



THE UNIFORM CIVIL CODE

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OLD AND NEW CHALLENGES BEFORE THE WOMEN'S MOVEMENT

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Since a number of years, the women's movement has been protesting against discriminatory personal laws based on religion. Women's secondary status in society is, to a great extent determined by the hold of religion on family. Patriarchy operates through the institutions of religion and family, defining the woman as subservient, meant only to bear and rear children, contribute her labour to the household and maintain the family at all costs. Any deviation from this norm, whether by force, choice or accident makes a woman more vulnerable, and at the mercy of discriminatory personal laws, in areas of divorce, maintenance, succession, guardianship and adoption.

The unique and common feature of all personal laws is the secondary status they accord to women, across all communities. Property rights protect male interests and perpetuate the patriarchal family. Women are denied a fair share in inheritance, and have no access to matrimonial property. Getting a paltry amount as maintenance if fortunate, a separated woman is often left entirely on her own to put her life together. Years of tedious housework, and the bringing up of children, merit no recognition in society or in the eyes of law. Recognition of household labour is a basic right of women, which is outside the realm of any personal law, or any talk of a Uniform Civil Code (UCC) as of today. We strongly feel the need to go beyond the present terms of the debate, as spouted by political parties for electoral gains and by religious leaders in their bid to supposedly protect their religious identity, as women do not feature in any real way in this debate.

THE BEGINNINGS

In the context of a history of communal conflicts and partition of the country, it has not been possible to deal with the issue of the Uniform Civil Code in a dispassionate manner. State intervention has been governed mainly by considerations of electoral politics. The result is that the issue has been highly communalised, with minorities perceiving the UCC as a threat to their religious identities. At the same time, the government's reluctance to push for reform in personal laws or enact a UCC, has been seen by the majority Hindu community as an appeasement of minorities. This has shifted the focus from viewing personal laws as discriminatory to women to looking at the issue only from the point of view of national integration and minority identity. For this reason, the term "Uniform Civil Code" is misleading and needs to be replaced by the term "Egalitarian Civil Code", which more accurately represents our stand.

Despite these constraints, the consciousness about women's rights and women's position in family and discrimination that women face in their daily lives, made the debate inevitable. Though the debate sharpened with the Shah Banu controversy, the issue in fact dates back to the independence period, when it was officially taken up by a Sub-Committee on Fundamental Rights of the Constituent Assembly in 1947. Rajkumari Amrit Kaur, Hansa Mehta and others dissented with the Committee's decision to relegate the issue of UCC in the Directive Principles chapter. But these protests were not heard against the argument that minority rights and identity would be affected.


STATE RESPONSE

Relegating the issue to an unspecified date was the first compromise of the Indian State with communal and patriarchal forces. The attempt in 1948 to enact a code for Hindus, with some improvements, while at the same time not initiating similar efforts in other personal laws was again indicative of the narrow and communal approach to the whole issue. This contributed to strengthening the hold of religious orthodoxy/obscurantist forces on their respective communities in the name of freedom of religion.

Committees of the government have also urged for a common civil code, and reports and recommendations in this regard have appeared time and again. In 1974, the Report of the Committee on the Status of Women in India, recommended the enactment of a UCC. In 1985, The Supreme Court directed the State to enact a UCC for all communities. In 1988, the National Perspective Plan stated that a UCC for all citizens will be adopted by the year 2000 AD. This document goes on to say "...absence of a UCC, and the continuance of various personal laws which accept discrimination between men and women, violates the Fundamental Rights and Preamble of the Constitution, which promise to secure for all citizens equality of status".

Having taken this position at a rhetorical level in 1988, in 1990, the Status Paper on Review of Acts Administered by the Department of Women and Child Development stated that the government's stand in this connection had been to respect the personal laws of all communities, and unless the demand for amendment came from the community itself, the government would not consider taking steps in this direction.

While in many other areas, the women's movement has been able to pressurize the State and achieve changes in laws, the picture has been different in the case of reform of family laws. State response to the issue of enacting a common civil code or reforming personal laws has been clearly guided by the political and electoral considerations. For instance, in 1974 the decision to exclude Hindus marrying under the Special Marriages Act in matters of succession, and imposition of Hindu Succession Act, had the effect of protecting the patriarchal Hindu family. In 1986, the enactment of the Muslim Women's Act was a clear move to exclude Muslim


women from the purview of secular maintenance laws. In 1988, a progressive proposal to introduce "Irretrievable Breakdown of marriage" as a ground for divorce was sent to women's groups to ascertain their views, but the government decided to limit this provision only to Hindus. These instances reveal that women's rights have not been an issue for the State as far as changes in family laws are concerned. 

EMERGENCE OF WOMEN'S STRUGGLE

However, the struggle for an Egalitarian Civil Code continued mainly by women, who most urgently felt the need for such a code. In December 1971, at a Muslim Women's Conference in Pune, for the first time, Muslim women voiced their demand for a Uniform Civil Code. Four years later, the Report of the Committee on the Status of Women in India recommended that there be a common civil code. Joint Women's Programme, since 1978, has campaigned for changes in Christian Personal Law, and has convened several meetings involving bishops, clergy, lawyers and social activists, and in 1994, drafted laws on marriage, inheritance, adoption and maintenance, pertaining to Christian women. Simultaneously, JWP believes that all personal laws discriminate against women and therefore advocates the evolution of a Common Family Law.

Within the women's movement, the first organised discussion on the issue of Women, Religion and Family Laws took place in 1985 in Bombay, during the Second Conference of the Autonomous Women's Movement. In 1987, in the Asian Conference on Women, Religion and Personal Laws in Bombay, Saheli continued to put forth the argument that all personal laws subordinate the status of women, and that division of women into minorities and leaving them to fight their own battles within their own communities, would weaken our struggle. This position was based on our experience with Sikh communalists trying to undermine women's rights by asking for a separate Sikh Personal Law. 1989 witnessed a National Conference on the same subject, and in the same year the Forum Against Oppression of Women put forward a draft Egalitarian Civil Code with detailed provisions. At this juncture, there seemed to be a consensus within the women's movement about the need for a common civil code.

In addition to these collective efforts, Mary Roy, Lata Mittal Shehnaaz Sheikh, Shah Banu to mention just a few names, are individuals who have taken up struggles against discriminatory personal laws. Supreme Court judgements, including Kalyani's recent case regarding bigamy, have been occasion to raise the debate. Some progressive judgements have helped women individually, and as a community too. For instance, a decision of the Supreme Court in 1986, regarding the application of the Indian Succession Act to Christians of former Travencore and Cochin, was a landmark judgement upholding the legitimate rights of Christian women in Kerala.

Besides these, there have been other initiatives for common laws. The recommendations of National Law School and the Bar Council of India, can be seen as initiatives on the part of lawyers and legal experts. Secular groups like the Sampradayikta Virodhi Andolan, and the Peoples Movement for Secularism, have also put forward the need for common and egalitarian laws for women. 

THE PRESENT CONTEXT

The state has played the most prominent role in converting what is essentially an issue of equality for women into an issue of religious freedom and identity. The notoriety of the ruling Congress (I) which has paid lip service to “women’s welfare”, is best exposed in the Prime Minister’s recent reassurance to Muslim religious leaders, that under no circumstance would the government change the personal laws of any community. It has come in the wake of the BJP taking up the UCC as an election issue. Today, the women’s movement is pitted between two parties – the BJP which wants a UCC in the interest of national integration (read “Hindu domination”) and the Congress (I), which does not want to reform discriminatory personal laws in the interest of the same national integration (read “pandering to minorities”). There is no reason for us to believe that either of these parties has any commitment to “gender justice”.

It is important to bare the progressive garb of the BJP. Despite their rhetoric of women’s rights, their sole intention has been to extend the Hindu code to all communities, especially the Muslims. Their aspiration is to portray India as the land of the Hindus, and therefore, all those living in India be governed by Hindu Law. The BJP has taken every opportunity to whip up anti-Muslim hysteria, and argue that Muslims are a pampered minority which is allowed to enjoy the benefits of its personal laws such as marrying four wives, divorce at whim etc., a reaction which was clearly seen in the recent case in the Supreme Court, dealing with bigamy following change of religion to Islam.

Of late, in aggressively taking up the campaign for a UCC, the BJP has started speaking of “gender justice” , and also suggests taking up the best aspects of all personal laws to strive towards giving women a better deal. However, given the track record of the BJP, of supporting the anti-woman practice of Sati; glorifying the image of “Indian Womanhood” as one of subservience and martyrdom; being responsible for the brutal rape of women in Surat and other atrocities in the communal holocaust after the demolition of the Babri Masjid in Dec. 1992....this sudden sympathy for women is nothing but part of the BJP strategy to further marginalise minorities by imposing a Hindu Code on them. It is attempting to usurp our long standing demand for equal laws for women, as a way to win the votes of the majority community. The BJP’s intentions can be exposed by eliciting from the BJP, their stand on equal wages for women, recognition of women’s household labour, guardianship and custody of children, maintenance, and status of women in the family. The BJP stands for institutionalised

children, maintenance, and status of women in the family. The BJP stands for institutionalised antagonism to the rights of women, dalits and minorities.



DEVELOPMENTS AFFECTING THE WOMEN'S MOVEMENT

Following the destruction of the Babri Masjid and the communal massacre in its aftermath, a lot of rethinking is taking place on the UCC as related to the issues of religious and community identity. This sensitivity towards minority identity has also made certain sections of the women's movement from their earlier unequivocal demand for equal rights for women cutting across caste, class, religion and community. In protesting against the targeting of Muslims by Hindu fundamentalists, there was hesitation about whether or not this was the "right" time to demand a Uniform Civil Code. There is also an apprehension, among progressive groups, that "uniformity" would lead to a wiping out of diversity, to the detriment of minorities. We believe that we need to discuss the linkages between culture and religion, and not equate the two. While the women's movement has hesitated, the forces of Hindutva have gone ahead to make UCC their agenda.

The argument of majority vs minority has once again overshadowed the women's question. Giving primacy to minority religious identity, it is now advocated that reform in personal law should come from within the community, thus relegating the struggle for women's liberation to the back seat. Experience has shown that religion has limited potential for social reform. The need for UCC has partly arisen because religious laws have not changed with time. In view of the virtual absence of effort of religious leaders to reinterpret law, it is clear that religious leaders are not interested in furthering the development of religion, but only wish to maintain their hold over their communities. Throughout the world, the ascent of conservative and fundamentalist leadership in practically all religions, is further proof that at this juncture it is futile to hope for religious reform.

If women's lives are now being seen, even within the movement, as subsumed under their religious affiliation, does it then mean a changed understanding of the nature of women's subordination? It is another way of saying family life is a private matter – a privatization that feminists have opposed from the start. As a movement for women's liberation, we have to stand by our resolve to free women from the oppression located in religion as well as the family.

Within the movement, there have been various dimensions in the campaign for egalitarian family laws. Efforts have been geared towards a feminist and liberal interpretation of religious texts, and emphasising the pro woman aspects. Yet another move has been to assert the need for common laws on the basis of constitutional provisions. While Art. 14 ensures equality for all. Art. 25 guaranteeing freedom of religion has been interpreted to perpetuate the exploitation of women in the interests of protecting religious family laws. This inherent contradiction provides no space for women's rights as citizens of a democracy irrespective of their religious identity.



The struggle for women's rights goes beyond constitutional provisions or what religion a woman belongs to, and we in Saheli feel a strong need to redefine the framework of the debate, to prevent further communalization of this basic demand of the women's movement.

COMMUNALISM

A DIRECT CONFRONTATION

The demolition of the Babri Masjid jolted activists in all progressive groups. It forced us to take a stand, and condemn with one voice the Hindu fundamentalist upsurge. Along with other women's groups, anti communal and democratic rights groups, we distributed leaflets in colleges, street corners and crowded market places, faced the ire of pro-demolition people, sang songs of communal harmony, and staged peace marches in the riot hit areas. Our volunteers participated in riot relief and medical work in Seelampur, one of the worst affected areas of Delhi.


Following the BJP call to "clean" Delhi of "foreigners" i.e. Bangladeshi, which was nothing short of a move to terrorise Muslims, a joint front of progressive forces rose to the occasion. All-night vigils, peace marches, teams to respond in case of emergency, posters and leaflets, and a series of meetings with the residents of the affected area (Okhla) was a clear message to fundamentalists that resistance would emerge in the face of their bullying tactics.

CHANGING THE TERMS OF THE DEBATE

It is imperative to go beyond the majority-minority debate which is over used by political parties and only serves to undermine women's struggles. At the same time, we need to be less defensive and project the issue as one of women's rights in order to confront its communalization by the right wing parties.

The issues faced by women in real life have confronted us every time a woman in crisis has come to Saheli. She is constrained by personal laws. Women have limited decision-making power in the family, and do not have the right to reside in the marital home, the right to matrimonial property or when thrown out, the right to go back to their father's home. They are forced to leave their children behind or to bring them up on a pittance after a protracted battle for maintenance in the courts because where certain limited rights do exist, implementation is inadequate and is a herculean task. Women are trapped in abusive family situations, for simple lack of alternative shelter. Obtaining a divorce along with property settlements means years of battle in courts.

Family, the very bastion of patriarchy, is the foundation of discrimination, with the male as head of the household. Personal laws constitute the link between the private and the social sphere

of the household. Personal laws consolidate the link between the private and the social sphere, perpetuating patriarchy through lineage, guardianship, inheritance and property rights. Personal laws negate women's contribution, through their labour, to the well-being of the family. Disregarding women's labour by giving them marginal or no rights to property or maintenance, is tantamount to ignoring the basis of productivity in society. Private capital, in its dealings with wage labour pretends that a woman's labour can be devalued since she only earns pin money, and this logic is used to depress general wage levels. 

In today's context, structural adjustment and the subsequent 'liberalization' of the Indian economy has resulted in a vast pool of unemployed, contributing to further depressing the value of wage labour. Women are the worst affected, being pushed into low-skilled contract wage labour. We need to talk about access to inheritance and property rights in the context where the right to livelihood is itself being threatened and the vast majority has been rendered assetless. Hence we do need a redefinition of the concept of the family itself, from the bourgeois model to a model for the dispossessed. Working on all these fronts is a fitting challenge to rightist forces, which proclaim their concern for women in isolation from larger social processes.

OUR VISION

Equal rights for men and women in the family

Protection of the interests and rights of children

Equal rights to inheritance and matrimonial property

Equitable rights to custody and guardianship of children

Equal rights for adoption irrespective of their religion, caste, marital or parental status

Recognition of women's contribution to the house and family, and their right to an equitable share in its property and income

Promotion of an ideal of family based on equality, mutual affection and respect

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