

National

Whither Gender Justice?

The proposed Uniform Civil Code is part of a patriarchal Hindu nationalist agenda to give community land to corporates in the name of women's rights

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The idea of a Uniform Civil Code (UCC) goes back to the 1930s. Feminist scholars and activists have worked and written on the issue ever since. And yet the mainstream debates continue as if these never existed. So what option do we have but to restate our complex arguments again and again?

The UCC invokes the idea of national integrity as against the prevailing judicial regime of separate religious personal laws. These laws, which are about worldly matters such as property, were concretised during the colonial rule and hardly embody pure

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For over eight decades then, the women's movement has debated the desirability and feasibility of a UCC replacing various personal laws applicable to the country's many religious communities. All these laws have discriminated against women in relation to marriage, divorce, property inheritance, and the custody of children. The question is: what is the value of uniformity? If uniformity in laws is desirable for the "integrity of the nation", as some judicial pronouncements have suggested, how does this integrity benefit the woman at the receiving end of domestic abuse?



Or are uniform laws meant to ensure justice for women in marriage and inheritance? If so, what would a UCC look like? If it intends to simply put together the best gender-just practices from all the personal laws, as is sometimes proclaimed by Hindu nationalist leaders, let us consider some possibilities.

First, just as polygamy and arbitrary divorce as permitted by the Muslim Personal Law need to be outlawed—as they are in the Hindu Personal Law—conversely, the Hindu Undivided Family should be abolished. This is a legal institution that gives tax benefits only to Hindus, but all citizens of India should be governed by the largely gender-just Indian Succession Act, 1925, currently applicable only to Christians and Parsis. The Muslim Personal Law is already modern in this sense, and since the 1930s, it enshrined individual rights to property—unlike the Hindu law, in which the family's natural condition is assumed to be "joint".

Second, the performance of a Muslim marriage is a legally-binding contract which protects women better in case of divorce than does the Hindu marriage, which is a sacrament. Therefore, all marriages should be civil contracts. *Mehr*, in the Muslim Personal Law—paid by the husband's family to the wife upon marriage—is the exclusive property of the wife and is hers upon divorce, offering her a protection that Hindu women do not have. So, any UCC would need to make the practice of *mehr* compulsory for all while abolishing dowry.

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The patent impossibility of even making such suggestions, leave alone enacting them, arises from the fact that a UCC has nothing to do with gender justice. It is entirely part of a Hindu nationalist agenda and is one of three long-standing campaign promises of the BJP—the other two being the construction of a Ram Mandir at the site where the Babri Masjid once stood and the revocation of Article 370 which granted special status to Jammu and Kashmir. A UCC is part of this arsenal.

So let us pose the question differently: who suffers in the absence of a uniform civil code? In the current phase of BJP rule (since 2014), gender justice is explicitly invoked by Hindu nationalists while discussing a UCC, but only for Muslim women who have long been victims of polygamy and triple *talaq*. But for decades feminist legal practice has, on behalf of countless Muslim women, successfully used both the Protection of Women from Domestic Violence Act, 2005—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 their matrimonial home. In addition, feminist legal activists have used the landmark *Shamim Ara vs State of UP* (2002) ruling to buttress their claim that arbitrary triple *talaq* is invalid.

The Indian Supreme Court finally did outlaw triple *talaq* in 2019, but this came out of a massive campaign by a grassroots Muslim women's organisation, the Bharatiya Muslim Mahila Andolan (BMMA). Formed in 2007 and with over 100,000 women as members, the BMMA has actively campaigned for legal reforms in the Muslim Personal Law and was one of the five petitioners in the triple *talaq* case, besides filing petitions against polygamy. The BMMA has also been pushing for the codification of the Muslim Personal Law based on the Constitution and a feminist interpretation of the Koran (not for a UCC). The Supreme Court judgment ending triple *talaq* was thus not a gift of the Modi-led BJP government to Muslim women. The additional Hindu supremacist move that followed was the legislation criminalising Muslim men who give triple *talaq*. This has taken Muslim marriage and divorce into the domain of criminal law—even as marital rape remains un-criminalised in the country. The paradox has been noted by feminist lawyers—it is a crime for Muslim men to unilaterally declare divorce, but it is not a crime for a man of any community to unilaterally force his wife to have sex. This says everything we need to know, both about the institution of heterosexual marriage and Hindu Rashtra.

If gender justice is the point of legal reforms, the centrality and power of marriage, and the damage it can do to women, must be mitigated.

Moreover, polygamy is not exclusive to Muslims. Hindu men are polygamous too, except that because polygamy is legally banned in Hindu law, wives subsequent to the first wife have no legal standing and no protection under the law. Under Sharia law, by contrast, subsequent wives have rights and husbands have 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, which is sustained by the unpaid productive and reproductive labour of women, and almost all women are exclusively trained only to be wives. 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 and exploited wives and children for whom they need take no responsibility. If gender justice is the point of legal reforms, the centrality and power of marriage, and the damage it can do to women, is what must be mitigated. That would mean recognising the reality of multiple “wives” as a common practice across communities, and the protection of the rights of all women in such relationships.

At the same time, since marriage is the only institution that legally permits people to have children together, pass on property, take medical decisions and perform the other functions that a “family” is expected to provide, the exclusion of queer people from being able to fulfil these basic human needs must be redressed. A just UCC would have to restructure the assumed heterosexual basis of marriage as an institution. But of course neither justice nor gender parity is the real objective of a UCC, as we have seen.

In 2016, the Law Commission of India was asked by the government to decide how to form a UCC in the face of multiple personal laws, but the report it submitted in 2018 stated that a unified nation did not necessarily need “uniformity” and that a UCC is

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The current position of the BJP, now that triple *talaq* has been banned and criminalised, is that there need not be a UCC at the all-India level; the states can set up panels to establish uniform codes. However, recognising the resistance from tribal communities (which are to be assimilated as “Hindu”), RSS leaders said at the inauguration of one such panel in Uttarakhand in 2022, that there can be no UCC without absolute consensus and that it is better to begin by removing unfair practices.

Now that one objective of the UCC agenda has been achieved (further criminalisation of Muslim men), the likely objective of getting states to follow up on it could be to dilute collective land rights (as being unfair to individual women). Community land ownership—through customary laws that govern resource-rich tribal lands—is a bulwark against the quick acquisition of land by governments to hand over to corporates.

When modern land laws enter such societies through the process of codification, it is found that the result is class formation and a stronger patriarchal ethos. The intervention of individual ownership-based laws first turn land without an individual title into state property. This prepares the ground to transfer power from the community to a few elite men who take control of all decision-making and interpret the customary law to their own benefit, thus deepening and entrenching gender and class inequality.

Returning to religious personal laws that govern agricultural land, the 2005 amendment to the Hindu Succession Act giving women coparcenary rights—which is hailed as a bold step for women’s land rights—is, in fact, part of a larger neo-liberal agenda promoted in countries of the global South by international agencies. All evidence from India, Africa and Latin America goes to show that the creation of individual rights to land is a strategy that achieves nothing more than opening up land for capitalist transformation, often via the State.

Thus, no discussion on the desirability of a UCC today is complete if it remains restricted to national integrity or women’s rights. The State, the traditional religious community, and the customary community are all equally problematic from the point of view of equitable access to land for women as well as other excluded castes and groups. Feminist rejection of a UCC has to go along with a challenge to all three simultaneously—State-led capitalist enclosures of commons; private individual land ownership; and, gender and caste-based forms of exclusion from land use.

(Views expressed are personal)

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