



# EGALITARIAN CIVIL CODE: AN ISSUE OF GENDER JUSTICE

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## EGALITARIAN CIVIL CODE: An Issue of Gender Justice



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The campaign for an Egalitarian Civil Code (E.C.C.) is once again on the agenda of our activities. Although the demand for a Uniform Civil Code (U.C.C.) is an old one and dates back to the time when the constitution was being drafted, the issue today has become much more complex and vexed. The women's movement which has been consistently seeking equality for women in the realm of personal laws today faces a serious challenge from communal & fascist forces within the country.

There exists an intimate and intricate link between the rights of women and personal laws. Broadly speaking, personal laws operate in the sphere of marriage, divorce, inheritance, succession, guardianship and adoption. Thus the rights and position of a woman within the family is determined to some extent by the personal law governing her. The personal laws, whether Hindu, Muslim, Christian or Parsi all find their origin in ancient religious texts. All personal laws in varying forms and degrees discriminate against the woman vis-a-vis the men within each community. The one common feature of all personal laws is that they give unequal & lesser rights to women. These personal laws ensure the secondary status of women within the family as well as the continued social and economic dependence of the women upon the male members of the family be they fathers, brothers, husbands or sons. The family as it exists today is based on patriarchal principles. The demand for a change in personal laws is essential as it would directly affect the status of women within the family. In fact the E.C.C. is a step towards eliminating unequal power relationships that exist within the family and oppress women.


It is important to remember that every personal law is biased against women. While it is true that the Hindu personal law has undergone some reform and shed some of its blatantly discriminatory aspects, the inequalities have not been eliminated totally. To take a few examples, a daughter's right of inheritance is circumscribed in comparison to a son in respect of ancestral property. Even in case of self-acquired property daughters are usually disinherited as fathers enjoy the absolute right to will away their entire property. Again, a daughter can only claim a right to residence in the ancestral home in times of distress. Under the Parsi law daughter gets half the share of the son. In Shariat law also women are entitled to half the property in comparison to men. Again under the Christian law wills are commonly used to disinherit daughters and to nullify their equal right to property. We must also not forget that though there are some differences between the various personal laws, in reality the status and plight of women of various communities is not very different.

However despite this reality, the response of the state as well as political parties has not been in favour of an E.C.C. The State has through its various institutions played a significant role in




converting what is essentially an issue of social justice for women into an issue of religious freedom and identity. It is argued by the Govt. that in order to preserve the cultural and religious identity of the minorities guaranteed under Article 25 of the Constitution, personal laws must be retained. In 1985, after the Supreme Court judgement in Shahbano's case, the Congress Govt. dictated by short-term electoral gains, sacrificed the interests of women and succumbed to the pressure of fundamentalists and passed the Muslim Women Protection of Rights on Divorce Act 1986. This Act, in fact, pulled divorced Muslim women out of the purview of S.125 Criminal Procedure Code, which was earlier applicable to women of all communities and communalised the issue. It also further strengthened the hold of religious leaders over the community and the consequent deterioration of the status of women. In fact in the monsoon session of Parliament in 1994 it was categorically stated on behalf of the Central Govt. that they had no intention of enacting a U.C.C. and the minorities should rest assured. Here again U.C.C. is not being seen from the view point of gender equity but rather as an issue of protection of minority-religious and cultural identity.

On the horizon of Indian politics today, right-wing, communal fascist parties are on the ascent. In the last few years religion has probably become one of the main determinants of electoral politics. We see all around us religious leaders gaining greater control over social and political life. This is of serious concern to us as history and our own experience show that religion has been used to legitimise men's power over women and also to deprive women of their rights.

The Bhartiya Janta Party (B.J.P.) has in its election manifesto stated that a U.C.C. be enacted. It is important not to be misled by the language that the B.J.P. is increasingly using. The term used by both the women's movement and B.J.P. is the same but for both they connote two completely different concepts. What the B.J.P. and other Hindu fundamentalist and communal groups mean by the U.C.C. is essentially that the present Hindu Civil Code be extended to all other communities especially Muslims. This fits in their scheme of things which seeks to portray India as the land of Hindus, and all those who reside within it should be governed by Hindu Law and owe allegiance to the same. Moreover the B.J.P. and others are asking for a U.C.C. not because they want women to get equal legal rights but because they want to use this issue to whip up an anti-Muslim hysteria. They want to point out how backward and barbaric Islam is while at the same time projecting Hindu law as the last word in equality, which we know is far from the truth. The Hindu communalists further argue that Muslims are a pampered minority who are allowed to enjoy their personal law, marry four wives and divorce at whim. We, however, do know that in reality polygamy is just as common among Hindus, wives are abandoned on a flimsy pretext and Hindu women suffer just as much as women under other personal laws. At the Annual Convention of Sampradayikta Virodhi Andolan, 1993, it was pointed out by a woman activist from Bangladesh that in her  ntry, the situation was just the opposite for while the Muslim law had been reformed the Hindu law remained untouched. So, it appears that the

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position of Muslim law in India is also a consequence of them being a minority community  here.

We must also be alert to the fact that when the issue of U.C.C. is raised by communal parties of the majority Hindu community the Muslims being a minority community feel under attack, withdraw and the voice of reform within the community is completely silenced. The communalists demand for a U.C.C. is borne not out of sympathy for women but rather antipathy towards all Muslims. It is therefore necessary for women's groups to make their position distinct from the communal parties, approach women of the minority community with sensitivity and to forge alliances on the issue of E.C.C.

In the wake of the severe challenge posed by communal parties, the women's movement today faces the task of clarifying misconceptions stating clearly that gender justice will be the sole underlying principle of the E.C.C. and to take the debate amongst women. It needs to be reemphasised that our demand is to abolish the patriarchal relations inherent in these laws and it is to be in the context of rights of women and not by linking it with the issue of religious or cultural identity. We have to be vigilant not to conflate our demand with that of the communalists.

In the last few years, anti-communal organisations too have felt the need to re-examine the issue of U.C.C. and turn it back into a question of women's rights. Seminars have been held to discuss the issue. The Peoples Movement for Secularism (P.M.S.) held a two days workshop on this subject in July. The discussions reflected three major stands. Firstly, that the demand for reform should come from within the community and there should be separate reform and codification of each personal law. A number of women's groups are working among Muslim and Christian women and are creating an opinion for reform within the personal laws. For instance a modern "Nikahnama" has been drafted to give Muslim women equal rights.

Secondly, it has been suggested that the Special Marriage Act be amended and made into an ideal secular, non-sexist law. It could then be optional for people to be married under the same. Thereafter a campaign be launched to propagate it and encourage people to come within its purview. In other words it would be like an optional U.C.C. However some of us felt that the benefit of this Act would be limited to very few women and would leave the majority of the women untouched.

The third strategy is to scrap all personal laws and to formulate a new Egalitarian Civil Code, the corner stone of which would be gender justice. The campaign for this compulsory E.C.C. is to be undertaken by women's groups and secular forces.



It is apparent that the common thread between the three different approaches is that they all

want reform so as to eliminate the discriminatory aspects of the personal laws.



At the P.M.S. workshop discussion was also initiated to explore areas in the realm of family and personal laws where women do not have any rights especially economic rights upon marriage. For instance, maintenance, matrimonial property, right to residence in matrimonial home, law to curb domestic violence etc. It was felt that along with campaigning for an Egalitarian Civil Code we should also work towards acquiring legal rights in these areas.

In 1947, after the debate in the Constituent Assembly, under pressure from the communal groups and dictated by considerations of vote, the Uniform Civil Code was placed under Article 44, in the chapter dealing with Directive Principles, which are unenforceable, and that is where it still rests. Article 44 provides that the State shall endeavour to secure a Uniform Civil Code for all its citizens.

The actions of the State in the last two decades however show its reluctance to adopt a Uniform Civil Code as also its communal bias. In 1976, the Special Marriage Act was amended and it was laid down that if two Hindus marry under the aforesaid Act they would continue to be governed by the Hindu Succession Act and not the Indian Succession Act. Again, in 1986, divorced Muslim women could no longer seek maintenance under Section 125 Criminal Procedure Code, as the Government had passed the Muslim Women (Rights on Divorce) Act. Thereafter, the Law Ministry sent circulars to women's organisations seeking their opinion on two issues-- firstly, on Section 125 Criminal Procedure Code, which gives a maximum maintenance of Rs. 500/-, and secondly, on the introduction of irretrievable breakdown of marriage as a ground for divorce in the Hindu Marriage Act. We at Saheli, however refused to respond, for we strongly felt that we could not allow the State to pay lip service to the issue of women's rights by enacting piecemeal legislation for some sections of women. Divorced Muslim women would get no benefit under Section 125 Criminal Procedure Code and it is Christian and not Hindu women who face difficulties in securing divorce under their personal law.

We feel that a campaign for an Egalitarian Civil Code is an urgent and important one. As part of our effort we organised a discussion with some students of Janki Devi College and spoke about the discriminatory aspects of various personal laws. The response of the students was quite enthusiastic and they were keen to learn more about their rights or the lack of them. We shall be continuing the campaign by attempting dialogue with women, students and other groups. We are also preparing an information booklet and a poster exhibition. In our effort for justice and equity in law we are also trying to coordinate with other women's groups, democratic rights groups and anti-communal forces, so as to make our campaign broad based.

