

THE LAW ON TRIAL

THE DEBATE ON THE UNIFORM CIVIL CODE



GEETANJALI GANGOLI

THE LAW ON TRIAL

The Debate on the Uniform Civil Code

Geetanjali Gangoli



I wish to thank the women of The Forum against Oppression of Women for their comments. My parents continue to support me as they have done for all my ventures. Thanks also to Nandita Gandhi for editing and Nandita Shah for designing the booklet.

1996

Reprint Jan 1999

(For Private Circulation Only)

Akshara: A Women's Resource Centre

501, Neelambari, Road no. 86, Opp. Portuguese Church

Dader West, Bombay 400 028. Tel. 4309676

PREFACE

The debate on the Uniform Civil Code/Personal Laws is fast moving towards an impasse. On the one side are those who demand an UCC based on rational and Constitutional arguments and on the other are the religious sentiments of the minorities and fears of communal riots. Most of the arguments are echoes from the early 1950s debate but times have changed and the issue has become simultaneously complex, polarised and emotional. It has also become communalised as never before with an aggressive rightist/ Hindutva force strengthening the anti Muslim bias in the country. The ruling Congress I government continues its policy of appeasing the Muslim clergy and political leaders.

But where are the voices of those whose lives are affected most by these laws or for whom the UCC is meant? Where are the voices and demands of women? Since 1937 when the All India Women's Conference first raised the need for a UCC, women have become more conscious of their individual rights but also trapped in their religious/community identity. Perhaps we need to go back to women from different communities, listen to their voices and experiences and be sensitive to their multiple identities in order to formulate the basis for our strategies.

This booklet hopes to succinctly summarise the UCC/PL debate from its historical origins to the present variety of political positions, with a specific emphasis on women's experiences of law. It is hoped that we can continue and disseminate this debate amongst women especially women at the grassroots.

The first section briefly touches on history and the arguments raised by the early Parliamentarians which are still being echoed today in spite of the changed political and communal situation. How important are the arguments of national unity and patriotism to women who are struggling for a better life?

Unlike most 'personal' issues concerning women, personal laws have always been and continue to be politically motivated. The second section records the experiences and voices of women. They are vital not only because they are seldom heard but because they show that woman's experiences are specific to their communities as well as cut across them.

The third section goes into the different theoretical positions and strategies put forward by women's groups. What are the foundations on which they are built and why they are being held. The conclusion appeals for a shift in the UCC/PL debate from the present paralysis to the contents, which will make laws better and more implementable for women.

Nandita Gandhi

SECTION I

THE BACKGROUND OF THE U.C.C. DEBATE

Personal or family laws, as they exist in Indian law, govern the areas of marriage, divorce, maintenance, guardianship, custody and adoption. They are based on religion and stand apart as the only laws in the Constitution which are different for different communities. Other civil and all criminal laws are the same for all citizens of India.

This is one of the legacies of British colonialism. The process of codification of personal law for the different communities began in the early 19th Century. The British consulted several pundits and maulavis. Customary laws as practiced by the diverse castes and tribal population were not taken into account. The codification of Hindu Law included laws like the Suttee Regulation Act, 1829 and The Widow Re-Marriage Act, 1856. These laws were brought about due to the efforts of Hindu social reformers like Raja Ram Mohan Roy and Ishwarchandra Vidyasagar.

The revolt of 1857 against the British disrupted this process. The British then changed their policy and refused to legislate on matters, personal and religious, unless the community leaders specifically asked for laws. However, for their own objectives passed the Indian Divorce Act in 1869. One of the most vocal initiatives came from the Muslim leaders who in the 1930s demanded the codification of their laws. This led to the passing of The Shariat Act, 1937.

Muslim reformers viewed The Shariat Laws as superior to customary laws. "The bill aims at securing uniformity of law among Muslims in all their social and personal relations. By doing so, it also recognizes and does justice to the claims of women for inheriting family property who, under customary law, are debarred from succeeding to the same. If the Shariat Act is applied, they will

automatically be entitled to inherit the same." [M H M Abdullah quoted in Zoya Hasan,1941]

G.V. Deshmukh was full of praise for the Shariat Laws, "The question is one that affects 40 millions of Indian women, my sisters and therefore, all these outside considerations of either property or politics are absolutely irrelevant and verge on the vulgar ... customs have crystallized into law and the chilly hands of custom has barred all progress of society .. I say this example will be followed by other Societies..." [ibid] At this historical juncture, the Muslim community saw itself as progressive and pro-women in ushering in step which would inspire other communities and countries.

From the period of the Nationalist Struggle to after Independence, there have been no reforms in Personal Laws of the different communities. It was not unknown that many of these laws were inappropriate and unjust to women. Along with the demand for freedom, women activists of the All India Women's Conference were the first to demand a Uniform Civil Code in 1937 which would give equality and justice to all women.

It was seriously taken up for debate in the Constituent Assembly but the 1947 Partition, communal riots and the irreconcilable positions taken, persuaded the framers of the Constitution to convert the proposal for a UCC into a Directive Principle or a directive which is not legally, binding on the State. It stands as Article 44 of the Constitution: "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory in India."

Dr. Ambedkar, one of the proponents of the UCC had said that India already had already achieved uniformity of law over a vast area and the only ones which were different were those governing marriage, succession etc. This diversity violated the principles of Fundamental Rights which gave equal rights to all citizens. K M Munshi had emphasised that there was nothing sacrosanct about Personal Laws because they concerned secular activities like inheritance and succession.

“.. One of the factors that has kept India back from advancing to nationhood has been the existence of Personal Laws based on religion which keeps the nation divided into watertight compartments.” [ibid].

The Muslim community which had voiced its fears was seen as obscurantist and irrational. They were urged to give up, " ... their insular attitude to life and enter into the mainstream." [Amrit Kaur quoted in B Shiva Rao, 1967]

The fears of the Muslims regarding the UCC were based on two planks - one that their laws were divinely ordained and thus they could not be governed by any other laws in their personal lives; secondly they feared that the new laws would be dominated by Hindu ethics. In an article in Madira dated 9th March 1950, Maulana Hamidul Ansari Gazi of the Jamiat-ul-Ulema warned the Muslims that the Hindus were trying to base their Constitution on the laws of Manu; that they were systematically developing hatred against the Muslims.

In 1955, following the passing of Special Marriages Act, 1954 the Muslim League and the Jamiat-ul-Ulema passed a resolution expressing concern about the refusal of the government to have Muslims exempted from the SMA and warned Muslims that this act was the beginning of a move to introduce a UCC. The resolution went on to say: "This meeting reiterates that the Personal [Shariat] law of Muslims is a vital part of their religion and the substitution of it by any other law is a direct negation of the religious freedom guaranteed to them by the Constitution."

If the founding fathers used the Constitution and Fundamental Rights as their main argument for a UCC, their opponents used the same ones to defend their rights to Personal Laws. Similarly the arguments of nationalism and national integration were answered quite adequately by different people.

An emotive appeal was made by a member of a minority community, i.e. a Sikh, on this issue, "...the Honorable members should place themselves in the position of the minorities and then try to appreciate their fears. Sir, I might be accused of

communalism when I sound this discordant note. But I hold that this nationalism is an argument for vested interests. Even the aggressiveness of the majority would pass off as nationalism, while the helplessness of the minority might be dubbed as communalism. [Sri Hukum Singh quoted in Zoya Hasan,1994].

After the debate had reached a stalemate, the founding fathers chose to attempt the formulation of a model Hindu Code Bill. But there was a united and vehement opposition to it. Some Congressmen like Sardar Patel supported polygamy. Members of the Hindu Mahasabha argued that if monogamy was enforced only on Hindus, it would mean "racial suicide" since it would lead to Muslims multiplying out of all proportions. Others like Shyama Prasad Mookerjee, N C Chatterjee felt that the Bill threatened the basis of Hinduism. The latter also felt that Nehru's secularism would turn India into "a godless state". They held that instead of the Hindu Code Bill which was a communal measure, a Uniform Civil Code be formulated.

Finally, Hindu conservatism watered down the Bill so much that Dr. B. R. Ambedkar resigned from the constituent assembly in disgust.

"I got the impression that the Prime Minister, although sincere, has not the earnestness and determination required to get the Hindu Code Bill through. The Bill was the greatest social reform measure ever undertaken by the legislature in this country. To leave untouched the inequality between class and class, between sex and sex, and to go on passing legislation relating to economic problems is to make a farce of our Constitution and so build a palace on a dung-heap." [London Times, 1-10-1951].

Today the debate still continues, and we hear echoes of the same arguments and voices putting forward the same fears. But it is no longer only a debate restricted to the members of the Parliament or between political leaders. Today the issue of the UCC is being debated in many other fora, within political groups and parties and on the streets. And unfortunately it is, more often than not, tinged with communal prejudice, fear and suspicion.

This is what two Supreme Court judges had to say:

“The Personal Laws of Hindus... have a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus, along with the Sikhs, the Buddhists and the Jains have forsaken their sentiments in the course of national unity and integration, but some communities have not, though the Constitution enjoins the establishment of a 'common civil code' for the whole of India.” [Justices Kuldeep Singh and R.M. Sahai, 1995 in the Sarla Mugdal case]

If we look behind the progressive language used in some of the judicial judgments e.g. in the Shah Bano case, we find a not so subtle suggestion that Muslims routinely desert their wives. "Does the Muslim Personal Law impose no obligation upon the husband to provide for the maintenance of his divorced wife? Undoubtedly, the Muslim husband enjoys the privileges of being able to discard his wife whenever he chooses to do so, for reasons good, bad or indifferent. Indeed, for no reason at all... It is also a matter of regret that Article 44 of our constitution has remained a dead letter... There is no evidence of any official activity for framing a common civil code for the country... A common code will help the cause of national integration by removing desperate loyalties to laws which have conflicting ideologies... It is the state which is charged with the duty of securing a UCC..." [C.J. Chandrachud et al, 1985]

Unfortunately, 'the good intentions' of the judiciary notwithstanding such judgments seem to have exacerbated communal tensions rather than create an atmosphere for better laws and justice. Why is it that the Judiciary has raised the demand for an UCC only in the context of cases dealing with Muslim Personal Law? asks Women's Research and Action Group during their workshop on Muslim Personal Laws in Mumbai in 1995. Whereas in cases dealing with discrimination within Hindu Laws, judges have never recommended a UCC as a solution. [Personal Interview, Mumbai 1995] Feelings such as these have helped to intensify the fears of many Muslims that even an impartial body such as the Judiciary may be anti-minority.

Secondly, we need to re-consider the argument of national unity. "It may suffice to remind and point out that uniform laws for crimes, contracts, torts, constitutional rights, etc., exists in the country... If they have failed to inculcate the concept of national unity, what prompts us to believe that uniform family laws alone will do the trick." [Ralkumari Agrawala quoted in Vasudha Dhagamwar, 1989].

Can a UCC help to unite a country? The argument that it can is in itself suspect. Are laws meant to be unifying agents or are they to give justice? A UCC that only attempts to 'unify' different communities may not necessarily succeed in doing so and may even fail in fulfilling the needs of women of different communities.

The role of the major political parties in the UCC/Personal Laws debate has been sad if not dismal.

The 'rationale' of the Hindutva forces in recommending the UCC is 'nationalist' but unlike that of the early Parliamentarians, it is extremely narrow and exclusionist. They have in the most populist and dangerous way equated nationalism with a unilateral acceptance of the UCC. In 1986, following the announcement of the Muslim Women's [Protection of Rights Upon Divorce] Act, 1986, Hindu communal leaders passed some volatile and inflammatory statements. The focus was on the 'rights' given to Muslim men, not on the sufferings of the Muslim women. Nor did it look at Muslims who had supported the Shahbano judgment.

A statement by 118 Muslim intellectuals and public figures like Dr. Salim Ali, the famous ornithologist, Dr. Van Habib, the historian, and Daniel Latifi, the noted lawyer demanded that Section 125 Cr. Pc. not be changed and "the rights of divorced Muslim women to claim maintenance from their husband or former husband be preserved". The Islamic Shariat Board, Kerala issued a statement voicing a similar sentiment, " The verdict of the Supreme Court in the Shah Bano judgment does not in any way contravene the injunctions of Islam on the subject." [Quoted in Asghar Ali Engineer, 1987]

However, the Hindutva forces choose to deliberately ignore them. "Communal minded Muslims, who have burnt the effigy of a

Supreme Court judge and common civil code have no place in this country... The issue is not of religion, but the poisonous seeds of treacherous tendencies. Can minorities in Pakistan take such an offensive stand? Those who do not accept our Constitution and laws should quit the country and go to Karachi or Lahore.libid]

A few decades ago, Vikram Savarkar had said "No Muslim is patriotic, since he believes only in the Quran." [ibid] Would that mean that a Muslim is not an Egyptian, Palestinian, Indonesian or Algerian? Muslims not only have their own national boundaries but have in their countries reformed their laws and given women more rights and equality. In India there is no dearth of Muslims who would like their Personal Laws changed but they resent being forced to prove their patriotism and loyalty to the nation. Most of them also know that giving in to Hindutva demands only means more of such demands being put forward because the main objective is provoking communal feelings through Muslim bashing for political gains.

From amongst the Hindutva forces, the Bharatiya Janata Party [BJP] is the most sophisticated in its approach. Its Status Paper on the UCC brought out in 1995 tries to allay the fears of the minorities. "It is beyond comprehension how the common civil code is related to the feeling of security or otherwise of Muslim community. The two are entirely unrelated to each other... The BJP has all along whole heartedly supported the constitutional mandate of enacting a common civil code for all citizens of India. It is of the view that it will not only pave the way for national unity and integration, but will also remove 'gender bias' and promote Human Rights." [Status Paper, Mumbai, 1995]

Can the Muslim minority simply separate the UCC from the overall motivations of a party which actively participated in the demolition of the Babri Masjid in 1992 and the anti Muslim pogrom in Bombay and the mass rapes of Muslim women in Surat in Dec 1992 and Jan. 1993? Can the Women's Movement take the BJP's sudden concern for removing 'gender bias' with any seriousness when it has never had a record for upholding women's rights or issues. Instead it has chosen to lambast feminists and feminism as western and

irrelevant. { Murli ManoharJoshi, Nov,1995, Asian Age] Can the Human Rights organisations believe that the BJP is interested in promoting human rights when it tramples on those of minority communities through specious arguments of patriotism and communal riots?

Perhaps the Congress I, had it been numerically strong in Parliament, might have taken up the challenge thrown by the BJP and started its own counter offensive on the co-option of the concepts of secularism and nationalism. But it chose to continue its policy of appeasing the Muslim clergy by time and again re-assuring them that there was no question of introducing a UCC.

In this unfortunate battle, the Congress I Government at the Centre has refused to pass the long pending, proposed changes in Christian Personal Laws. Recently, the President of India withheld his assent to an adoption bill sent by the Maharashtra Government which would have extended the right to adoption to all citizens in the state.

'Patriotism', 'national unity', 'joining the mainstream' How did all those, who have used these concepts down the ages as their main argument, relate them to women? Unfortunately, women's rights had got entirely subsumed in this debate. What does the woman who is struggling to get maintenance for her children and herself from a unrelenting husband have to say? Do Hindu women who have some of the most progressive inheritance rights on paper really enjoy them?

The All India Women's Conference in 1937 did not think it necessary to go into any of these questions, believing that the UCC would bring about better laws for all women. The Status of Women Report in 1975 brought out to commemorate the International Women's Decade reiterated, "The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights, and the Preamble to the Constitution which promises to secure to a citizen 'equality of status', and is against the spirit of national integration and secularism... Our recommendation regarding amendments of existing laws are only indicators of the direction in which uniformity has to be achieved. We, therefore

recommend expeditious implementation of this constitutional directive by the adoption of a Uniform Civil Code. “[Status of Women Report, 1975]

The Women's Movement had not very clearly differentiated between equality for women and national unity in their demand for a UCC. This, according to The Working Group for Women's Rights, has had three consequences. It pitted 'uniformity' with religious freedom thus making it easy for communal propoganda. Secondly, it lead to a comparison between different Personal Laws which did not allow for an in depth critique of each Personal Law. Lastly, the emphasis on unity and national integration did not allow them to go beyond into the contents of the UCC. [Verbal presentation in The Indian Association of Women's Studies Conference, Dec 27-30th 1995, Jaipur.]

The Women's Movement, by choosing to ignore it, have lost the initiative to veer this debate away from communal prejudice and minority bashing into women centered one. The permeation of Hindutva ideology to sections beyond the middle class makes the task of the Women's Movement all the more difficult. We need to re-focus the entire debate. In today's globalised world, the earlier and the present use of nationalism has turned into an antiquated term. Swadeshi was earlier related to patriotism and the Nationalist Struggle. But the Hindutva governments themselves are vying with each other to bring in Multinational Corporations. What are the experiences of women under their Personal Laws? Can these laws which have remained static for all these years are reformed to give them better rights and justice? Are the 'secular' laws more just to women? We will look at some of these aspects in the next section.

We The Women

We the women who toil
unadorn
heads tie with cheap cotton
We the women who cut
clear fetch dig sing
We the women making
something from this
ache-and-pain-a-me
back-o-hardness
Yet we the women
who praises go unsung
who voices go unheard
who death they sweep
aside
as easy as dead leaves

Grace Nichols

SECTION II

WOMEN'S EXPERIENCES OF PERSONAL LAWS

HINDU PERSONAL LAWS

Hindu Law is commonly understood to be 'better' than other personal laws. Whilst this myth has been shattered by experts and the experiences of women, it continues to hold sway. Perhaps, the heroic role of the 19th century Hindu reformists, or the efforts of the Hindu Code Bill Committee, much publicised by the State, have contributed to strengthening it.

The British along with their appointed religious pundits and shastris formulated Hindu Personal Law by codifying Brahmanical law. In the 19th century some of the laws they passed were the Suttee Regulation XXVII of 1829 and The Hindu Widow's Remarriage Act, 1856. In 1955, what was meant to be a comprehensive Hindu Code was fragmented and passed as the Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956 Hindu Minority and Guardianship Act, 1956 and the Hindu Succession Act, 1956.

The anomalies of Hindu Laws begin with the definition of a Hindu. They apply to all those, "who are not Christian, Parsee, Muslim, or Jew". In legal parlance, a Hindu is defined negatively. "Hindu law applies to those who are born Hindu...(and) to Hindus by race'... Deviants... will not shake off Hindu Law... There is no escape for a Hindu woman from Hindu Law (Prior to 1955) Sanskrit texts did not apply to the Shudras... The statutory definition of Hindu (today) includes Hindus of all castes... Jains, Sikhs, Arya Samajists and Buddhists are also governed by Hindu Law, that is it applies one law to all castes and that is the law of the upper castes." [Indira Jaisingh, 1994].

The Hindu Marriage Act 1955 [HMA] abolished bigamous relationships for Hindus. There are, however, so many loopholes that Hindu men could remarry without any problems and without providing maintenance for the second wife. In case the first wife wanted to file a complaint she would have to provide proof of the second marriage. Hardly something that the first wife can do. In case the second wife, who may have been duped into marriage, wished to file a complaint there is no provision for her. Another area of problem was that under the law, only saptapadi [and not customary forms of marriages] were recognised as valid. Thus large numbers of women were left outside the scope of law.

The Section 9 of the Hindu Marriage Act on the 'restitution of conjugal rights' provides for the legal return of a separated spouse to the matrimonial home, failing which a divorce can be granted. In effect it means that the spouse, in most cases, the husband can demand the return and sexual availability of his wife. The famous Andhra Pradesh judgment of 1983 freed Saritha from forced conjugal relations. Supreme Court however reversed the judgment.

The Status of Women Report [1975] revealed that the incidence of polygamy is higher among Hindu men than Muslim men. "In practice the law can be evaded or ignored by men by virtue of their dominant position in society... Much has been made of injustice done to a Muslim woman by the provision which allows a man to divorce his wife by pronouncing the word talaq three times. But when a man walks out on an unemployed woman and refuses to maintain her or their children, it makes little difference whether he says to her, 'I divorce you' or omits to say this." [Madhu Kishwar, 1986].

Hindu women do not enjoy equal property rights in their ancestral property. Even in earned property, women are disinherited by wills that favour sons. The social custom of dowry only tends to reiterate the inferior position of Hindu women within their marital homes. They have no claims over matrimonial or natal property. Nor do single women enjoy any unalienable property rights and are often at the mercy of their relatives. As Bharati, an unmarried woman puts it, "I have been the sole support of my parents for 25 years and I

have looked after them when they were ill. After they died brother and his wife who had not even bothered to visit or help out, entered the house demanding their rights. My brother beats me and often throws me out of the house." [Interview, 1995]

The underside of succession shows up in the Sushila Dighe case. Her parents challenged the Hindu Succession Act, 1956 on the grounds that it was discriminatory to women. Sushila had died under mysterious circumstances after 10 months of her marriage. Her parents were dismayed to learn that all her self acquired property i.e. her earnings, marriage gifts and employment benefits could only be inherited by her husband. This could well be another form of dowry murder in which the husband stands to gain doubly from his wife's 'suicide': inheritance as well as another bride and dowry. [Sunday Observer, 19-11-1986]

A few months ago, novelist Gita Hariharan made the headlines when she became yet another challenger to the Hindu Minority and Guardianship Act, 1956 which designates the father as the 'natural' guardian of a couple's child. In the Radhika Tikkoo vs Vikram Nehru Case, the estranged father had tried to stop the mother from changing their child's school. Another woman had

to plead with her divorced husband to sign application forms for their children's passport. Under this Act, even if the mother has custody of the child or children, she is forced to seek her husband's permission for all official matters concerning them. The practical problem is that it is not uncommon for the husbands to use this as a form of harassment. The theoretical problem is why should a man be considered a natural guardian and not the mother who has given birth?

MUSLIM PERSONAL LAWS

During British rule, Muslims were governed by that section of Islamic law which was applicable to their particular sect. For example, if a Hanafi died, his wealth was distributed according to Hanafi inheritance laws. The law of the Da'a'imul would apply to all

Ismailis, and so on. The Sha riot Act, 1937 was brought in to bring some uniformity amongst different Muslims. Two years later, The Dissolution of Muslim Marriages Act, 1939 was passed to give Muslim women the right to divorce. In their own ways these two Acts with their context were quite progressive as they recognised a woman's right over inheritance [a concept absent in all laws except some tribal customary ones] and the right to ask for a divorce.

The commonly held notion that Muslim law is anti-women and exploitative is quite misinformed and communally prejudiced. In fact the scope for a potentially less exploitative relationship exists more in Muslim contractual marriages than in those seen as a sacrament. Secondly, there are many Islamic scholars like Daniel Latifi and Asghar Ali Engineer who believe that the Karan allows freedom of interpretation. Unfortunately the Muslim clergy and leaders have chosen to take an orthodox and fundamentalist approach which prevents reforms and positive changes. Vahida of the Women's Research and Action Group goes one step ahead to say, "... such interpretations have been done by men. As a result, the spirit of Islam, which is one of justice and equality, of the upliftment of women, has been lost and patriarchal values taken over." [Jyoti Punwani 1994].

The Shah Banu controversy, the unprecedented communal tension and the passing of the Muslim Women (Protection of Rights within Marriage) Act 1986 has taken Muslim women several steps backwards. They have been denied the right to maintenance under Section 125 of the Criminal Procedure Code." It is a pathetic sight to watch at family courts Muslim women accepting a pittance from their erstwhile husbands, a pittance of what is rightfully due to them and a pittance which is sometimes triumphantly, and sometimes contemptuously, flung at them by the men, who know too well that the women have no other legal remedy left to get maintenance." [Rasheeda Bhagat, 1995]

From the experiences of several Muslim women's groups and studies, besides maintenance women are most likely to face the problems of divorce and the insecurity of triple talaq.

The Dissolution of Muslim Marriages Act, 1939 (Act No. 8 of 1939) states that a married woman shall be entitled to obtain a decree for the dissolution of her marriage on several grounds to be proved before the judge. Even for a cruel husband she has to wait for 7 years or more, if the ground is for disappearance of husband, she has to wait for 4 1/2 years. "Hundreds of married women would like a divorce from their husbands but they do not divorce them for fear of providing for children." [Durrani K S, 1995] On the other hand, divorce for men is much too easy. Verbal triple talaq without witnesses often leaves women unsure about their marital status.

The constant threat of communal tension and riots has worsened the plight of many Muslim women who now feel isolated and doubly oppressed. They find it difficult to speak out openly against the oppression within their families fearing that their voices will be used against their community by anti-Muslim forces or gagged by their own community men.

"I feel so lonely - if I tell my friends about the pain I suffer due to my husband's second marriage and the fear that he might divorce and throw me on the streets, they give me a pitying look. I can almost hear what they are thinking - that all Muslim men are like that. If I speak to my aunts or mother, they advise me to keep quiet and suffer. My male relatives don't want me to go to a lawyer or to the police or anyone outside the community. It's like being suffocated." Fatima (personal interview, 1993).

Mallis, a women's organisation in Bombay found that it could not take any cases of violence in 1993 against Muslim women to the local police near Behrampada, a riot affected area. Policemen who were known for their indifference to women's complaints about wife battering etc were now only too glad to beat up Muslim men and/or lock them up.

Communalism has forced the community to silence its own members in the name of religious faith and identity. Shah Bano was an old woman fighting for an adequate maintenance from a rich husband. Shahnaz Sheikh wanted a legal separation from her husband. And both challenged their Personal Law and gained the unforgiving wrath of the orthodox within their community. Both

had to bury their suffering in the face of communal tension and threats of death.

CHRISTIAN PERSONAL LAWS

Christian Laws had been passed in the 19th century as the Native Converts Marriage Dissolution Act, 1866, The Indian Divorce Act, 1869 and The Indian Christian Marriage Act, 1872. They govern Christians of all denominations - Roman Christians, Syrian Christians, Protestants - even though all these churches differ on the issues of marriage and divorce. There have been no amendments or reforms to date since the British passed these laws.

As a prominent feminist lawyer writes of this law, the IDA denies Christian women rights that women of other communities enjoy.

"Some of the glaring discrimination against women in the Christian

Personal law are: (1) The grounds for divorce are different for the husband and the wife. While the husband can get a divorce, on the grounds of adultery on the part of the wife, the wife has to prove adultery coupled with desertion, cruelty or incestuous adultery. A woman cannot get a divorce merely on the grounds of cruelty or desertion.(2) The maximum amount of alimony, a woman can get should not exceed 1/5 of the husband's income.(3) In the case of adultery of the wife, the co- respondent has to pay damages to the husband. Additionally, the Roman Catholic women are also governed by the Canon Law or Church Laws. The grounds of annulment are quite different under both these Laws. And a divorce is not legally valid unless a woman goes through both the procedures." [Flavia ,1985]

Another area of great distress to Syrian Christian women are their inheritance laws. Syrian Christian women were earlier governed by the Travancore Succession Act ... which decreed that when a man dies without a will, his widow would get a life estate over a portion of the family property and the daughter would receive a quarter of the share of a son, or Rs 5000 whichever is less.

In 1985 Mary Roy challenged this Act as violative of her Fundamental Right to Equality i.e. Article 14 and 15. The Supreme Court struck down the Act in 1986. Mary Roy won the case but not the property. Her brother continues to deny her a rightful share. "It is clear that none of us are going to inherit anything in our life time. The battle goes on because as a matter of principle I cannot withdraw." [Kamla Bhasin et al,1994]

Nothing had changed even after a year of the Supreme Court judgment. When Mariakutty Thomman went to the People's Council for legal advice on claiming her share of the family property, she was told that she should show sacrifice. Asked she, "Why must I alone sacrifice? why do you not ask my brothers to make any sacrifices?" [Indian Express, 1987]

Several Christian women have challenged these antiquated laws in court and been granted some favourable judgments. A Delhi based women's group, The Joint Women's Programme, the Satyashodhak Mandal from Mumbai amongst others have made several recommendations and called for a UCC. Yet the government has done nothing except give reassurances for the past decade.

In terms of procedures, Christian women are quite disadvantaged as their cases cannot be heard in the Family Courts or in the Sessions Court but have to directly approach the High Court. A divorced Christian woman had this to say of the laws governing her.

"My youth has been wasted away in church offices and court corridors. There were good chances of remarriage when the annulment came through. But now, with a stamp of adultery, who will marry me? No one believes that it was a false ground that had to be cooked up in order to get a divorce... Very few people are aware that a Christian couple who wants a divorce has no option but to commit perjury ... Do you think Jesus Christ wanted Christian women to be degraded in this manner?... The problems of Christian women don't seem to bother anyone - not the Church authorities nor the State." [Belinda, Womenews, 1986].

The Indian Parliament and Executive have a record of sabotaging or aborting any attempt to make the Personal laws progressive in

nature. Especially when the target group is women... The Law Commission of India in its fifteenth report (1960) had suggested comprehensive amendments to the Indian Divorce Act. It had also submitted a bill titled 'The Christian Marriage and Matrimonial Causes Bill', 1960, whereby both husband and wife were given the right to seek dissolution of marriage on almost all grounds mentioned in the Special Marriage Act, 1872... the bill was allowed to lapse. The 90th Law Commission Report submitted on May 17, 1983, had made this prophetic statement: "If the Parliament does not remove this discrimination, the courts, in exercise of their jurisdiction to rectify isolation of Fundamental Rights, are bound to declare the section as invalid." [Savvy, May 1995]

COMMON OPPRESSIONS

Hindu Law recognises the saptapadi which is legally important but only one small part of the marriage. There are many other pujas, social events and the giving and taking of gifts which are also associated with an Hindu marriage. Likewise the Church functions and social gatherings or the Muslim nikahnama and mehdi sessions. As social customs and tradition are an integral part of religion, every Personal Law carries a heavy flavour and colour of them. A large part of people's attachment to their Personal Laws is intertwined with their religious and community identity.

These laws which were propounded for a specific period and community, and later re-interpreted and developed through thousands of years have their own assumptions and frameworks. For example, women in all religions are considered unequal to men, though in varying degrees. The concept of equality between castes, classes and sex is comparatively new in the history of the world. There may be favourable laws for women in certain circumstances like for widows etc. But no matter how liberal our interpretation of ancient texts we cannot read gender equality into them beyond a point. Most societies, even the matrilineal and tribal ones, have now accepted patriarchal norms and practices. The existing inequalities between men and women of different communities, castes and classes coupled with their Personal Laws give an edge of advantage

to men. Women find themselves dependent, powerless and resourceless. In times of dispute and conflict, it is not always that their laws give them a fair deal and justice. In fact mostly women, especially those who have struggled, learn that it is better to not claim their rights but start living their lives as best as they can. This is true also for the so called 'secular' laws like the Special Marriages Act, 1954 and its amended versions of 1963 and 1976. They have been shaped from a patriarchal mould, with superficial progressive features without the spirit of gender equality and justice.

Some of the areas of discrimination within the different Personal Laws have been touched upon. The Hindu and Christian Succession Acts on inheritance are clearly anti women and only provide for their maintenance. And the Muslim and Parsee laws on succession are certainly better in that they give them some rights to inheritance. Muslim law even provides that the woman's inheritance cannot be willed away. But even the Muslim Personal Law too is not wholly fair. For example, the portion given to the daughter and the wife is much smaller [1/8th] than that given to the son. As Bina Srinivasan points out in her study of Muslim women in Baroda, "It seems that daughters, specially married ones, often relinquish their share of the property to their brothers. This is done in the name of emotional attachment to them ... it is very difficult to ascertain if there is any direct or indirect coercion of women in this respect." [Unpublished monograph, 1995]

When first passed, the Special Marriages Act, 1956 provided that all those marrying under it, should be governed by the non-religion based Indian Succession Act, which provided women with equal inheritance rights. In 1976, an amendment was quietly passed which allowed Hindu men their right over ancestral property if they married within the Hindu fold. The one step forward was once again accompanied by two steps backwards - back to religion and unequal rights for women. Not only does this amendment discriminate against non Hindus and appease Hindu men, it made inter community marriages less attractive.

Islam treats marriage as a contract, thus attaching less significance to it than the sacramental status of marriage in Hindu and Christian

tradition, the rights of all women within marriage remain mostly restricted. The 'secular' Special Marriage Act has the same provision as the Hindu Marriage Act for restitution of conjugal rights. A woman married to an abusive husband and who was at the receiving end of the restitution order was overjoyed at the Andhra Pradesh judgment on the Saritha Case in 1983. "I have kept a clipping of it. Conjugal rights is what men want, not conjugal responsibilities. And the law gives them these rights, never mind if we are made slaves in the process." [Sunday Observer 10-6-1983]

Divorce whether it is verbal as in triple talaq or a written legal one makes no difference to women who fear the prospect of homelessness, the social stigma and dependent status. "I was brought up to believe that marriage is for keeps and true to that I put up with unendurable humiliations because I knew that it was better here than those at my brother's house." [Interview in a Basti in Mumbai, 1989]

Upon divorce, the different Personal Laws on maintenance for separated or divorced wives treat it as a dole to a destitute woman and not as a rightful claim in return for her labour within the household.

In case the separated or divorced woman finds herself another partner, the maintenance is immediately withdrawn. The implicit meaning being that the former husband has no further obligation and the other man should now support her. Secondly, the Special Marriages Act, 1954, the Hindu Marriage Act 1955, the Parsee Marriage and Divorce Act 1937 and Section 125 of the Criminal Procedure Code, 1973 also provide for 'the rescinding or varying' of the maintenance order if the wife has re-married or is not leading a 'chaste' life. The Indian Divorce Act, 1869 even puts a restriction on the maintenance amount to be given to the woman: it should not exceed one fifth of the husband's average income.

Hindu married couples and even single women have the right to adopt children. However, a woman cannot adopt a child without the consent of her husband. And single women are bypassed in favour of families by adoption agencies.

Patriarchy in its starkest form is revealed in the Guardians and Wards Act, 1890 which makes the father the 'natural guardian' of children born or adopted by a couple. Neither does any Personal Law give the woman the right to guardianship. When Indian culture sentimentalises and glorifies motherhood, why is the mother not considered worthy of being a guardian to her child? To use the colloquial expressions: why is the 'seed' more important than the 'earth' even in law? In effect, this gives the father unbridled control over the child even though the latter may be in the mother's custody.

More often than not, even custody of the children is denied to women. Women of all communities, including Muslim mothers who are given the right of guardianship of small children, can lose them later. Several very discriminatory reasons are put forward on the grounds of the welfare of the children. The law states that the court has to look into what is best for the welfare of the child in the case of custody. Who can best look after the child and her/his need? Most often needs are understood as financial welfare which can best be provided by the father's wealth. Neerja complained, "... I lost custody of my child because the judge decided I was a 'loose' woman and hence, a bad mother. He came to this conclusion only because I initiated the divorce proceedings... I wear Western clothes and smoke in public..." [MOS 22-12-1995] Feelings, care, mothering, all the qualities attributed to women and their roles as mothers are often ignored by the court.

I see paradise as a deep, deep
breath taken in wide, wide horizons of peace

Paradise is when I wear the sun
around my head like a necklace
Paradise is when others can
sense that I am connected
with stars, with moons, familiar and unfamiliar,
with skies, the blue ones and the others...

Paradise is really riding away
riding far away from what we have seen
This paradise is so good, so just,
so beautiful.
We ought to create it right here on earth.
Why?
Just to train ourselves being loving needs a lot
of training don't you know?

Fatima Mernissi.

SECTION III

ALTERNATIVE POSITIONS

One of the persistent questions within the Women's Movement has been that laws, whatever their name, have not given much to women. In spite of all the efforts of the early reformers, the latter day 'secular' laws, and the more recent rape, dowry and other amendments, women are still deprived of their deprived of their basic rights, face dependency, discrimination and are resource less and powerless. The judicial system has given them some hope but not always justice, some good laws but very few favorable judgments, and a lengthy and expensive system not everyone can use.

Legal reforms have been seen as one of the multipronged strategies of the Women's Movement. It was one more attack on patriarchal relations within society in order to establish a right and begin a public debate on the various forms of women's oppression. The UCC/PL debate becomes all the more crucial because it needs to be reclaimed back from the Hindutva and Muslim fundamentalist agenda.

Since the rise of Hindu and Muslim fundamentalism in the past decade, women's groups are caught in a multidimensional dilemma. There is the reality of women trapped within oppressive gender relations in all communities; there is a strong Hindutva force which is coopting the Women's Movement demand and distorting it to serve its own fundamentalist and political objective; there is the constant threat of communal violence and the insecurity and alienation of the Muslim community.

Most of the women's groups in the 1970s and 1980s were inclined towards a UCC. But today that demand places them squarely in the camp of the BJP, which has approvingly quoted many pro UCC feminists. [Madhu Deolekar, 1995] they would definitely not want

to be counted amongst BJP supporters. But distancing themselves from the BJP might mean in the public mind, distancing them from the issue of the UCC. Some groups changed to pro reforms within Personal Laws stand as part of their anti BJP position. Unfortunately this stand places them within the Muslim fundamentalist camp.

Women's groups are struggling to free themselves from the false choices placed before them of national unity and community identity, and the politics of reaction to Hindutva forces. There is serious debate within the Women's Movement on its different positions and their practical outcomes. The range may seem diverse and varied but we view it as part of one continuum with the Compulsory Uniform Civil Code and the reforms in Personal Law at the extremes and the in between as optional Code with reforms; reverse optionality special laws or a set of laws and reforms; reforms now and UCC later. However, the main conceptual differences are between the positions taken for the UCC and for Reform within Personal Law.

REFORM WITHIN PERSONAL LAWS

The starting premise of this position is that Personal Laws are by themselves not inherently discriminatory against women. Many Islamic scholars have taken this stand like Daniel Latifi and Asghar Ali Engineer. The latter has stated that the generally held perceptions that MPL is retrogressive is based both on the Indian experience of Islamic laws and due to communal propoganda. If the community were to reach back to the emancipatory potential inherent within Islam, it would preserve the cultural identity of Muslims in India whilst bringing about gender equality in a participatory process.

"As far as the non-Muslims are concerned they should know that Islamic law is not in the least bit suppressive of women's rights... Islam was the first religion in the world which tried to empower women and that too 14 centuries ago. It was Islam which recognised women as legal entities and not as daughters, wives or mothers. It

was in that spirit that Islam gave women the right to marriage. An Islamic marriage cannot take place without the specific consent of women. If it does, it will be treated as invalid. The woman has the right to divorce, the right to inheritance and property, the right to custody of children and the right to maintenance from her husband. These are legally enforceable in any court of law. The right to maintenance is so absolute that, even if the husband avoids paying up, the woman can take the amount due from his pocket without informing him.." [Asghar Ali Engineer, 1994].

The problem is that in the course of history, women no longer seem to have had these rights. "We have to trace such laws from the ancient systems to the existing systems in order to claim a right and say it is not a new right at all. It always existed, somewhere it got eroded, somewhere the women did not claim it.

... the question to be asked is whether we take the existing situation as the norm for law reform, [where mehr is low, never paid, waived etc] or we go back to situations decades ago when certain rights existed and make that our basis." [Flavia, 1995]

This is a clear cut, principled position based on the right to religious freedom/personal laws and cultural, community identity. The potential for reform eliminates the need for another law or Code for the particular community. Maulana Syed Abul Hasan Ali Nadvi said, The Shariat has always remained the sheet anchor of Muslim religious and cultural life and has saved it from disintegration ... The Muslim Personal Law Board would, therefore, stand for continued application of Islamic law to Muslims even after the enactment of a UCC." [Indian Express, 29-6-86]

Other women's groups like Vimochana, Bangalore and Action India, New Delhi have given more emphasis on legal pluralism because of the cultural diversity of India and as they believe that popular participation is better than State institutions and power. There are many in the Women's Movement who advocate non state legal systems like women's panchayats etc as they are quicker and more accessible to people. This is certainly true and women feel far less alienated than when they go to court where proceedings are held in a language unknown to them. Therefore such "non State spaces"

should be explored and encouraged. Some groups in Tamilnadu had set up small groups to 'try' rape cases and had even succeeded in getting compensation.

There are, however, some limitations to this approach. Even if one were to accept that some personal laws had given women certain rights, and we were to establish them as women's rights, it would be quite difficult to retrieve them after years of patriarchal consolidation and custom. Secondly, the frameworks of these old religion based laws would prevent any new ideas like matrimonial property rights or those of single women from taking shape as law. They would be immediately rejected as culturally alien.

The other question is who would initiate these reforms. It is easy to say let the women from the communities speak up but can they in this communally charged atmosphere speak without being called traitors? So far religious leaders opposing the UCC have not made any promises or taken any concrete steps for changing their own personal laws. Instead the religious leaders of different communities have become more orthodox and unyielding in their stand at the expense of women's rights. Remember the large mobilisations of men and women against Shah Bano or the Church's advice to Syrian Christian fathers and brothers so that the new law was not applicable to them.

Some experiments in non state legal systems have been successful. People's Courts in areas controlled by revolutionary groups gave quick justice and made a strong ideological point. But they have been known to be sometimes violent. Caste panchayats where a woman is most likely to go, have mostly always treated them as badly as any court. Tribal ones have held auctions of women unfaithful to their husbands. These are quite orthodox and patriarchal structures which perceive women in traditional roles. Women who have challenged patriarchal norms are usually not treated well. At the most, they might give women some favourable judgments within familial boundaries.

UNIFORM CIVIL CODE

The UCC is also called the common code or secular laws. Its starting premise is that all women have some basic rights to live and work as productive, creative and equal individuals. These basic rights are non negotiable and universal. Fundamental rights give women some rights but the UCC as envisioned by women's groups, have the potential to go beyond e.g. rights over the matrimonial home, economic recognition of housework, rights of single women or homosexual rights. These laws are often called 'secular' as they are not based on any older laws or religion though they could draw inspiration from them.

Some have held the view that a uniform code already exists. "Barring marriage, divorce, maintenance, adoption, succession and inheritance, there is already a uniform law in India. Even on marriage and divorce, the Special Marriages Act, 1954, is a uniform law applicable to those who choose to get married under it. There are laws such as the Dowry Prohibition Act or the Child Marriage Restraint Act which are applicable to all ... Section 125 Cr Pc., 1973 is a uniform civil law on the maintenance of destitute wives... Unfortunately, the recent legislation enacted by Parliament... has excluded Muslim women from the purview of S. 125 CrPc." [S.P. Sathe, 1987]. In Goa, Daman and Diu, the Portuguese left behind a common code which is still being used by the people but its jurisdiction ends with its boundaries.

Extending this point, Vasudha Dhagamwar has written that informally or outside the purview of mainstream legal institutions, a uniform system of law is followed in most local communities. "... I came across the practice of adoption amongst Muslims in the Santhal Parganas. I had not been looking for it. I was studying land settlement and overheard my hosts for the day, who were Muslims, talk about it... I did wonder then, as I do now, at our supreme confidence. Sitting in Delhi or Bombay the "national" leaders are absolutely positive that adoption is against their religious law and yet in far away Santhal Parganas Muslims serenely adopt and give in adoption, even across religions. Their practice was in many ways

uncannily identical with the provisions of the Adoption Bill".
[Vasudha Dhagamvar, 1989]

Some women's groups believe that the political situation will make it difficult to outrightly ask for and implement a UCC without treating panic waves and communal tensions amongst the minorities. One way could be to formulate an optional civil code or a set of optional laws to be used at the time of dispute. The concept of optionality has two sides. One is what exists today that as a citizen of India, one is born into their Personal Laws and can choose to be governed by special acts or the code at any time of their life or for whatever aspect. This position hopes not to rock the boat too much yet make available gender just laws to women. Most feel that in our present, dormant explosive situation, women will not have the right to opt for the secular code, since family and community pressures will lead to a coercive network around them. It is possible that the entire community may boycott the code. Given the sad state of legal literacy, many may not even be aware that other laws besides personal ones exist.

"I do not believe in an 'optional civil code'. A few men might opt for such a law, but the vast majority of men will not. A woman alone cannot opt for such a law - she will need the consent of her husband. You see, the majority of women who need protection will not benefit from such a course of action." [Indira Jaising, 1995].

The second option turns it around. One is born into the Code and can opt for one's personal law. The Shetkari Sanghatanci, a peasant party put forward the following formulation in Chandwad. "(1) Every citizen of the Republic should be a prior considered as governed by the common civil code; however, any citizen or his guardian should have the possibility of opting for the civil system of any of the established religious codes. (2) The official judicial system should not intervene in civil disputes between citizens opting for a religious code. (3) The disputes between citizens opting for a single religious code shall be decided according to the common civil code, should any of the parties take recourse to the official judicial system." [Gail Onwedt, 1987].

The Working Group on Women's Rights, New Delhi has called this 'reverse optionality' as it ensures both democratic principles and the right to choose. This is necessary because women of all communities are routinely denied democratic rights. Thus common, gender just laws are available to them and become the norm against which women can make a choice for their personal laws. The Group thinks that this would also act as a push for reforms in personal laws. [verbal presentation, 1995]

However, the notion of an optional code has been dismissed as untenable not only because it is unpractical but because basic rights cannot be treated as optional i.e. to fulfill their constitutional and legal meaning they need to be enjoyed by all.

There are quite a few women's groups which have accepted the combination of an optional Code [of either type] and reforms within Personal Laws. "We believe that there should be no imposition of laws on any community in this highly charged communal atmosphere. We demand an optional Civil Code to be used ... if chosen by any distressed party... The new law should include progressive laws related to marriage etc... Simultaneously women should also have the benefit of reforms within their own personal laws." [Forum Against Oppression of Women, Bombay 1995]

Optionality can at best be seen as a strategy and a transition towards a code and not as a permanent solution.

STRATEGISING FOR WOMEN

This debate will always remain un-conclusive as the conceptual foundations of both the UCC and Personal Laws are fundamentally different. Women's groups, whatever position they may take, are interested in bringing in better, gender just laws for women. Their first task as part of their strategy is to reclaim the debate, take it back from the fundamentalist forces, debunk the false choices that they are advocating, and expose the electoral gimmicks of the BJP and the Congress I.

Secondly, the Women's Movement as a whole needs to shift out from a pro and anti UCC position dialogue. We still have no idea what will be the 'right' time for a UCC, whether it should be optional or not, or if reforms in personal laws will be radical enough for women. But women cannot wait. They have waited too long for justice, for dignity, for recognition of their labour, to decide about their fertility or sexuality and lead a violence free life. The Women's Movement needs to shift to the formulation of the contents of gender just laws.

There are already some signs of this shift within the Women's Movement and other progressive movements.

APPENDIX

The following are excerpts from a draft prepared by the Forum Against Oppression of Women to initiate a dialogue on the contents of a gender just package of laws.

VISIONS OF GENDER JUST REALITIES

.... The questions then that come to mind are : What kind of law will give us the justice? Can there be any law in this world which can give a fair deal to women? Can there be a law that while reflecting our reality also shows the path ahead? Is it at all possible to dream beyond what exists and plan for the future where we would not only have more legal rights but also where the machinery would be more approachable? Is it possible to mitigate the trauma by having a better deal in terms of the law ?

.... We are articulating our vision here. These are based on real life situations and also the struggles undergone by various individuals and groups of people especially with respect to issues related with our personal lives.

MARRIAGE

In today's context marriage is looked upon as a sacrament and is reduced to sexual interaction for giving birth to a male child... We look upon marriage as a space which allows individuals to grow and also assures commitment and security to men and women and in particular to women.

We are trying to formulate the law to make this into a contract for companionship and commitment. Procreation and transfer of property along the prescribed familial lines is not the only reason for marriage and so with this formulation the basic nature of the institution itself changes.

We define marriage as a registered companionship contract between two consenting adults of any sex above the age of 21 years without any prohibitory degrees. At the time of registration each individual should provide the following to the registering authority and the concerned partner:

1. Date of Birth Certificate
2. Declaration of non-existence of any valid marriage contract.
3. Medical Certificate giving health status especially regarding STDs and HIV.
4. Declaration of immovable and movable assets.
5. Declaration of annual Income.

Any two cohabiting persons may enter this registered contract at any point. Cohabiting partners have the same rights as married partners as long as cohabitation can be proved for at least six months. Instead of the registered marriage, two persons, whether married or cohabiting, can enter into a self-defined contract where they agree up on their respective rights and obligations ...

MATRIMONIAL PROPERTY

i. Matrimonial Home:

... While married and even after her spouse's death (until she enters any other marriage contract), a woman has the complete right of residence to the matrimonial home. Matrimonial home is the proven residence of the woman.

The rationale is the patrilocality in society whereby the woman is invariably displaced from her original home after marriage and the fact that it is always difficult for a woman to find a house in this society more so if she is a single woman...

ii. Other Property

... both the wife and the husband own individually the property that they come with into the marriage...

Everything else that they acquire while in marriage is jointly owned by the wife and the husband.

If this acquired property, assets, matrimonial home and household goods which are being shared, are to be disposed off or loans to be taken against them, the other person's consent is essential.

MAINTENANCE

Women contribute to the household through income-replacing work (fetching of fuel, fodder, water, etc.); domestic labour; looking after the various needs of the household members, especially the children and the elderly; value enhancing work put in land, etc; very often coupled with waged work ...

Hence a woman has a right to maintenance while she is married. This has to come to her as her right and is not a dole.

... Maintenance matters have to be always settled within a month of the application... The husband would be obliged within 15 days of filing of the [woman's] application to disclose his income and property including shares, securities, bonds, units, fixed deposits, bank accounts, all whether held jointly or singly, and income tax returns, as well as any other property he may be invested in.

... If an order of maintenance is violated it will be treated as a cognisable and non bailable offence with an obligation on the police to arrest the husband...

The Government will set up a Maintenance Fund to be operated from the Family Court.

GUARDIANSHIP

Both the partners are the natural guardians of the children (whether biological or adopted) and are jointly responsible for the welfare of the child. If the wife is not working [in public employment] the husband has to pay for the children's maintenance as well. If the woman is working then each of them contribute in proportion to their earnings.

HOMORELATIONAL REALITIES

... Since contracts [between persons of the same sex] are to be considered on par with each other, the partners in such contracts have similar rights. The difference is that here we are considering it to be a contract between two persons from the same sex and so there is no clear cut power relation as in the case of a man and a woman.

- i. Each partner has an equal right to the matrimonial home.
- ii. Each person has the complete right over the property that they individually own at the time that the contract is made. Both partners have an equal share and jointly own all property that is subsequently acquired.
- iii. Each partner is responsible for the well-being of the other with greater responsibility on the one who is earning to meet the material needs of the other.
- iv. Both partners are guardians of the children jointly adopted and are responsible for their welfare.

BREAKDOWN OF CONTRACT

Since marriage or cohabitation is strictly between consenting adults, we do not feel that the breakdown of such contracts requires

proving of certain legally defined reasons. The two adults are in a position to determine the breakdown of the marriage. The legal machinery should help a fair settlement rather than opine and judge on the validity of the breakdown.

... Our recommendations for breakdown are as follows:

Divorce proceedings can be initiated only after a minimum period of six months after signing of the marriage contract. No fault divorce has to be the norm.

Mutual consent divorce would be available. A six month period of separation after the filing of application for divorce (as exists today) should be there.

Irretrievable breakdown of marriage is a clause available for both the partners.

The economic settlement has nothing to do with who initiates the divorce proceedings.

SETTLEMENT ON DIVORCE

... any breakdown of marriage has to be compensated and the settlement and other matters have to be speedily undertaken by the legal authorities.

MATRIMONIAL PROPERTY

(i) Matrimonial home

The woman has a right to stay in the matrimonial home. If that is not possible also, for example when it is a joint family or it is a rented house that has to be vacated, it is the responsibility of the husband and his parents to see to it that the woman has a matrimonial home of the same status and standard to live in.

(ii) Other property

All other property that is jointly owned and which is all that they have acquired after marriage would be equally divided between the wife and the husband.

MAINTENANCE

Maintenance settlement at divorce should be a lumpsum settlement and would be for the period that the couple has been married or cohabiting. The minimum period here again has to be taken to be three years or double the number of years of the contract, whichever is longer, if the marriage breaks down in three years.

... All other conditions valid for maintenance settlement within marriage such as violation of the order, punishment on violation, etc. are also applicable in case of breakdown settlements.

CUSTODY OF CHILDREN

The parent who has been predominantly committed to caring and rearing the child should get the custody. The overall welfare of the child should be the primary concern. No preference should be given to the person who provides the material necessities. Over and above this custody of children above seven years should be determined on the basis of the wishes of the child.

HOMORELATIONAL REALITIES

At the time of breakdown of such marriages/partnerships.. the following will be applicable. [1] irretrievable breakdown of marriage to be the norm [2] ... [joint] property to be divided equally. [3] right to maintenance or residence only if destitute... [4] if child is adopted responsibility with.. Both partners

INHERITANCE

... Children under the age of 18 have to be looked after by the parents ... the daughter's [rights] ... also needs to be protected... hence the rights of children differ slightly for a son and a daughter...

- Only children and dependent parents to be considered legal heirs...
- No concept of ancestral property and co-parcenary rights. All property is either inherited or self-acquired.
- Inherited property cannot be willed away but has to be shared equally between legal heirs.
- All children below 18 years have a right to reside in their parents' home.
- Women have the right to reside in parents' home irrespective of age and marital status.
- Property above certain level ... provision for 10% social security.
- Dependent and old parents have the right to reside and maintenance in their children's home.

DRAFT ON SOCIAL SECURITY BILL

... the State has to take responsibility for providing some social security so that people can survive... If women have to use the reforms in the law ... to get justice then some basic facilities need to be provided [to them].

- Housing, short stay homes, hostels for working women with children and students, preferential allotment ... for single women..
- Education including skill based training and control and management of resources.
- Credit facilities

- Health including occupational health hazards; compensations and maternity fund.
- Unemployment compensation and old age pension and security for children.

BIBLIOGRAPHY

Action India Women's Programme,
Rethinking the Uniform Civil Code. New Delhi.1993.

Agnes, Flavia,
Give us This Day our Daily Bread. MaJlis /Bombay.1992.

Agnes, Flavia,
For Better or for Worse - Till Death do us Part in *Womenews*,
Volume 3, No.1. March 1986

Agnes, Flavia,
Mehr - An Economic Right of Muslim Women ;
In *W.R.A.G News Vol.3* Issues 1 Jan.1996.

Agnes, Flavia,
Hindu Men, Monogamy and Uniform Civil Code, in *Economic and Political Weekly*. 16 December 1995

Arslan, Mehdi & Rajan, Janaki, eds,
Communalism in India - Challenge and Response.
Manohar/New Delhi.1994.

Baxi, Upendra,
Inhuman Wrongs and Human Wrongs - Unconventional Essays.
Har-anand. New Delhi.1994.

Bhagat, Rasheeda,
Muslim Women should favour a Uniform Civil Code.
Indian Express 27.5.1995.

Bhasin, Kamala; Menon, Ritu & Khan, Nighat Said,
Against All Odds- Essays on Women, Religion and Development from India and Pakistan. Kali for Women/New Delhi.1994.

Das, Veena,
Critical Events. Oxford University Press.1995.

Deolekar, Madhu,
India Needs a Common Civil Code. B.J.P/Mumbai.1995.

Dietrich, Gabrielle,
Reflections on the Women's Movement In India. Horizon India
Books/New DeJhl.1992.

Dhagamwar, Vasudha,
Towards The Uniform Civil Code.
Indian Law Institute/N.M.Tripathi Private Limited. Bombay 1989

Durrany, K.S, Dr.,
Uniform Civil Code: A Never Ending Controversy.
Presented at a meeting organised by Joint Women's Programme on
1.8.1995.

Engineer, Asghar All, ed,
The Shah Bano Controversy.
Orient Longman/Bombay. 1987.

Forum Against Oppression of Women,
Views on The Uniform Civil Code. - Bombay 27.7.1995.

Forum Against Oppression of Women,
Visions of Gender Just Realities. November 1995.

Gangoli G & Solanki G,
Fighting over the Baby and the Bathwater.
Metropolis on Saturday 22-12-1995

Hasan, Zoya,
Forging identities. Gender, Communities and the State.
Kali for Women/New Delhl.1994.

Jacob, Jessica,
Female-centred Look at Civil Code.
Times Of India. 8.8.1995.

Jaisingh, Indira,
The Communal Nature of Personal Laws-do we need a Marital
Property Law?
in *The Lawyers July-August 1994*.

Karandikar, M.A.,
Islam in India's Transit/on to Modernity.
Orient Longman/New Delhi.1987.

Kishwar, Madhu,
Codified Hindu Law-Myth and Reality,
in *Economic and Political Weekly*. 13.8.1994.

Lateef, Shahida,
Muslim Women in India: Political and Private Realities.
Kali for Women/New Delhi.1993.

Mahmood, Tahir,
Uniform Civil Code and the Islamic Law, Religion and Society.
December 1979.

Nair, J.RaJasekharan,
A New Commandment in *Savvy*, May 1995.

Omvedt, Gail,
Towards a Non Sexist Civil Code in *The Lawyers*, February 1987.

Pandey, Gyanendra,
Hindus and Others - The Quest/on of Identity In India Today.
Penguin Books/New Delhi.1993.

Parashar, Archana,
*Women and Family Law Reform in India. Uniform Civil Code and
Gender Equality*. Sage/New Delhi.1992.

Patwa, Subhadhra, ed,

The Law and Gender Justice. Readings on Women's Studies.
R.C.W.S, S.N.D.T University. Bombay.(undated)

Punwani, Noti,
Talaq, Talaq, Talaq, *In The Times Of India.* 8.5.1995

Sahel!,
Egalitarian Civil Code - *Struggle Against Communalism and for Women's Rights.* Presented at Nari Mukti Sangharsh Sammelan, Uttar Bharat. Kanpur. April 1993.

Sangari, Kumkum,
Politics of Diversity - Religious Communities and Multiple Identities:
In Economic and Political Weekly. 23.12.1995 & 30.12.1995.

Sarkar, Shohini,
A Case for having kids out of Wedlock, in *The Economic Times.* 6.8.1995.

Shiva Rao, B,
Framing of India's Constitution. Select Documents.
Volume 1&2 I.I.P.A/New Delhi. 1967.

S.P. Sathe,
The Indian Marriages and Matrimonial Remedies Act, 1986.
Indian Secular Society, Pune,1987.

Srinivasan, Bina,
A Cry For Change - Women & Law in the Muslim World.
The India Project - Women's Research and Action Group/Bombay.
1994. (Unpublished monograph)

Government of India
Towards Equality- Report of The Committee on the Status of Women In /nclla. Government of India/Department of Social Welfare, Ministry of Education and Social Welfare.
December 1974.

About Akshara

Akshara: a Women's Resource Centre is an information centre, having lending and reference services with 2500 books, about 10,000 documents and 25 periodicals. The Akshara information collection focuses on women and development, women's movement, health and labour. Akshara is specially geared to meet the information needs of women's struggles and campaigns. Its activities include: research and publications, conducting training programmes on information management and gender development and organising discussions on topical issues.