



EGALITARIAN CIVIL CODE: EVERY WOMAN'S BASIC RIGHT



An EGALITARIAN CIVIL CODE: Every Woman's BASIC RIGHT



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Years of struggle by the women's movement to achieve equal laws have today been undermined to the point where a common civil code itself has become a controversy. An already patriarchal state has no interest in enforcing the fundamental right to equality by recognising women's rights in matters of divorce, marriage, inheritance, guardianship etc. When any Bill affecting women's rights is passed or rejected by our legislature, the real agenda of the ruling party is invariably to secure its vote bank on communal lines. The same logic applies to any opposition when it supports or opposes a Bill. While the Congress government at the centre had played its traditional politics of appeasing Muslim fundamentalists by enacting the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Shiv Sena - BJP Government in Maharashtra recently introduced a Bill to provide for the prevention of bigamous marriages and create further insecurity within the Muslim community and strengthen its Hindu base. More than ever before, the last two years have witnessed communalisation of the issue of a common civil code for women. The terms of the national popular debate thus once again were set by those in power. And the real question of equality for women took a backseat. As an organisation committed to an Egalitarian Civil Code for all women, it is necessary for us to understand and respond to the shifts that have taken place in the debate within the women's movement.

One important factor in the shift has been the rise of communal and fundamentalist forces, which has led to increased insecurity amongst the minority communities, especially the Muslim community. Minority communities have understandably become resistant to reform in their personal laws, which they now see as an integral part of their religious identity. This has resulted in increasing the control of religious leaders over women of the community. Simultaneously, in a situation of insecurity and communal strife, women are left with no option but to depend on community support. This scenario inhibits women from stepping out of oppressive community situations and joining in the larger struggle. It is indeed true that in any crisis situation, women as well as men first depend on their communities. But it is only when women step out of their houses or go against the established norms of their community by force or choice (e.g. break up of a marriage), that the question of equal laws becomes significant. In such circumstances, if law is also discriminatory and unjust, women become even more vulnerable.

Secondly, the experience of the women's movement with legal reforms has not been satisfying. Though the movement did impel the State to enact a number of pro- women laws, the ineffectiveness of these laws in improving the status of women or checking violence and crime against women has triggered a rethinking on the whole issue of legal reform. These laws were

mostly in the form of penal provisions and in no way addressed the basic question of inherent inequalities between men and women. They had many loopholes and only resulted in increasing the power of the State without bringing any real change in women's lives. They did not even challenge established notions of women's role and image in society, and in some cases even penalised women as culprits (e.g. the law against sex-determination). The weak implementation of these laws has contributed to the disillusionment of women's groups with legal reforms.

Thirdly, the interaction of the women's movement with the State has been problematic. State's co-option of the agenda and progressive terminology of the women's movement to blur the contradictions between its own interests and those of women, serves to hide the real interests of the State. The communal character of the State is revealed in the tacit support it extends during instances like the demolition of the Babri Masjid and the riots and mass rape in its aftermath. Such an anti-people State, while claiming to respond to the women's movement, may in the process impose a majoritarian code that serves the interests of the dominant community rather than that of women.

Divided by Community, Or United as Women?

It is in the context of these apprehensions that there has been rethinking within the women's movement regarding its position towards demanding legal reforms from the State. It is being asserted by some sections within the movement that as a matter of strategy, the demand for a common code should be dropped for the time being, and instead other alternatives should be explored towards achieving "gender justice". Some others advocate the need to bring about legislation in areas not covered by personal laws, like the demand for rights in matrimonial property or home, or laws related to domestic violence. There is resistance to the term "uniform", since it is argued that uniformity will crush plurality and diversity, and may lead to the imposition of a uniform majoritarian law. It is perturbing to realise the extent to which pluralism or diversity is being sought to be defended. Is pluralism an end in itself? Or is keeping women deprived of basic rights the only means of maintaining diversity?

The co-option by the Hindutva forces of women's demand for equal laws has pressurised the movement to differentiate and even dissociate it from the demand of a compulsory code for women of all communities. Today the demand for women's rights is being suppressed as it is seen as a threat to identity based on caste, community and religion. Many sections of the women's movement have also tended to link the issue of women's rights to the issue of religious and minority identity. The result has been a retraction from the earlier unequivocal demand for equal rights for women cutting across caste, class and religion. The shift that has taken place is not only in the nature of the demand, but also in the analysis and arguments being put forth. This has been a severe setback in the struggle for women's rights.

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THE WOMEN'S MOVEMENT HAS ALL ALONG BEEN BASED ON THE UNDERSTANDING THAT WOMEN'S STRUGGLE should not remain individualised. Slogans like "Break the Silence" (Khamoshi Todo), or "Break Your Shackles" (Todo Bandhan), based on the day-to-day reality of women's lives, had emerged as resistance to family and religious forces as perpetrators of women's oppression. Instead today, the constraints, of family and religion are being strengthened again. Is it a changed understanding of women's oppression? Or is it being advocated that we can struggle for women's liberation from within the boundaries of family and community?

Emphasising divisions amongst communities conveys the message that women of different communities should fight their battles separately, thereby weakening the concept of collective struggle. Emphasising the divisions amongst women only on the basis of religion and community, ignores the importance of other differences, like the reality of a class divided society. The political solidarity of all struggling women is crucial as it is the commonality of these struggles which cut across divisions based on caste or religion. The organising potential of women sharing common interests across communities cannot be undermined.

The move to organise women on community and religious lines by religious patriarchal forces also contributes to increasing the power and hold of these very forces on women. Moreover, the role of religion as liberator has always been questionable. In fact, whatever rights women have wrested for themselves has been largely due to the influence of liberal theories of equality and justice rather than due to liberal interpretation of religious texts. The argument for religious identity is devoid of any analysis of patriarchy which is at the root of religion, and ignores both the ideological and material potential of keeping women in their place within the family.

While a Uniform Civil Code may present the danger of homogenising communities, the promotion of heterogeneity on the basis of community is equally dangerous. Proponents of the argument that diversity should be recognised and therefore customary practices safeguarded, ignore the fact that all customary practices are not pro-women. In tribal communities, a number of customary practices are oppressive for women. Even in matrilineal societies like the Nairs of Kerala or the Khasis of Meghalaya, though women are relatively better placed, they do not enjoy complete control over land and decisions regarding the disposal of property.

Increasing the control of the community over women is liable to invite pressure from various communities to further promote and codify their customary practices. This has happened in the case of the Sikh community; asking the State to recognise the "Karewa" practice, whereby a widow is made to marry the husband's brother, in the interest of retaining family control over property, Pressure from the community can lead to indiscriminate codification of customary practices, as has happened in Arunachal Pradesh. While women's groups there were actively demanding for changes in their customary laws, the government passed a Bill in 1994 giving protection to customary laws and social practices. The women's groups are now fighting to get

the Bill repealed. Communities can try to influence the courts by justifying any unequal provisions as their customary practice. Any argument of community identity holds the inherent danger of making a patriarchal community even more closed to any improvement in women's lives and status.

On the other hand, when women do organise on the basis of community, both society and State turn a deaf ear. The Bill prepared by the Christian women's groups and submitted to the Parliament a few years ago, continues to gather dust. In 1995, a group of Muslim women in Bombay drafted an alternate nikah-namah with specific provisions at the time of marriage in favour of women. It is to be presented to the Muslim Personal Law Board for further dialogue. These voices of women who seek to change their situation, meet with resistance within the community.

Optional Equality?

The various positions on the issue of a common civil code do aim for 'gender justice' in principle. But it is in the process of implementation or choice of strategy, that there are wide differences. There is a demand that a "gender just code" be enacted and made optional for those who wish to avail of it, like the Special Marriage Act. The other argument is that everybody will be born under the gender just laws, but will have the option to revert to their personal laws. Both positions are problematic and far removed from the reality and context of women's lives. It is doubtful whether optionality would really give a choice to women in the exercise of their rights. Given the present imbalance of power and resources, any law which tries to correct this imbalance, is bound to remain ineffective if left to be enforced voluntarily. Men, who are privileged in the present system of laws, in situations of conflict, are more likely to take recourse to laws favouring them.

In our society, right from their birth, men are privileged with favourable laws in the crucial aspects of personal laws, whereas women have to fight hard for their due in legal battles. Women have to involve themselves in long drawn processes of litigation to prove their claims. An optional code, whichever way, will not benefit women at large. Using the option to go back to personal laws while being born under "gender just laws" does not fulfil the objective of equality.

The struggle for women's rights is a struggle for women to be recognised as citizens of a democracy with equal laws and opportunities. The fundamental question of democracy and equality can never be a matter of choice. The argument for an optional code violates the philosophical foundation of a constitution which guarantees certain fundamental rights to every citizen irrespective of class, caste or gender. And equality before law is one such fundamental right. It is the basic principle in the struggle for liberation of millions of people all over the world. That an optional 'gender just code' will give a choice to the oppressed to seek equality is

highly doubtful.



BOX

BEYOND A COMMUNITY IDENTITY

The 'paritaktya' movement in Maharashtra represents the struggle of thousands of deserted women. Patriarchal communities have consistently denied a proper status to those who are widowed; divorced, deserted or single by choice. Their relentless fight for pattas or land titles in their names, is inspiring for struggling women all over the country. Without support from society or even parents in many cases, the women have been demanding facilities for government housing, loans for self-employment, legal aid and free education for their children.

