



TOWARDS A UNIFORM CIVIL CODE



Towards a Uniform Civil Code



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When we gained national independence almost forty years back, it was an outcome of a long struggle against the British by our fellow citizens. Their aim was not only to gain freedom from the British but to establish a true democracy and in this struggle men women and youth joined hands. The leaders of our independence struggle, and now the leaders of 'free India prepared our Constitution which formed the basis of the rights and conduct of all citizens, Equality and freedom were two values which were enshrined in it and are each Indian's basic rights. It is a sad commentary on our political structures that these rights stayed where they were written - on paper, and the policies of independent India have been framed mostly in contradiction to these principles. As a consequence, in the 36 years of the life of our republic, inequalities, exploitation, oppression and concentration of economic and political power have increased manifold. We women have had to face increased exploitation and oppression, not only in society at large but also within our homes. While our government does not always openly support exploitation or subjugation of people, in our case it has openly discriminated against us through laws.

Discriminatory personal laws

Personal laws: In order to understand our lower status before law we need to see what laws govern our lives. We can broadly group these laws in two categories:

(a) which govern public life and

(b) which govern private or family life, While justice is not ensured even by laws that apply to the public sphere, they are at least applied in principle, uniformly to all people; The laws in this regard deal with criminal and business behaviour and other such matters. But when we come to the family sphere we find that different laws exist for different communities. The laws relating to family matters are based on interpretations of religion and any person may have more or less rights based on his/her religion. This is so because every religion has a different code of conduct and laws based on these have to be different. Therefore in the private sphere we have, Hindus governed by Hindu law, Parsees governed by Parsee law, Jews governed by Jewish law, Muslims governed by Muslim law and Christians governed by Christian law and in addition, customary practices are also recognised. These personal laws cover rights within marriage and family including the right to choose the place of the matrimonial home, the right of a married woman to work, the right to care for children during marriage, and when it breaks up, the right to separate or divorce, the right to maintenance, the right to adopt children and the right to property.



What do they imply and offer us. How are there similar.



The fact that we have different laws does not mean that these are totally dissimilar. They have a common thread running through them, that of giving sanctity to the subordinate status of women. This similarity should not come as a surprise because laws based on religion are based on an older, less developed society and reflect that society's dominant values of discrimination against women. If we put all personal laws together and look for principles which are similar, we find a family structure:

- (a) Where man is superior and he and he alone can be the head of the family.
- (b) The natural guardian of all children is the man.
- (c) Man, whether a brother or a father or a husband has superior rights over family property.
- d) It is easier for a man to divorce his wife.
- (e) Morality expected from the wife is higher than that expected from the husband.
- (f) The wife has no inalienable right to work after marriage.
- (g) Man chooses where to establish the matrimonial home and the interest of children and women are subordinate to his interest and they have to follow him.

Such a structure definitely does not view marriage as a partnership between a man and a woman, who protect the rights of their children. The family is not seen as a unit, based on mutual love and respect but as a vehicle for producing heirs to the male. These laws which confer rights only on men' in respect of children and property, ensure the superiority of men from generation to generation.

These laws violate the democratic rights of all citizens because they neither treat men and women as equal nor do they ensure equality to men and women of different religious communities. In addition, they also violate the principles of secularism, a value which is basic to the identity of our country.

Should we accept all this? NO. We definitely will not allow such discrimination against women. We will also not tolerate divisions among women, based on these personal laws.

Religion and its legitimate role in society:

It is true that the Constitution guarantees the right to religious worship. But this Constitution could come into being only as a consequence of our united struggle. We never wanted this unity to be undermined by our religious ic[Ⓢ]ities. We had not asked for continued exploitation based on religion. We wanted freedom and secularism. Therefore, our constitution reflects democratic

ON RELIGION. WE WANTED FREEDOM AND SECULARISM. THEREFORE, OUR CONSTITUTION REFLECTS DEMOCRATIC values i.e. equality among all citizens and secularism i.e. right to religious worship to all citizens of this multi religious society which is a necessity for goodwill. But this freedom to religious worship does not mean that religion is allowed to control the lives of people to an extent where democracy loses its meaning for women. In today's society, the right to religious worship means that there shall be no interference by the state when any citizen practices a religion of his/her choice. This right necessarily only governs the relationship between an individual and God, and definitely not the relationship between man and man, man and woman or woman and woman. When the state encourages religion to control people's life it is undermining all values that we stand for.

It is not that people at large do not realise that religion has no place in determining our code of conduct in today's society. Therefore, nobody objects to having a uniform criminal code. Nobody demands or wants a criminal to be punished in accordance with what is laid down in his/her religion. Nobody promotes chopping off of limbs. At least no one openly promotes untouchability. Every one understands that most religions are products of a less developed society, and to implement religious codes of conduct which might have been appropriate at some point of time would be to negate all growth and development and would be regressive.

Why is it that when it comes to family life people think differently? Why are women expected to live with a medieval concept of family? Why does religious leadership feel threatened when it comes to giving women equal partnership in marriage? Why do politicians find the question of change in personal laws a threat to the minority? Why is personal law alone related to the question of identity or loyalty to religion? Who are those who benefit from existing laws? Do they really serve any purpose beyond serving the vested interests of religion and politics and keeping values of male domination intact?

Inflation, unemployment, etc. Politicians display the same attitude towards the question of women's rights. The ruling party's attitude of appeasing fundamentalists on the question of personal law is part of their continuing relationship with each other, with the sole aim of staying in power. In fact, a genuine demand of women, i.e. for change in personal laws, has been turned into a communal issue.

Use of religion in this manner dates back to the pre-independence days. Until such time that the Indian people did not start demanding independence, the British were quite open to the question of social reform and effected it through legislation such as Sati abolition. But after the 1857 war of independence, the British understood that their interest lay in keeping people divided. They not only stopped attempts at social reform or in personal laws, but infact, started promoting communalism. Our progressive leaders on the other hand could very well see the role of personal laws in keeping people divided and the impact of continued domination of

women on the conditions in society, and as a result raised the demand for a uniform civil code. These included well known leaders like Bhagat Singh and Hansa Mehta. Women's organisations of the time also understood the importance of such a change and demanded uniform civil code.

By the time we gained independence, a lot had been done to strengthen our communal identities (as opposed to religious identities) and the Government of free India passively adopted all legal systems of the foreign rulers. The continued struggle by women, forced it to adopt a conciliatory attitude towards the women of the majority community. (Instead of secularism, the government thought along communal lines). But even the Hindu Code Bill had to be debated for 17 years before it was passed in a much mutilated and ineffectual form, due to the onslaught of patriarchal values. For Hindus, for example, the law on bigamy states, that only the first wife can take the husband to court for the offence of re-marrying. This, in the face of general weak position of women means nothing. After all, if bigamy was seen as a genuine offence then anyone should be able to take a man to the court. What is the use of such an ineffective law? At any rate one can say that at least lip service was paid to the majority community women. But not even a finger was lifted to amend the laws for the minority community women. After all, how could anything be done, they did not form a large enough vote bank! The attitude of the government with respect to women is diabolical in nature. It acts in a manner which negates all that it says to promote the cause of women. With one hand it forms a ministry for women and with the other it promotes retrogressive changes; even in the criminal procedure Code, Section 125, which stand to abridge the rights of a section of women. In a similar vein, its organ Doordarshan, promotes a Hindu man who has married 94 women and has the ambition to reach the count of 100, making a mockery of laws against bigamy. It further shows its patriarchal nature when the Telecommunications department issues a notice stating that women who don't adopt their husband's last name will not be entitled for maternity benefit - thus relegating women to the status of property which has to be known by the name of its owner.

Such games and intrigues which various forces play with our lives are not acceptable to us. We believe in equality and not within a community alone, but among men and women of all communities. We are not second rate citizens of this country and believe that our gaining equality in the family situation is not going to hurt anyone's fair interests irrespective of their caste, or religion or sex.

Our answer to those who do not want us to raise this demand:

Our demand for an Equal Family Law which should be the same for all communities has many opponents. This demand for a uniform civil code, which ensures equality for women, has been so maligned and so misunderstood, ⓘ : progressive people can not talk about it. When we want to raise this demand we are accused of doing many wrong things. We are told that we are

encouraging Hindu communalist forces which are also demanding a Uniform Civil Code! We are told that we are fanning communal tensions! That we don't care for the rights of minority communities! That we will cause this country to disintegrate! Today we want to respond to all these allegations and show how these allegations are based on an incomplete and confused understanding.

We agree that Hindu Communalists including Hindu Maha Sabha, Shiv Sena and Vishwa Hindu Parishad have raised the demand for a Uniform Civil Code in a big way. But unless we see their other demands and try to locate their role in history we can not understand what exactly they are asking for. Their slogans "We shall not allow Shariat Law to be practised" and against Pope Paul, are making it clear that their demand is merely for uniformity and not for equality. They would like all minorities to be governed by Hindu Law, otherwise they would have definitely asked for Abolition of Hindu Law, which along with the other personal laws being abolished will truly a Uniform Civil Code. Their demand is not for giving equality to women, it is for uniformity, the Hindu way and is aimed at tanning communalism with the objective of creating a Hindu Nation. If these people had actually wanted equality, would they not have opposed the government for showing the above mentioned TV programme, considering that they are quite ready to criticise the government at all other times? If they wanted equality, would they not have demanded the derecognition of Hindu Undivided Family or recognition of all joint families for the special property and tax benefits which the Hindus alone enjoy?

The leaders of minority communities, mainly from communal organisations which include Jamaat-e-Islami, and Jamaat Ulema-e-Hind are opposed to the demand for Uniform Civil Code. These communalists thrive on a fear psychosis generated in their communities. These are as false a representative of the people as any other organisation of the Hindu majority. If minority interests were to be truly guarded by these why don't they demand more jobs and more educational facilities for their communities? When communal fervor is at an ebb and they start losing hold on communities, their interest is served only by generating new fear psychoses among people.

But fundamentalists do not comprise the whole community. Do our critics feel that women of these communities who are suffering and are trying to raise their voice have no meaning or form no part of minority communities? Are their rights of no consequence? Can't they see the contradictions within the minority communities?

If minority communities feel unsafe in this country it is definitely not on account of us and our demand for a uniform and equal family law. They are insecure because of the whole history of communal politics and the role of our Government in protecting majority communalism. Our government has failed to secure just. ⁽ⁱ⁾ to riot affected people. It has never followed the

recommendations of the enquiry commissions. It has never punished any one responsible for the riots. Not only this, its police and para military forces have actually sided with the Hindus and got away with it. The third wing of the government, the Judiciary, is in no way less communal. Why do its judges single out just one religion and call its customs barbaric? Is child marriage among Hindus very progressive or human? Why does it admit a Writ Petition which asks for a ban on Koran on the grounds that it preached violence? Don't the Ramayana and the Mahabharata also preach violence?

We don't think that our keeping quiet will reduce communal tensions. We have to fight communalism more directly. After all, the game of communalism is political in nature, politicians who are not really interested in securing and guarding people's interests, continually find issues that can be exploited on communal lines. If it is not the question of Uniform Civil Code, they will move on to Ram Janma Bhoomi. Infact, the Muslim Communalists seem to be quite aware that they will not get the support of Muslim women for their position on personal law and have already moved on to the more fertile issue of Ram Janam Bhoomi. It is our present Congress (I) government who, for conciliatory reasons has drawn everyone's attention again to the question of personal law.

Infact, there is no bigger mistake, than to see the question of Personal law as affecting only the minority community. This is a question for all women. Lata Mittal has raised the question of Hindu inheritance rights, Mary Roy has done it for Christian Personal Law in the Supreme Court, and there are also three petitions of Muslim women challenging Muslim Personal Law. While it is true that our demand when realised, will affect the minorities, it is equally true that it will also affect the majority community. But the loss will not be the loss of the communities as a whole but of a minority which is holding on to fundamentalist and patriarchal values. Do our opponents mean to say that our rights have no meaning when compared to these retrograde values?

The opposition of minority leadership will not get generated as a reaction to women outside these communities also raising these demands. Opposition exists and arises from patriarchal values held dear by all such leaders, irrespective of who raises this demand.

Those who oppose us, also want the demand for change in personal law to be raised within specific communities. This is an argument always used to keep people divided. It encourages a culture which says 'do not bother about others', It also means that we should first put on a communal cloak and become Hindus, Sikhs, Muslims and Christians first and then raise our voices. This will not only weaken our movement but such an approach is definitely not conducive to national integrity. For national unity, we need true democracy and our joint struggle will be a step towards this. It is appropriate, here to reiterate that our leaders who raised this demand were aware of its democratic value.

Our Voices Need to be Heard:



Women are struggling for this change in two different ways: within their communities as well as by giving support to each other. We have to support both ways of functioning. We have given a few examples of women taking their demands to the law courts. These are not isolated instances as the spate of judgements following Shah Bano's case would illustrate.

Hundreds of women, of all communities under the banner of 'Talaq Peedith' went on a Padayatra from Pune to Nagpur despite being stoned at Ahmadnagar, to congratulate Shah Bano. Muslim women demonstrated in Aurangabad. With the government's introduction, of a bill to exclude Muslim women from Cr. P. C. Section 125, all women's organisations, whose membership includes women from different communities, have started a protest. The move in Goa, away from Uniform Civil Code to Personal law has been opposed strongly by progressive forces and Goan women. The Indian Council of Christian Women has also asked for the introduction of a Uniform Civil Code.

When women are raising their voices through out the country, it is only right to join hands and be more effective.

Our Demands:

While protesting against the fundamentalist forces, particularly the Hindu Fundamentalists who are masquerading their cause of 'Hindu Rashtra' and the attitude of the government in this regard we demand : that an equal and uniform family law be enacted which promotes a family based on mutual love and respect as opposed to that based on property and succession.

- (a) Equal rights for men and women within the family.
- (b) Protection of interests and rights of all children.
- (c) Promotion of an ideal of family based not on property but on affection, care and respect.
- (d) Recognition of women's contribution to the sustenance of family and therefore an equitable share in its property and income.
- (e) Equitable rights to custody and guardianship of children.
- (f) Equal rights for adoption for all men and women, irrespective of their religion caste and their marital or parental status.
- (g) Equal rights to property.
- (h) Each marriage to be governed by these principles and hence registration of each marriage.

(i) Mandatory requirements on part of the priests to register all marriages.



In addition, as a step to fight growing communalism we demand derecognition of Hindu Undivided Family under law, because it promotes majority interests and is a cause for real tensions among communities.

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