned with achieving equality for women, and all choose law as a primary tool for achieving such a goal. Yet each has different expectations from law. Majlis assumes that piecemeal legislation on uncontested issues will remain immune to communalisation. AIDWA advocates piecemeal reform, even though it anticipates resistance from fundamentalist and communalist forces. It regards secularism, in terms of separation of religion from politics, and equality, as tools that can effectively meet such resistance. Yet it fails to recognise that the language of equality and secularism have both been deployed by the hindu right in terms that appear very reasonably and therefore highly persuasive to the general public. PMS clearly spells out the fact that law reform is a limited, though desired, strategy for women's empowerment. Unlike the other positions, it perceives law reform as a space for challenging the terms of the current debate, rather than as a solution to the problem of gender equality.

The initiatives taken by these groups in trying to advance the terms of the debate and beyond the current impasse need to be applauded. Their efforts have tried to strategically side step the deeply problematic and communalised Uniform Civil Code debate. Each proposal attempts to avoid this controversy and reappropriate the issue from the Hindu Right; each is trying to make it harder for the Hindu Right to communalise the particular reform proposal. Yet, ultimately, the problem is that no issue seems beyond communalisation, and when dealing with women's rights, there is just no way to avoid controversy. The private sphere has always been controversial. The Hindu Right will oppose these reform proposals on the grounds that they threaten to destroy the family and minority groups will remain rightly suspicious of these reforms which have not come from outside of their communities. Furthermore, the terrain of law has become an increasingly difficult one in which feminists can engage. The legitimacy conferred by the recent decision of the Supreme Court in the Hindutva case on the use of the term "Hindutva" in electoral campaigning, has fortified the backbone of the Hindu Right. Nevertheless, these initiatives do take a decisive step in the direction of women's rights and away from the exclusive control of communal forces. The efforts seek to bring women's rights back into focus and central to the debate rather than marginal and invisible.

RATNA KAPUR