

KAFILA – COLLECTIVE EXPLORATIONS SINCE 2006

DEBATES, FEMINISM, LAW

A Response to 'Uniform Civil Code – the women's movement perspective': Rohini Hensman

08/10/2014 | NIVEDITA MENON | 7 COMMENTS

Guest Post by ROHINI HENSMAN

Nivedita has done us all a service in kicking off a wider debate on personal laws (<http://kafila.org/2014/10/01/uniform-civil-code-state-of-the-debate-in-2014/>) than the ones which have been taking place within feminist groups. One of the most important points she makes is that we have correctly moved away from the demand for uniformity. Uniform laws need not be either gender-just or secular, which is what we are aiming for; indeed, patriarchal theocracies have extremely uniform family laws! She has also raised several other questions that need to be discussed. I look at some of them here in the hope of taking the debate forward.

Polygamy: Unless polyandry is also allowed, polygyny is not gender-just, and ought to be opposed. The fact that the vast majority of Muslim women, who are directly affected by the existence of legally sanctioned polygamy, are opposed to it, makes this an obvious move for feminists. To support polygamy on the grounds that it offers more protection to second or third wives sounds like a perverse argument. If we accept it, we should also be demanding that polygamy be made legal in other personal laws! Second or third wives would surely be better protected by being able to sue their fake husbands for fraud and get hefty damages.

Contractualising all intimate relationships: Although legal recognition of stable non-marital relationships would be desirable, contractualising all intimate relationships may not be such a good idea. Even in the simplest case – heterosexual couples who want to be married – what would the terms of the contract be? In Muslim Personal Law, the implicit or explicit terms are that in return for accommodation, food, clothes, medical expenses, educational expenses for children, etc. provided by a husband, a wife will be sexually available to him and will look after the household. In other words, it reinforces the assumption of complete sexual availability of a wife and the gender division of labour, both of which we otherwise oppose. If this is not contractualised, there is room for bargaining and negotiation – for example, a wife may go out to work, and/or fight to have her husband share the housework – but a contract locks these assumptions in place. What about stable couples, both heterosexual and gay, who don't want to get married? It is one thing to point out to a woman that having a legally recognised relationship strengthens her rights, but if despite this she doesn't want a legal marriage, why would she want a contract? Finally, polyamorous relationships would tend to rely on flexibility. Suppose a woman has relationships with two people and contractualises them. Would she have to specify how much time she spends with each? What happens if she gets involved with a third person? Would she have to renegotiate the first two contracts to make room for her rights and obligations in the third? What happens if she – or the other person – wants to break off one of the first two relationships? Will they have to go to court? Unless there is a built-in exit clause to the contract saying that either party can terminate it by giving one month's notice (which would make it a bit pointless), one can envisage endless legal nightmares.

Whatever marriage as sacrament means, that is surely a matter of personal faith, and cannot be a legal term. The alternatives are not marriage as sacrament or marriage as contract; one can simply have marriage (or cohabitation) as a socially and legally recognised relationship in which the participants have equal rights.

Upper-class bias: In some countries, the waged and unwaged labour put into the household by a woman is taken into account in divorce settlements; alternatively the money she would have earned had she been employed with her level of qualifications; but those ideas have not been promoted by most feminists in India. Consequently, the image of women that comes across in personal laws is of mainly ornamental creatures whose only work is providing sexual services. The reality, of course, is very different: on average, women work longer hours than men, and the majority slog from morning till night without adequate rest or leisure. Yet the image of women as dependent on men is used against them in the labour market, to deny them equal employment opportunities and equal wages.

Nivedita has mentioned the dangers inherent in privatising the commons, and there is also a danger in assuming that a husband or ex-husband is responsible for paying for maintenance, healthcare, education of children, and accommodation of a woman. In the first place, it is unrealistic in these days of forced redundancies and unemployment; and secondly, it detracts or distracts from the necessity of fighting for free healthcare and education as well as social security and welfare benefits including subsidised public housing, all of which are so important for women.

Family laws can't solve problems of equal wages and employment opportunities, or access to commons and social security and welfare, but the terms in which they are drafted should not have an adverse effect on these struggles for women's rights. So I agree with Nivedita that we need to think more carefully about reformulating property clauses in family laws.

Are religious family laws compatible with a secular state? Personally, I don't think so. One of the main pillars of a secular state is equality before the law and equal protection of the law regardless of religion, yet religious family laws demand precisely the opposite. But, it is argued, a secular state must guarantee freedom of religion. That is true, but only to the extent that fundamental rights are not violated. Untouchability is illegal no matter how passionately someone may believe in it (that it is still practised is testimony to the disarray of the law enforcement system rather than the law itself). Likewise witch-burning and sati.

Secondly, I would argue that religious family laws actually *violate* freedom of religion. If we have learned anything from the various attempts to reform personal laws, it is that the same religion is interpreted in widely divergent and even contradictory ways by the people who practise it. In enacting religious personal laws, the state takes sides in theological disputes and forces those who disagree to submit to its interpretation. This is the very opposite of freedom of religion and conscience, which should allow people to practise their own religion in their own way. By contrast, the British parliament recently passed legislation legalising gay marriage. Although to the best of my knowledge none of the churches accepts gay marriage, apparently a large number of gay Christians promptly went and got their marriages registered. This seems to me a more secular relationship between religion and the state than what we have in India (which is an irony because Britain has an established church and is therefore not a secular state): the state cannot force the church to recognise gay marriage, but neither can the church prevent the state from registering marriages of gay Christians who believe it is compatible with their faith. A similar development has taken place with the provision in the Juvenile Justice Act for people of all faiths to adopt, even though adoption is prohibited in Muslim Personal Law. This allows Muslims who believe that adoption is compatible with their faith to go ahead with legal adoption of children even while the MPLB continues to oppose it.

I'm not arguing for immediate abolition of religious family laws, only for acknowledgement of the fact that they violate freedom of religious faith and practice. In addition to trying to introduce gender-justice in personal laws, Chayanika had suggested at a meeting in Bombay that we should adopt the Special Marriage Act as our own, and try to make it into a properly gender-just and secular law. I think this is a really good idea. For example, one of the biggest problems with it is the requirement for prior notice, which is used by families, communities, registry officials and the police to block inter-religious and inter-caste marriages, thus vitiating the main point of having the act at all. What can we do to make this kind of interference impossible? What other changes can we propose? Is it possible to change the title of the act to the Indian Marriage Act in order to popularise it? We should definitely work on this!

◀ **PERSONAL LAWS** ◀ **UNIFORM CIVIL CODE**

7 thoughts on “A Response to ‘Uniform Civil Code – the women’s movement perspective’: Rohini Hensman”

1. **Mukul Dube** says:

[08/10/2014 AT 7:54 AM](#)

Pretty obvious that polygyny in the absence of corresponding polyandry is unbalanced.

2. **Ghulam Mohiyuddin** says:

[08/10/2014 AT 11:29 AM](#)

Ms. Hensman’s arguments are sound. Religions should be freed from the burden of being law givers. Let that responsibility fall on the state. Religions will then be better able to concentrate on spiritual and ritual matters.

3. **avinashk1975** says:

[08/10/2014 AT 3:40 PM](#)

>> Pretty obvious that polygyny (polygamy ?) in the absence of corresponding polyandry is unbalanced >>
Yes, Mr. Dube, I fully agree with you. I would like to know whether you will be comfortable with such an idea if an enabling law is enacted in India.

1. **Mukul Dube** says:

[08/10/2014 AT 6:49 PM](#)

I wrote polygyny because that is what I meant. Please find a dictionary. I expressed an /idea/ with which I am comfortable. If you want to know whether I shall be comfortable with polygyny and polyandry, please say that.

4. **oshrivastava** says:

[08/10/2014 AT 5:11 PM](#)

Reblogged this on oshriradhekrishnabole and commented:
A Response to,civil code,,the women movement,

5. **avinashk1975** says:

[08/10/2014 AT 10:36 PM](#)

@ Mukul Dube, so far I can understand “Polygyny” is a narrow form of polygamy. Yes, my question is whether you are comfortable with Polyandry. Why only men should have all the fun? We have examples of Polyandry in our Epics itself.

1. **Mukul Dube** says:

[09/10/2014 AT 10:06 AM](#)

“Polygyny is a form of plural marriage, in which a man is allowed more than one wife.” Next time, make the effort to look up a word you do not know. I have nothing against polyandry. As a one-time student of anthropology I know that it exists or existed in many parts of the world. However, in my understanding it has nothing at all to do with “having fun”.