

KAFILA – COLLECTIVE EXPLORATIONS SINCE 2006

EVERYDAY LIFE, FEMINISM, LAW, RIGHT WATCH

Uniform Civil Code – Once again, where is gender justice?

15/07/2016 | NIVEDITA MENON | 9 COMMENTS

This article appeared in The Hindu today

For nearly eight decades, the women's movement has discussed and debated the desirability and feasibility of a Uniform Civil Code (UCC), and has ended up posing a simple question – what is the value of uniformity? Is it for the “integrity of the nation” that uniformity in laws is required, as some judicial pronouncements have suggested? If so, who exactly is the beneficiary? Which sections of people benefit from “integrity of the nation”, that abstract entity which is not exactly at the top of your mind as your husband throws you out on the street?

Or are uniform laws meant to ensure justice for women in marriage and inheritance?

In that case, a UCC would simply put together the best gender just practices from all Personal Laws. So yes, polygamy and arbitrary divorce would be outlawed (a feature derived from Hindu Personal Law). But conversely, as feminist legal activist Flavia Agnes has often pointed out, a UCC would require the abolition of the Hindu Undivided Family, a legal institution that gives tax benefits only to Hindus, and all citizens of India would have to be governed by the largely gender-just Indian Succession Act, 1925, currently applicable only to Christians and Parsis.

Muslim Personal Law is already modern in this sense, since it has since the 1930s, enshrined individual rights to property, unlike Hindu law, in which the family's natural condition is assumed to be “joint”. In the decades of the 1930s and 1940s, contrary to later discourses about Muslim law being backward, it was Hindu laws that were considered “backward” and needing to be brought into the modern world of individual property rights.

Again, since the Muslim marriage as contract protects women better in case of divorce than the Hindu marriage as sacrament, all marriages would have to be civil contracts. *Mehr*, in Muslim personal law, paid by the husband's family to the wife upon marriage, is the exclusive property of the wife and it is hers upon divorce, offering her a protection Hindu women do not have. So, the Uniform Civil Code would make the practice of *mehr* compulsory for all while abolishing dowry.

The patent absurdity of these suggestions arises, not from the ideas themselves, but from the fact, recognized by everybody, that the talk of a “Uniform Civil Code” has nothing at all to do with gender justice. It has entirely to do with a Hindu nationalist agenda, and is right up there with the beef ban and the temple in Ayodhya. A UCC is meant to discipline Muslims, teach them (if they didn't know it already) that they are second class citizens, and that they live at the mercy of “the national race” (the Hindus), as Golwalkar decreed.

So let us pose the question differently – who suffers in the *absence* of a UCC? Is it Muslim women, victims of polygamy and triple talaq, as Hindutvavadi wisdom has it? But for decades, feminist legal practice has successfully used both the Protection of Women from Domestic Violence Act (2005) that is available to all Indian citizens regardless of religious identity; as well as the Muslim Women Protection of Rights on Divorce Act (1986), to deal with polygamy and triple talaq, and to obtain maintenance, child custody and rights to matrimonial home, for countless Muslim women. In addition, feminist legal activists have used the landmark ruling *Shamim Ara v State of UP* (2002) to buttress their claim that arbitrary triple talaq is invalid.

Moreover, polygamy is not exclusive to Muslims. Hindu men are polygamous too, except that because polygamy is legally banned in Hindu law, subsequent wives have no legal standing and no protection under the law. Under Sharia law, on the contrary, subsequent wives have rights and the husband has obligations towards them. If gender justice is the value we espouse, rather than monogamy per se, we would be thinking about how to protect “wives” in the patriarchal institution of marriage. “Wives” are produced through the institution of compulsory heterosexual marriage, the basis of which is the sexual division of labour. This institution is sustained by the productive and reproductive labour of women, and almost all women are exclusively trained to be wives alone.

Thus, when a marriage fails to fulfill its patriarchal promise of security in return for that labour, all that most women are left with is the capacity for unskilled labour. Or they remain trapped in marriage with children to provide for, while men marry again, legally or otherwise, producing still more dependent, exploited wives and children for whom they take no responsibility. If gender justice is the point of legal reforms, the centrality and power of the compulsory heterosexual, patriarchal marriage, and the damage it can do to women, is what must be mitigated. This would mean recognizing the reality of multiple “wives” as a common practice across communities, and the protection of the rights of all women in such relationships.

In this sense, recent Supreme Court rulings (<http://daily.bhaskar.com/news/DEL-supreme-court-gives-landmark-judgment-giving-second-wife-right-to-maintenance-cl-4409376-PHO.html>) that have granted rights to second wives in Hindu marriages, dilute the legal standing of monogamy for Hindus, but empower women.

A survey conducted by Bharatiya Muslim Mahila Andolan, a significant voice in the debate, found that more than 90 percent of Muslim women in India want a ban on “triple talaq” and polygamy in Muslim Personal Law. That is, the demand is made within the framework of codifying Muslim Personal Law, not in favour of a UCC, partly because there is no clarity on what a uniform code would look like, but also because the demand comes from clearly Hindutvavaadi quarters which have shown that both women and minorities are expendable for them.

The only example of a uniform code in India is the Portuguese Civil Procedure Code (1939) of Goa, which is neither ‘uniform’ nor gender-just. Marriage laws differ for Catholics and people of other faiths, and if a marriage is solemnized in church, then Church law applies, permitting, for example, arbitrary annulment at the behest of one of the parties. The “customs and usages” of the Hindus of Goa are recognized, including “limited” polygamy for Hindus.

The positive aspect of Goa’s Civil Code is the Community Property Law, which guarantees each spouse 50% of all assets owned and due to be inherited at the time of marriage. However, this provision can be sidestepped in practice, given the power relations in a marriage, and studies show that it has not made any impact on the incidence of domestic violence.

Clearly, if gender justice is not prioritized, both uniformity as well as its dilution can reinforce patriarchy and majoritarianism.

The woman at the centre of this recent round of debate on the UCC is Shayara Bano, who received talaq by post. Her lawyer, instead of using any of the three recourses available, discussed above – the Protection of Women from Domestic Violence Act (2005), the Muslim Women Protection of Rights on Divorce Act (1986), or the citation of the judgement *Shamim Ara v State of UP* (2002) – decided to file a Public Interest Litigation in the Supreme Court challenging triple talaq on the grounds of violation of Fundamental Rights. Shayara Bano is now in the media spotlight, spiritedly criticizing patriarchy in the Muslim community.

Revealingly, a recent interview with her in a national newspaper concluded with a startling question – “What about the ‘Bharat Mata ki jai’ slogan controversy?” Shayara replies, “I feel all Muslims should say Bharat Maa ki jai.”

Does the question seem irrelevant in the context of Shayara Bano’s fight for personal justice? What does compulsory chanting of “Bharat Mata ki jai” have to do with a woman fighting patriarchy?

But the question does not seem irrelevant at all; it seems to be at the heart of the interview. This alone should alert us to what the demand for a UCC is actually about.

◀ [SHAMIM ARA](#) ◀ [SHAYARA BANO](#) ◀ [UNIFORM CIVIL CODE](#)

9 thoughts on “Uniform Civil Code – Once again, where is gender justice?”

1. **sreejith** says:

[15/07/2016 AT 11:51 AM](#)

Have to disagree with your article

1. you have summarized what is wrong with polygamy

“Thus, when a marriage fails to fulfil its patriarchal promise of security in return for that labour, all that most women are left with is the capacity for unskilled labour. Or they remain trapped in marriage with children to provide for, while men marry again, legally or otherwise, producing still more dependent, exploited wives and children for whom they take no responsibility.”

2. You have also said what is wrong with triple talaq. The very reason that Sharaya Bano and their lawyer has to use their wits to prove to court that they have been wronged by triple talaq is the reason why the law should directly reject the practice.

3. Again, when we are talking about hindu succession acts, i am unable to see how it can be kept out of a uniform civil law. Already amendments have happened and further requirements have to be part of a uniform bill. How will anyone successfully argue against this

4. We already have a stick we use to beat muslims with – claiming that the law has special provisions for minority religions.

So for 1,2, 3 and 4 the uniform civil code is desirable. However you argue against it.

From the article the only beef with the issue is the political intent behind this and the existing law not being upheld effectively enough. However neither is a case against having the uniform civil code.

2. **K SHESHU BABU** says:

[15/07/2016 AT 4:08 PM](#)

More than Muslim personal laws, Hindu laws need to be scrapped to achieve ‘ uniform’ civil code. Hindu laws are more archaic, anti- women and male chauvinistic than Muslim laws. The inheritance of property or protection to women in cases of polygamy are more liberal in muslim laws. Therefore, Hindu laws , especially manu code, should be abolished. The propaganda that Muslims do not subscribe to uniform civil code is misleading. In fact, the Hindu laws should be deleted and some Muslim personals should be incorporated to make the laws ‘ uniform’ ...

3. **shaturya** says:

[15/07/2016 AT 8:17 PM](#)

It is surprising to note that the author who is generally very rational feminist, has opposed UCC on the grounds that it appears to have been backed by ‘ Hindutva ‘ forces. In the process, she has defended features of religious personal laws (except Hindu Law) as they being more gender-just than Hindu laws. She appears to be condoning polygamy in Muslims as their personal law protects subsequent wives.

This is utterly surprising. Polygamy by men by its very nature is a huge injustice to women. Just because subsequent wives are given some rights doesn’t make acceptance of polygamy right.

I agree that any Hindu Laws should also not be their on the statute, and for that matter all laws should be religion neutral. As I have always maintained that secular constitution is a necessity and not a matter of choice for a civil nation.

By showing diffidence towards making religion neutral laws, our polity has shown that it is not wholly secular, and sadly, this has given the excuse to rightist forces of all hues and colours to assert themselves in the name that power-to-be are appeasing 'them'. It has been the pattern worldwide wherever rightist forces have ascended to power.

UCC, if implemented, will be one step forward for strengthening secular constitution. And accordingly, we must press forward for all laws to be religion neutral. Opposing UCC will dilute our secular credentials and weaken our stand on secular issues including gender justice

4. **Jamila Koshy** says:

15/07/2016 AT 9:31 PM

What an interesting article! Thank you. I have often found myself opposing the UCC, with no clear idea why I did so – but I guess the reason was that it seemed unbelievable to me that the people pushing it were actually at all interested in gender justice (their invariable justification for a UCC). And in fact, the author is right – if we are to construct a UCC, it requires minds and attitudes quite at variance to that which the bulk of its proponents currently display, and an ability to think out-of-the-box, and rationally, objectively and yet sensitively deal with the issues pertaining to each community, finding common ground, and including best practises from all. Seems impossible now – but it will have to be done, someday, when the passions around the idea settle a bit.

5. **pbk** says:

16/07/2016 AT 9:16 PM

What the Hindu Code Bill did was to establish that a secular authority could overrule shastric injunctions in at least some ways. It was a step in the right direction. The Left actually opposes any such subordination of other personal laws to a secular authority. By discussing too many details, the author has actually diverted attention from this core issue. UCC is not a single button to press, it will happen over a period of time.

By opposing even the first step, the author actually makes secularism a Hindutva project.

6. **Pritam Singh** says:

17/07/2016 AT 12:21 AM

Completely agree that it is Hindutva agenda couched in apparently feminist garb

7. **Kavita chauhan** says:

17/07/2016 AT 5:08 PM

No uniformity unless we ensure equality at all bottom. How can we introduce uniformity where cultural paluarity in India.... This is the unique feature of India...by introducing uniformity would not we taking steps towards the destruction of this uniqueness salient feature of our nation. We can expect homogeneity from all caste and gender.... Efforts are nice but need to have bear patience .till the time when all become machines and run through similar commands. 🙄

8. **Sayan** says:

20/07/2016 AT 1:05 PM

This article is a perfect example of a "liberal's dilemma".

I completely agree with the author that the right wing in India uses the bogey of Uniform Civil Code to "discipline Muslims". I also agree that there are plenty of regressive provisions in the Hindu law. But does this mean that one has to reflexively oppose UCC and perform all sorts of mental gymnastics to justify this stance?

Consider the case of Malala Yousafzai in Pakistan. The western world has treated her like a hero, partly because her cause highlights the barbarity of the Talibans and this narrative fits nicely into the imperialist agenda of the US. But does this mean that someone opposed to US imperialism should also instinctively oppose what Malala stands for?

To come back to the issue of UCC, if uniformity is bad in itself, then why do we have a common criminal code? Should the activists and the feminist groups now start demanding separate criminal codes for Hindus and Muslims?

On monogamy, the author wants the law to “recognize the issue of multiple wives as a common practice”. But the same is true for child labor. Should we also demand that the law “recognizes the issue of child labor as a common practice”? Why is it difficult to demand that (1) the law does not recognize polygamy. and at the same time (2) offers protection to the victims of polygamy (in particular, Hindu women)?

UCC is only one such issue. The issue of ethnic cleansing of the Kashmiri Pandits has also been hijacked the Hindutva brigade, and the liberals in this country are partly to blame for it.

On the one hand, the Muslim community in India face systematic discrimination from the state and the society. On the other hand, there are some religious fundamentalist streak within the Muslim community itself (just like any other community). How does one stand up against the discrimination faced by the Muslims without endorsing the religious fundamentalism within the Muslim community? I myself don't have a simple answer to this question.

1. **shaturya** says:

22/07/2016 AT 12:44 PM

You have raised an interesting issue of difficulty of standing up against discrimination faced by Muslims without endorsing the religious fundamentalism with Muslims.

This is the dilemma faced by our 'liberals' and 'secularists' .

The issue is simple in that fundamentalism per se , whether Muslim or Hindu , should be opposed. The state should be religion neutral. (This philosophy of being secular applies to any, repeat any, birth ascribed difference among populace , but on that later)

The problem arose because we muddied the waters by defining secularism as accommodating minorities , hand holding them , offering sops etc. on one high sounding pretext or other like peace, harmony , social justice . This was perceived by majority as 'appeasement' and as such was exploited by rightists.

While attacking rightists (in my views , far leftists or far leftists are same) , the liberals should take care of the issues at the core which need to be supported. Just attacking rightists will weaken the liberals' position.