Is Gender Justice Only a Legal Issue?

Political Stakes in UCC Debate

In the context of the current debate on the Uniform Civil Code, there is a need to rethink the women's question and rework currently accepted notions of gender justice in the light of contemporary political developments. Given the political nature of the UCC debate, a reconceptualisation of our political and legal institutions, is called for in such a way as to make them more responsive to diverse claims for justice.

THE Indian women's movement in the 1970s and the early 1980s was characterised by a broad ideological consensus on a number of issues and approaches. Some fault-lines, however, became evident in 1985-86 during the discussions around the Shahbano case. This case, which revolved around the question of maintenance for a divorced Muslim woman, apparently a gender-just demand, became the rallying point for Hindu groups which were aggressively targeting Muslims. Certain sections of the women's movement began to feel a sense of unease because what appeared to be self-evidently beneficial for women in the form of common, secular, national laws were also equally self-evidently articulated as a communal demand. As Madhu Kishwar (1986) pointed out, the demand for the UCC was not a pro-woman demand but an anti-Muslim one. There was also the growing realisation that justice was not available for women despite the activism of the women's movement which had resulted in a number of legislative reforms on issues such as rape, dowry, domestic violence, and sati.[1] These factors in turn led to the awareness that the whole issue of legal justice for women had to be carefully re-thought.

A decade later, however, this cautiousness of approach has given way to impatience. Attempts to investigate the complexity of the issue seem to have been deliberately set aside in favour of a move that allows us to demonstrate that women's problems can be sharply delineated in any situation, over and above anything else, as women's problems. There appears to be among some groups the growing confidence that a solution has been found, not just to the fact that the UCC demand has been co-opted by the BJP, but also to the vexed problem of gender justice itself.

The 'solution' is envisaged as a process in which feminist and left groups will involve themselves in the task of drafting gender-just common laws. While there are many differences among the groups with regard to the timing, formulation, legislation and implementation of common laws, most of the groups engaged in the UCC discussion appear to share the opinion that the women's movement should be working towards 'better' laws which will effectively articulate our sense of 'gender-justice'.

The Delhi-based Working Group on Women's Rights (WGWR), for instance, has suggested that an entirely new set of national, secular civil laws be drawn up. It has at the same time argued for a 'reverse optionality' which would allow women to switch from secular law to personal law if they felt it more advantageous to do so. WGWR has assumed that the 'new package of gender-just laws' has to be drafted by feminists and left secular groups [WGWR 1996]. The Bombay-based Forum Against Oppression of Women (FAOW) has proposed specific 'gender-just' legislations in several areas such as marriage, inheritance, social security, etc. FAOW contends that in the context of the demand for a UCC by the hindutva parties on the pretext of bringing about 'national integration', feminists need to emphasise that they want laws which are "based on gender justice" [FAOW 1995]. Among human rights groups, the Human Rights Law Network (HRLN) has been actively collaborating with other groups in promoting the idea of drafting common legislations.

The All India Democratic Women's Association (AIDWA), which had initially supported the call for a uniform civil code, retracted on this position after the 1995 Sarla Mudgal case, stating their opposition to the 'fundamentalist' demand for a UCC. The shifting stance of AIDWA perhaps characterises the unease that many of us within the women's movement experience today in relation to the demand for new legislations. Even while AIDWA suggests bringing about legislations "with immediate effect" in certain specific areas in order to ensure gender justice and to strengthen 'secular forces' [AIDWA 1995], the demand is tempered by the recognition that "[G]ender justice and the fulfilment of constitutional guarantees of equality need not necessarily be linked to an umbrella legislation '...[and that] within the present legal framework an umbrella legislation could well be counter-productive" [Karat 1995].

Groups that had earlier favoured legislations in certain specific areas, such as right to marital residence or regarding domestic violence, have now come out more strongly against initiatives for legislative reforms in the context of the prevailing communal situation and in the light of the women's movement's experience with state-centred action. Majlis, a women's legal-aid group in Bombay, for instance, has categorically opposed the drafting of uniform family laws at this point in time and has instead emphasised the importance of initiatives for change within religious communities. Individuals such as Madhu Kishwar, editor of the journal *Manushi*, have also criticised the enactment of uniform laws and have supported local and community-based initiatives. Vimochana (Bangalore), Sanchetana (Ahmedabad), Asmita (Hyderabad), and Anveshi (Hyderabad), have frequently expressed concern over the haste with which some strands of the women's movement have chosen this moment to press for uniform common laws that will cover areas such as marriage, divorce, maintenance and inheritance.

In what follows, we wish to elaborate our position by re-examining the political significance of the issues that impinge on, as well as shape, the debate regarding the UCC. We hold that the women's question cannot be separated from the notions of 'democracy', 'equality', 'secularism', and 'modernity' which are under contestation at present. We also believe that the women's movement will have to evolve a new form of politics that will, among other things, seriously engage with issues of caste and religious community that have arisen today. Otherwise feminist practices will willy-nilly end up becoming an accomplice to the endorsement of existing class/caste hierarchies and the communal targeting of Muslims. We feel that though no easy solutions are available, we need to begin by addressing the obvious impasses we have reached both in our politics and our theorising instead of simply reiterating the demand for 'gender justice' as though the stakes for all Indian women were the same.

Rethinking Frame of Gender-Justice

The emergence in the last few decades of different social and political movements, especially the Dalit movement, has raised many questions for feminism. This includes

the question of the nature of the unity that the women's movement has projected. By and large, the manner in which feminists have sought to engage with issues of caste and community has been to incorporate them, but by blunting their political edge such that these issues do not radically affect the analysis of the women's question. The move has often been one that says it will "not attack or humiliate the minorities" and will remain "committed to their right to a peaceful, dignified life"[Sangari 1995].

This manner of co-optation is reminiscent of the treatment that women's issues themselves often find in mainstream agendas. Today, 'gender studies', 'gender justice', 'gender politics' and 'gender development' are in danger of becoming mere appendages to important policy resolutions. In relation to women, policy and administrative initiatives substitute for political activism and critique. The underlying argument for refusing fundamental changes is that since all men and women are after all human beings (where the 'human' is understood as somehow remaining prior to and outside of structurings of gender, class, caste or community), developmental approaches for them cannot be vastly different. Within this discourse, the women's movement itself ends up being characterised as a pressure group that insists unnecessarily on being aggressive and divisive.

Some amount of reflection might show that unless the women's movement is careful about its response to the questions being raised by the dalit movement or by Muslim groups, it will end up similarly labelling their concerns either as marginal and secondary, or subversive and disruptive. This approach from within the women's movement will then be remarkably similar to the attitude of those within the mainstream who claim to sympathise with the women's movement but are uneasy with its politics. This group allows the validity of feminist demands to a certain extent but not beyond that, especially when the demands threaten to radically destabilise existing structures of privilege. To summarise, the attitude of the women's movement, normed as urban, Hindu, and upper caste-class, has been to address the concerns of the Muslims or the dalits by making some space for the dalit woman and the Muslim woman even while insisting that their 'primary' identity is neither dalit nor Muslim, but woman.

This is in keeping with the manner in which the women's movement has articulated its goals as well as its modalities for achieving them. In the 1970s and 1980s the women's movement was able to press for the inclusion of 'gender' in the conception of what constituted a modern, post-independence nation-state. Feminists were able to achieve this by invoking the language of liberal secularism in which the notion of the 'citizen' was articulated. In a society claiming to be modern, the citizen is precisely the figure that can demand rights. Working within the language of rights and of secularism that creates the citizen, feminists implicitly accepted that caste and community represent that which is backward, pre-modern. In direct contrast with this denial of caste and community is the fact that in the nationalist period itself, 'woman' in India had acquired the markings that made her Hindu, urban, upper-caste and middle-class.[2] Over a period of time, through processes of consolidation, these specific markers become invisible, and this norming of the woman comes to be seen as natural. Only the normed woman can lay claim to being truly 'Indian'.

As a result of this historical trajectory, there have been elisions of two kinds. One, the feminist concept of 'gender' which was introduced to refer to the differential socialisation of sexes and to systemic and relational inequalities, now signifies only the female sex. Consequently, gender differences that are linked to the differences of class, caste, culture, community, etc, are overlooked in order to construct a universal feminist subject in the image of the secular-modern. Second, principally as a consequence of the obscuring of community and caste as dimensions of the gender question, the women's movement today has not developed the analytical tools to distinguish between patriarchies or to relate to the specificity of historical conjunctures. Therefore, it is forced to equate the patriarchal assertions of the majority Hindu community with that of the minority Muslim community and adopt a similar stand of denunciation in relation to both. The enasure of factors that allow for critical distinction between these patriarchies is made possible by an approach that privileges an essentialist understanding of woman.

Essentialising Women: Privileging Biology?

It is a fact that the women's movement, as it has developed historically in India as well as in the West, has found it difficult to acknowledge difference and plurality. This has largely to do with the manner in which the problem of women's subordination was figured for, and by, the women's movement. One of our main objectives in the movement has been to fight discrimination against women; a discrimination that is often, in the discourse of patriarchy, sought to be justified on the grounds of biological difference. In the process of resisting discrimination within this already existing framework, certain strands within the women's movement have implicitly endorsed the universality of woman's identity. As a result, significations around biology are placed in the realm of the uniform, the natural and the unchangeable. This approach appears to discount the fact that women are subordinated not simply because of their biological difference but due to the cultural meanings of that difference.

In contrast to this biologistic analysis is the position that focuses on social and cultural significations of femininity. This position seems to valorise the category of gender over other categories such as community, caste or class. Therefore even as the stress is on the social construction of the category of 'woman', a commonality across caste, class and community is assumed, suggesting thereby that the unwitting point of reference is perhaps an ahistorical and decontextualised notion of the body. The necessary insistence on the social and cultural designation of femaleness, when made in a purist fashion, de-emphasises all other markers of identity but gender, and paradoxically lapses into the very biologism that it denounces.[3] The biological identity of the woman therefore seems to be privileged even by those who would accept that 'woman' is made, not born.

There has been a great deal of feminist work that has contested attempts to essentialise women. Given the complex historical processes by which essentialist notions have become established, there is no quick and easy way of side-stepping them. Hence, even those who attempt to critique essentialism find themselves veering close to it. Two kinds of culturalist arguments, which have the appeal of the commonsensical, in effect consolidate the notion that biological description and difference is at the root of women's problems. The implication is that class, caste and community only tangentially contribute to configuring 'woman'. One argument is that irrespective of the specificities of the context or the cultural meanings attached to bodies, women as a sex are more oppressed in all cultures, albeit in varying degrees. Another argument is that with the global spread of capitalist culture, different politico-cultural contexts are being represented as the same, and therefore the cultural specificity of women's lives may not retain their significance.

The logic of these two arguments seem so powerful that we are forced to conclude that what women need is a singular and universalisable set of uniform laws. The notion of 'woman' today also derives from global articulations of the woman's question. Recent international conferences, such as those held at Cairo (1994), Vienna (1994) and Beijing (1995), have focused on issues of human rights and women's rights. The apparent existence of similar concerns across the globe gives credibility to the local struggles by women's groups and human rights' groups. These international initiatives, however, have also have a contradictory

kind of impact. The homogenising impulse of the global articulations have obscured the specificities of micro-level situations. The ripple-effect created by the globalisation of women's rights has carried with it a conception of justice which is static and singular corresponding to the perception of woman as a universal category.

By focusing on discriminations that women universally face, these formulations also make a strong plea for retaining the unity of the women's movement. While not refuting the fact that the claim of unity has indeed energised the women's movement, the context in which this value is today upheld, for instance in the Indian context, needs to be examined. When we contend that it is no longer possible to theorise 'gender' as a homogeneous category, our intention is not to undermine the women's movement but in fact to strengthen its efforts by working for a retheorising of the concept of gender itself. We propose that by treating gender subordination as structurally similar to caste and community-based subordination (instead of implying that the first is somehow primary – perhaps biological – and the rest are cultural or social), we can begin to retheorise gender away from biology and into the realm of social signification. The approach which claims that women "also" belong to a particular caste-class and community posits a facile distinction between categories that does not really help us understand questions of gender as they exist in our everyday world.

In their preoccupation with unity, many in the women's movement seem to be regarding as wilfully disruptive any attempt to raise questions relating to identities other than apparently biological ones. We refer here to those who continue to insist on the pure category of "gender" justice. We would argue that these dissensions within the women's movement need to be seen as positive upheavals that will help feminists analyse the manner in which women are formed through multiple sources of self-description. The existence of these multiple identities also results in differential notions of justice which perhaps cannot be easily squared with the singular conception of justice that the women's movement has been working with.

Contrary to the apprehensions that different conceptions of justice or the means of attaining it will lead to political confusion and a paralysing relativism, we feel that efforts to appreciate these differences can in fact make us more alert and sensitive to the various claims for justice that are emerging from different sections of our society. We need to investigate more carefully what we are claiming in the name of gender justice and what it entails. We also feel that however risky and difficult the enterprise may be, today we need to question the notions of 'secularism' as well as 'rights' – notions that once promised emancipation for women.[4] Given the present impasse that faces the women's movement, a critical rethinking of these concepts may yield a way out of the crisis that the UCC debate represents.

Political Nature of UCC Debate

It is perhaps a sign of our times and a consequence of activist spaces being rendered problematic that the fight against injustice to women is today being totally collapsed into the question of law and legislation. Increasingly, the manner in which the issue of justice for women is being framed implies that the modern legal system is the principal site where feminist intervention can take place. Furthermore, and significantly enough, it is being seen as the only site where issues of justice may be articulated. A lot of effort is therefore focused on using legislation and law itself to solve the diverse problems of women.

The increasing validation in recent times of the role of law in ensuring gender justice can perhaps be traced to certain legal pronouncements which themselves established an equation between gender justice and law. The rulings in the 1985 Shahbano case (where a divorced Muslim woman was granted maintenance by the court in a gesture which later came to be recognised as anti-Muslim, leading to the withdrawal by Shahbano of her court-petition) the 1994 Tilhari or triple talaq judgment (where the ruling on a land ceiling case involved the assertion that a Muslim man – who was claiming exemption from the ceiling on account of his having divorced his wife according to the Shariat law of triple talaq – was not really divorced because the court did not recognise Shariat law), and the 1995 Sarla Mudgal case (where three Hindu women had petitioned the court that their husbands had entered into bigamous marriages after conversion to Islam, and where the court ruling vindicated their plea by invalidating the second marriage and holding the Muslim personal laws responsible for "open inducement" to Hindu husbands) offer examples where the judiciary has seemed to assert itself on behalf of women.

The force of these declarations of the legal system have the effect, although in a rather circular manner, of once again legitimising the dominance of the judiciary. While many feminists have criticised the court rulings for their anti-Muslim bias, they seem to have accepted the underlying assertion that the solution to women's problems can be found within the legal system. The corollary of this assertion is: if women today continue to have problems it is only because the legal system has not been adequately pressed, in spite of its willingness, to address the women's question. Such a formulation suggests a neat separation between the legal system and other social institutions. The promise is of a set of gender-just laws that will ensure justice for women, bypassing a whole network of relations within which women function. It is precisely the setting aside of these inter-related issues which make possible the reduction of the numerous questions that the UCC debate has raised to a single one, that of law.

In this context we need to remind ourselves that the questions thrown up by the UCC discussion are actually political. In fact, we might argue that the issue of the UCC has contributed in a major way to our sense of discomfort with categories of political theory in India today. Concepts such as 'citizenship', 'secularism', 'modernity', 'community', 'identity' and even 'women's movement' have come in for a new round of questioning in the wake of the UCC discussion. And these are issues relevant not just for gender analysis but for analyses of other kinds as well – class, caste, democracy, etc. To ignore these questions and to interpret and respond to the current crisis merely as a legal one that can be resolved by drafting laws or setting up a common code is to short-circuit these questions at our peril.

The unease with existing political and juridical concepts and institutions; the sense that we are up against contradictions that make it tricky to continue with the old certitudes; a whole new generation of claims to equality and justice that are emerging; in sum, the political issues that are being raised by the UCC controversy, it would seem to us, are critical aspects of the situation that the women's movement finds itself in today. Given this situation the movement is faced with two options – and these options also represent the faultlines that have appeared in the wake of the recent UCC demand. Those who consider gender justice as something for which we have been fighting for several years, and therefore see it as by and large a known entity, feel that we must demand legislation that will assure justice, in common, for all Indian women. They want to ensure that the common laws will be discussed and drafted by secular feminists and not by a communal organisation such as the BJP.

On the other hand, those – like us – who feel that given the new questions that confront the women's movement, it is ill-equipped at this point to decree on gender justice, argue that the call for legislation is not merely ill-timed, it is hegemonic. This is because (i) it simply reaffirms a feminist subject (feminist, rather than simply female, because the subject that will be affirmed in laws that will be drafted at this point is one radicalised

by the feminist movement) whose upper-caste, Hindu norming has been put at issue both by the dalit movement and by the anti-Muslim nature of the call for the UCC; (ii) it refuses to confront or work through the tricky issues that today attend key political and juridical concepts such as citizenship, secularism, the family and so on; (iii) it seeks to draw on the force of the law and the power of the state to subdue new political claims to egality and justice.

Laws that unproblematically embody familiar notions of gender justice will exacerbate divisions among women, and between the women's movement and other oppressed and marginalised groups. Legislation cannot be a substitute for democratic politics. Further, to resolve in terms of the law what is in fact a political conflict is to invoke the law only in the service of the state.

The problem with the current demand for legislation is that solutions are being sought within the existing logic and dynamics of law. Attempts are being made to bring about justice for women either through piecemeal changes in legislation or through a totally revamped set of laws. Though the modern approach to law requires that it be regarded as secular and democratically instituted, in their demand for a common code even socialist feminists seem to regard the law as having a sort of transcendent efficacy. What is ignored here is the cultural or ideological ground that provides the basis for the law and determines the actual working, not only of laws but also of legal institutions, practices and personnel. Also ignored are the larger "extra-legal" contexts – e g, of everyday life, of media reportage and analyses – within which jurisprudential contests and the process of adjudication takes place. Many of the conflicts that confront us today are conflicts about the terms, the assumptions, the logic and indeed the political force and orientation of our ideological ground. They cannot be resolved by simply reinvoking the certitudes of this ethico-political ground.

For example, the culture of law derives from and also shapes, as we have been suggesting in different ways, the processes by which citizenship is historically conceptualised, institutionalised and normed. All these determine who can be the bearer of rights. One of the major achievements of the feminist movement was to expose the patriarchal nature of citizenship. Yet today, it is clear that when women claim rights as women, they have often to do so in such a way that markers of class, caste and community become invisible; otherwise when the markings of one who does not fit the norm becomes revealed, she cannot any longer claim her rights as female citizen without in turn allowing her caste or community to be singled out for attack.[5] Shahbano could claim maintenance as woman, but in the very granting of her petition she stood revealed as Muslim.

Any number of cases will show that it is not everyone that the law will recognise as the bearer of rights. What sorts of assertions, then, is the law equipped to hear? What kinds of conduct or behaviour will the law permit? What sort of language will it allow? How does the law regulate all these, and how is this related to the obtaining of justice? Those of us who have had to deal with the judiciary in any way will recognise that these questions have some obvious answers. Take the recent case in Rajasthan of the 'sathin' Bhanwari (a poor lower caste woman who through her work for the WDP programme had protested against child marriages). Her accusation against the wealthy upper caste men who raped her was dismissed by the court as going "totally against Indian culture". The defence counsel had argued that since one of the accused was a brahmin, he could not have raped a lower caste woman. The judge agreed, and added in the verdict that an "innocent, rustic man" brought up in the 'Indian culture' would not stoop so low as to indulge in "evil conduct". Hence it had to be the victim, Bhanwri, who was 'abnormal'. The establishment of the accuser's abnormality by the judiciary automatically absolves the accused from guilt.

As far back as the Mathura rape case, around which the women's movement mobilised in the late 1970s, it was evident that the legal system could recognise as the bearer of rights only one that it defined as a chaste and virtuous upper caste-class woman. Any other kind of woman ran the risk of being designated as a prostitute, and not entitled to redress from the court's ruling. Although rape law does not come under the purview of personal laws, the rulings in rape cases should alert the women's movement to the ways in which culture and ideology determine the interpretation of law and the nature of what is regarded as justice.

These examples draw attention to the conflict between class/caste/community and gender identifications which can only be grasped when we consider the entire process of adjudication as governed also by the culture of law. Ethnographic studies of adjudication expose many other issues that emerge from this ideological ground on which laws are drafted, interpreted and enforced [Mukhopadhyay forthcoming]. When citizenship is invoked as an abstract category – which is what a common civil code seeks to do – the workings of this culture are driven underground.

If we look back on the experience of the women's movement, it seems clear that feminist interventions in this broader territory have had far more effect on popular understanding of legal issues, the legal process and the form of judgments, than changes in the law have ever achieved. Interventions in the culture of law, we suggest, opens up new questions for us to address, while attempts to add laws only serve to close off questions even before they can be asked.

Multiplicity of Laws: A Problem?

The anxiety that underlies the discussion about the UCC is not just regarding the blatantly sexist nature of laws. The overriding fear of a large section of the women's movement seems to be that women's access to justice is hindered by the existence of a multiplicity of laws. Consequently, many groups believe that a single set of gender-just laws will resolve women's problems within the legal system. Even groups such as WGWR which support optionality (between separate personal laws and a particular set of secular civil laws that supposedly have gender justice inscribed in them) endorse the demand for a single set of universally applicable laws. The personal laws are then sought to be pressured into approximating the 'secular' model. This conception fits in neatly with the modern legal system whose very structuring prevents it from envisaging a heterogeneity of laws. The common sense of law regarding an unquestioned and authoritative homogeneity makes the very idea of a multiplicity of laws seem ridiculous.

A politicised/historicised understanding of law reveals that the modern legal system has evolved as one of the strategies of the state to organise relationships of power within its boundaries (and also to demarcate those boundaries themselves – as through the question of citizenship, etc). The abstract

concept of justice is linked to the liberal notion of the state. The development of law is connected to the discourses of progress and modernisation which aim at shaping and re-forming the citizen. The unilinear conception of progress and modernisation necessitates a single system of law which by its very conceptualisation excludes the interests of some sections while serving that of others. Interestingly, the legal system which is seen as an arm of the state (and therefore concerned with constitutional matters, belonging to 'political society') constantly intervenes in the supposedly non-political civil society to which the "pre-modern" customary laws are relegated.

The existence of different sets of personal laws, a legacy of colonial rule, are generally perceived as an anomaly within the Indian legal system. The majority opinion is that it is largely a question of time before separate personal laws can be done away with. This is often the stand even of those who believe that there should be "reform within communities". The legal recognition of the personal laws notwithstanding, judicial pronouncements, such as the one in the Sarla Mudgal case, that denounce the existence of different laws for different religious communities have caught the attention of a wide range of groups. A large section of the media and the hindutva forces have sought to emphasise the 'truth' of these pronouncements. More cause for concern is the fact that the left and some women's groups too have implicitly conceded the logic of these denunciations by themselves offering to draft a common set of laws, as evident in the initiative of the groups that organised the workshop to draft laws at Bombay in May 1996.

It is important to note that the tension today is built around the different meanings of the very concept of personal laws. The point that often gets missed is that though personal laws were recognised within the Indian legal system as a result of the colonial policy of non-interference in religious matters, the meanings attached to personal laws have been historically changing. They have been perceived differently at different times by the media, the judiciary, the personal law boards, the right wing forces as well as the women's groups themselves. A historical study of the responses of these different groups to discussions about codification of laws in 1936, 1955-56, 1985-86, and 1995, for instance, would amply demonstrate the shifts in positions.

The women's movement seems to face an impasse today because, among other things, it is constrained to work within a system that recognises only singularities of law and justice. Moreover, the dominant notion of gender justice (over and above other notions of justice) today obtains from the hindutva logic which characterises Muslims as unchangeably pre-modern. The hindutva agenda as electoral rhetoric may have ceased to be effective, but hindutva common sense has become well entrenched – culturally as well as institutionally.

The women's movement, which is normed as urban upper caste and Hindu, has also given tacit support to the hindutva arguments. As Flavia Agnes has pointed out, certain issues (such as polygamy and maintenance) tend to be highlighted by the women's movement as the problems of Muslim women, but the problems of the upper caste Hindu women (regarding proof of marriage and dowry, for instance) are characterised not as the problems of Hindu women but as women's problems [Agnes 1994]. As a result of the spotlighting of Muslim identity in the instances that the women's movement has taken up, the Muslim man has become marked as the archetypal oppressor and therefore as the legitimate target of feminist anger. This response is dangerously close to the BJP's characterisation of the situation as well.

The women's movement today often finds itself, on a number of issues such as those of legal justice, anti-obscenity campaigns, etc, on the same side as the BJP. We need to reflect on why this convergence of positions has come about. The BJP version of modernity has popularised a model of emancipation and justice for women that partly borrows from the women's movement but derives predominantly from an ethico-moral and political conception that is acceptable to the upper caste, middle class, urban Hindu woman. The existing culture of law therefore hegemonically designates all other notions of justice as barbaric and primeval. Attitudes towards marriage, divorce, property rights, adoption or other aspects that are a part of the personal laws are judged by the yardstick of a notion of justice that is not easily separable, in the present communal context, from the hindutva one.

In making an appeal to a secular model, certain analyses from within the women's movement seem to be suggesting that the state and the judicial system are truly secular and that the hindutva formulations regarding nation, community or gender are alien to these institutions. The judiciary is seen as 'neutral', even *vis-a-vis* the state. Even complaints about 'bad judgments' bear out this authority we grant the legal system. Instances of support to the hindutva ideology by the courts are seen as exceptions to the norm of integrity and impartiality that the state and the judicial system represent.[6]

In our efforts to confront the influence of hindutva common sense, we also need to recognise that the notion of secularism that was invoked by us in the 1970s and the 1980s is no longer a viable one.[7] Moreover, hindutva notions are not only a part of the the legal processes through which the abstract figure of the citizen is formed but is a part of the common sense of the women's movement as well.

In response to the challenge of the crisis posed by the UCC debate, we will have to envisage different sorts of interventions, not all of them in the traditional realm of the law. As we have pointed out, the women's movement has been involved in earlier cases where we worked in the domain of the culture of the law and were able to investigate and open out the formation of the subject of law, criticise legal concepts and procedures, effect changes in the popular understanding of the issues involved, and broaden out the whole issue of gender justice.

To give just a few examples: in the Mathura and Rameeza Bee rape cases, we were successful in breaking the hitherto "natural" connection judges made between rape and the past sexual history of the victim; in the Net-Oen (injectable contraceptive) campaign where science was invoked as a powerful mode of control over women, feminists showed through their legal and other interventions that the drug had a political profile, not simply a technological one; in the innumerable dowry death cases taken up by the women's movement, what we have shown up is the precariousness of marriage as an institution, so much so that many parents today are willing to acknowledge that their daughter has a right to give up on the marriage when conditions become unbearable. In all these different cases, regardless of whether or not we obtained new legislation, we made possible a rethinking of what justice for women might involve.

Drawing on this experience, we should carefully plan our strategies in the present historical conjuncture so as to address the different kinds of political conflicts that have emerged. If we simply ask for new legislations for women, we are reducing major political issues to those the law should resolve. While continuing to engage with the law in terms of filing writ petitions and public interest litigations, challenging benchmark cases, etc, we need to radicalise that engagement by questioning the common sense about gender justice that often informs such initiatives.

Notions of justice and rights do not merely arise from the legal system, just as the culture of law is not restricted to the courtroom. Consequently, feminists need to engage not only with the formal procedures of the courts but also with processes of conflict resolution that exist outside the established legal domain, such as those initiated by caste panchayats, forums of religious communities, and the informal adjudicatory processes which exist

in families and different kinds of communities. We in the women's movement must remind ourselves that intervention in adjudication covers a wide range of locations, including the influential one of print and electronic media where discussion of case-related issues often shape the extra-legal contexts which influence judicial pronouncements.

We have been arguing that we need to rethink the women's question and rework our notions of gender justice in the light of contemporary political developments. In emphasising the political nature of the UCC debate, we are demanding no less than a reconceptualisation of our political and legal institutions, in such a way as to make them more responsive to diverse claims for justice.

Notes

[This paper has been prepared by the Anveshi Law Committee in the context of the current debate on Uniform Civil Code.]

1 For an analysis of the attempts by the Indian women's movement to bring about legislative reforms, see Flavia Agnes, 'Protecting Women against Violence?:Review of a Decade of Legislation, 1980-89', *Economic and Political Weekly*, XXVII:15 (April 11, 1992), WS 19-33.

2 See in particular Uma Chakravarti, 'Whatever Happened to the Vedic Dasi?: Orientalism, Nationalism and a Script for the Past' and Partha Chatterjee, 'The Nationalist Resolution of the Women's Question' in Kumkum Sangari and Sudesh Vaid (eds), *Recasting Women: Essays in Colonial History* (Delhi: Kali for Women, 1989) and the introduction to Susie Tharu and K Lalita (eds), *Women Writing in India:600 BC to the Present*, Vol II, New York Feminist Press, 1993.

3 See for example Kumkum Sangari, 'Politics of Diversity: Religious Communities and Multiple Patriarchies', *Economic and Political Weekly* XXX:51 (December 23, 1995), 3287-3310), and XXX:52 December 30, 1995), 3381-3389.

4 For a critique of 'rights' see Susie Tharu, "Slow Pan Left: Feminism and the Problematic of 'Rights'" in Jasodhara Bagchi (ed), *Indian Women: Myth and Reality*, Orient Longman, Hyderabad, 1995.

5 For a further elaboration of these arguments see Susie Tharu and Tejaswini Niranjana, 'Problems for a Contemporary of Gender', *Social Scientist*, Vol 22, Nos 3-4 (March-April 1994), 93-117.

6 For an instance of this manner of analysis, see Brenda Cossman and Ratna Kapur, 'Secularism: Benchmarked by Hindu Right', *Economic and Political Weekly*, XXXI:38 (September 21, 1996), 2613-2630.

7 For a recent critique of the use of 'secularism' in India, see Partha Chatterjee, 'Secularism and Toleration' *Economic and Political Weekly*, XXIX:28 (July 9, 1994),1768-77.

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