

## **Women between Community and State**

### **SOME IMPLICATIONS OF THE UNIFORM CIVIL CODE DEBATES IN INDIA**

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This essay is an attempt to think through the question of women's position in relation to the state and to religious communities, a position that is invariably played out as a conflict between the exercise of women's citizenship rights and the claims of the religious communities they belong to. This issue figures in the debates and conflicts around a Uniform Civil Code (UCC) for India, which are among the most vigorous and divisive in the present Indian intellectual and political scene, concerning as they do the desirability or otherwise of instituting such a set of laws to replace the current personal laws, and, if the first, the manner of doing it and the content of such laws.

This essay is divided broadly into two parts. In the first I set out the main positions on the UCC, identify the relationships among individual, community, and state on which they are premised, and highlight the feminist interventions made on grounds of gender, citizenship, and rights. The second part of the essay seeks to locate women as "national subjects" in relation to, but also beyond, the state and the religion-based community that the UCC debates invoke, as providing the only two alternative resources and identities for the (gendered) Indian citizen.

### **Personal Law**

The operation of separate personal laws for different religious communities in India is a legacy of colonial administration. Four religious communities, the majority Hindu, and the minority Muslim, Christian, and Parsi communities, have their own personal laws (other religious groups such as Sikh, Buddhist, Jain, and tribal and scheduled castes are subsumed under Hindu law). No one is exempt from or may opt out of a religious identity (Indians may choose, however, to be married under a nondenominational Special Marriage Act). Personal laws operate in matters relating to inheritance, marriage, divorce, maintenance, and adoption, which are regarded as "personal" issues, understood to be matters that relate to the family or "personal" sphere. Despite differences among them, the personal laws of all communities are discriminatory toward women.

Personal law, since it is envisaged as a means of securing community

identity and respecting religious difference, operates therefore within rather than despite a constitutional commitment to the secularism of the Indian state. Any proposed reform or removal of personal laws becomes a fraught issue and is perceived as a threat to community identity and/or traditional patriarchal arrangements. Following the Shahbano case (which in 1986 resulted in passage of the regressive Muslim Women's Protection of Rights on Divorce Act), a uniform civil code became an issue of moment in the Indian political scene.<sup>1</sup> Since the Bharatiya Janata Party (BJP), subscribing to a *Hindutva* ideology and politics, came to power at the Center in 1998 with the promise of instituting such a code, it continues to be a prominent issue on the agenda of the Indian state.

### **The Uniform Civil Code: Positions**

In the contemporary debates on the UCC, the following broad positions may be identified:

- *Constitutional secularism*: The Indian Constitution approves a UCC in principle but not in practice. The main consideration for the first is that legal uniformity will serve as a means of overcoming religious differences and achieving national unity. The subtext, at least at the time of Independence, was also that secular laws would be in keeping with the modernizing agenda of the postcolonial nation-state. However, the difficult communal situation at the time of Independence, and the opposition to removal of personal laws at such a time, led to the accommodation of a UCC only as a directive principle in the Constitution (directive principles are constitutional injunctions, viewed as policies to be kept in abeyance and implemented in the fullness of time).
- *Religious patriarchy*: The opposition to reform in personal laws was most vociferous when a reformed Hindu Code bill was proposed in Parliament in the early years of Independence. Its proposals included measures like women's equal rights of inheritance, and rights in divorce, which were viewed by the majority of Hindu parliamentary members as threats to the hierarchy and traditional gender relations within the family. The personal laws of other communities have remained untouched by any reformist impulses since Independence (except for the regressive Muslim Women's Protection of Rights on Divorce Act passed in 1986). This position continues to prevail, though the explicitly gender-discriminatory arguments are in recent

times more muted in lip service to women's rights. These broadly and transparently patriarchal concerns among all religious communities are additionally inflected by different political anxieties in different groups.

- *Minority communities*: Their opposition to UCC is articulated on the grounds that it threatens the sanctity of their communities' religious laws and therefore threatens their religious identity—more recently, it arises from resistance to what is perceived as the likelihood that a UCC will really be a version of Hindu law, which will then be made uniformly applicable to all.

- *Hindu political parties*: Following the passage of the Muslim Women's Act of 1986, Hindu political parties have stepped up their advocacy of a UCC, primarily as a means of removing the "privileges" of minority men. The UCC that is envisaged will be a version of Hindu law and will thereby secure Hindu hegemony. Much is made of the so-called progressive reform of Hindu law in the 1950s as a model for a UCC.

(Hindu ideologues seeking a UCC would still be bound to resist reform of personal laws in certain directions that might empower women.<sup>2</sup> The positions of both minority communities' representatives and Hindu ideologues are undoubtedly both covertly patriarchal and overtly communitarian, grounded as they are in the will to preserve gender hierarchies as well as retain their own religious authority and autonomy.)

- "*Communitarians*" would oppose the imposition of a UCC because of their opposition to coercive state secularism, their advocacy of a pluralist and decentralized polity, and their support of autonomy for religious communities.

- "*Liberal secularists*" would support a UCC on the grounds of egalitarianism, uniformity of law, and democratic politics, but they would hesitate to unequivocally support its imposition in view of the actual situation of conflict with embattled minorities in which it is enmeshed, as well as the dubious credentials of the government in this instance for securing a secular and egalitarian substitute for the present personal law structure.

- *Women's groups*: The agenda of *women's* rights in discussion of personal laws has been systematically foregrounded only by the women's movement, and that only in its most recent phase.

The UCC debates among these last three categories occupy two distinct discursive realms whose overlaps and disjunctures are important to note. Though the Shahbano case led to the revival of the UCC question, it was perceived in sharply different ways, and the political and intellectual discussions it prompted moved in two different directions, one toward the nature of “Indian” secularism and the other toward women’s rights in the context of personal laws. The latter is by no means at the center of the secularism debate between the communitarians and the leftists/liberals, and the former has impinged on feminist thinking specifically only in terms of defining democratic political space, as I shall elaborate later.

As will be clear from this exposition, there are problematic convergences to be found in this situation: between the liberal/Left and the Hindu Right favoring a UCC, for instance, and between secular communitarians and fundamentalist representatives of minority communities that oppose it; as well as contradictions between a secular constitution and a state that administers religious laws and is indulgent to religious communities’ demands. The content of these positions cannot, therefore, be looked at in isolation from their context. We must be alert and ask who speaks, why, and what is the speaker’s politics.

A further point by way of ground clearing: Both the liberal multiculturalism debates in the West and women’s struggles against religious fundamentalism in other parts of the world are relevant to the issue of the UCC in India, and they are useful parallels to draw on to facilitate understanding. But the Indian debates are considerably more complicated because of two factors specific to India: one, *religious* laws in a secular democracy, and two, a multireligious nation-state. Thus the “secularism” debate, as I call it here, like the multiculturalism debates in the West from which it draws, is similarly polarized between “communitarians” and “liberals”; but since the communities under discussion in the context of Indian personal laws are *religious* communities, the place and function of religion in the modern democratic state becomes a central issue, rather than (only) the question of group (cultural) rights versus individual (legal) rights as in the latter case. Further, feminist politics around the issue in India are more complicated (I mean theoretically and ideologically, not necessarily in actual political struggle) than similar movements in other countries because of the multireligious situation in India, in which majoritarian community organizations have sway over and pose a threat to minority communities.<sup>3</sup> Feminist activists may oppose state and/or community straightforwardly when there is a clear polarization of positions between women’s interests (gender justice) and religious/state patriarchies; but in India women’s groups also have to respond to and negotiate minority claims for recognition. This means that Indian feminists, because of

their liberal, secular credentials (which does not exempt them from “having” a religious identity), cannot confine their struggles to women’s interests “alone” (if such a thing were clearly identifiable in the first instance), but are called on to be sensitive to the identity crises and threats experienced by members of minority communities, including women. This double commitment can lead to acute dilemmas for feminist understanding and to the paralysis of feminist praxis.

I shall examine in somewhat greater detail, below, some of the positions in the secularism debate between communitarian and leftist-liberal intellectuals, who share a common discursive space despite the divergence of their views on the UCC; and, in the following section, highlight the issues in the debate around women’s rights within feminist groups.

### **State and Religious Community in Secularism Debates**

The modern Indian state, by definition secular, nevertheless—and precisely in the name of that secularism—grants considerable recognition to religion, not only by retaining personal law, as I have explained, but by actively regulating religious institutions in the name of a vastly expanded definition of secularism: for example, by having the courts administer personal law, managing religious trusts, opening entry to temples for lower-caste Hindus, administering religious holidays, constitutionally securing freedom of religious belief, and other similar interventions. This is clearly in contrast to the modern secular state in the West, which operates with a definition of secularism that places religion, treated as a matter of *faith* (worship, ritual, custom), in the realm of the private, to which it makes the promise of noninterference and offers a minimal guarantee of protection of freedom of practice, and little else, and that relegates the *institutions* of religion—church, religious law, religious authority—to minor functions in the public sphere related to the community’s practice of its religion. Beyond the constitutional investment in “secular” control of religious matters, the Indian state, as Sandra Freitag has pointed out, has also showed a marked shift from the “initial constitutional emphasis on the relationship between the individual and state” to an increasing reliance on direct relationship with communities, both in terms of “state policies (e.g., reservation policies for scheduled castes and tribes)” and in terms of “political strategizing (in the wooing of vote blocs).”<sup>4</sup> It has also responded to demands for decentralization and greater autonomy to local bodies, regional blocs, and religion-based organizations in politics.

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conflict. Conflict is the product of two aspects of communalism (as it is called): one, the existence of many religious communities within the single space of the nation, and the consequent struggles among them for supremacy or survival, as the case may be; and two, the conflict between communities and the state. The latter takes different forms. The mobilization of the majoritarian religious community, organized around *Hindutva* or Hinduness as a claim of cultural nationalism, is of course a direct challenge to constitutional secularism and the state’s secular authority. The problem posed by minority communities is different: it takes the form primarily of intransigence to state-led change in an attempt to preserve their religious identities. Both the conflicts and the complicities between state and different communities show unmistakable signs of ascendancy. In such a context, the Indian state cannot adopt the West’s secular program of domesticating religious practice, relegating religious institutions to an enclave, and treating religious faith as a “private” concern. Religion in modern India is not simply a survival of premodern belief systems and religious authority—a familiar stereotype of civilizational backwardness in the “Third World”—but in fact a crucial signifier of community identity and hence a player in state politics.

It is in the face of this enlargement of religious communities’ political influence that communitarian arguments are becoming prominent in India. Religious community (along with other forms of linguistic, regional, caste, and ethnic communities) is rescued from the illegitimacy it has acquired in the modern state. All these groups are described as various “fragments” in opposition to an inauthentic and totalizing nation-state. Located within powerfully orchestrated critiques of modernity, the community is cast in the role of the only alternative to modern life and its institutions (including, indeed above all, global capitalism). The argument goes that, along with the family, the community is the primary site of the individual’s socialization and hence of identity, affiliation, and the formation of affective ties of loyalty and solidarity with others; it offers the idiom of love and bonding in place of the sterile terms of the modern contract in law and marketplace; religion of course provides spiritual solace, in contrast to secular rationalism. However, none of this, we might think, is in real conflict with the place assigned to it in the contemporary secular state.

But the fostering of communal sentiments has led to community identity politics, communal mobilization, and ultimately communal conflict, in the view of others. Left/liberal secularists attribute the eruption of hostilities between communities in the form of riots, arson, and other acts of violence and destruction (whose apogee was reached in the destruction of the Babri Masjid in Ayodhya in 1992) to the problem of communalism.

Communitarian arguments would locate communalism within a different problematic: that of modernity. They argue that it is the failures of the totalizing modern nation-state and its belief systems—liberal individualism, the rhetoric of rights, bourgeois capitalism, secular rationalism, science, “development”—at whose doors the responsibility for the pathology of communal violence must be laid. The resurgence of indigenous community values is a consequence of people’s disenchantment with alien (European) Enlightenment values, even a rebellion against its imposition by the colonial and then the postcolonial state. It is in this context that the communitarian defense of “minority cultural rights” and “toleration” of different religious laws for different communities is put forward. As we can see, here it is the defense of community rights and cultural pluralism, articulated as a politics of recognition, which provides the larger argument within which a UCC is opposed.

In the leftist-liberal secular position the concern with a UCC tends to be only an aspect of a larger discussion of secular modernism, the role of the state, and the “real” issues for postcolonial nation-statehood. Sumit Sarkar, for instance, complains about the neglect of urgent problems like poverty, underdevelopment, caste and gender inequalities, or land reform in Indian political praxis and discourse as a consequence of the claims of cultural nationalism and identitarianism to political centrality.<sup>5</sup> A recent collection of essays by prominent Indian leftist-liberal social scientists offers a specific focus on “state and politics” in response to these claims, in which the *state’s* centrality to the Indian nation’s development is reaffirmed. Even as they stress the need for state-led development, the *actual* record of the Indian state as the central secular, liberal, developmental agent and authority of the postcolonial nation, they admit, is a dismally poor one. They argue that, nevertheless, what this would entail is a “censure of governance” rather than the wholesale “denunciations” of modernity, science, and reason, of the kind the anti-Enlightenment intellectuals engage in.<sup>6</sup>

Both Amartya Sen and Pranab Bardhan address the state-versus-community debate. They insist that the state is called on to play a “protective role vis-à-vis inequities within the ‘community’” since the community is not necessarily the egalitarian, democratic, and intimately affective space that it is claimed to be in communitarian discourse.<sup>7</sup> Communities often insist on compulsory loyalty from their members; religion-based parties like the Rashtriya Swayamsevak Sangh (RSS) are closely modeled on fascist organizations in their modes of discipline and regulation; the individual’s exit from communities is not easy, and there is violent opposition to conversion, mixed marriages, or disobedience of norms; and whether religious heads—sometimes self-styled—or a vocal funda-

mentalist minority among a community can be regarded as truly representative of its position is a question often raised by its moderate members. There is also a well-founded belief that community institutions are in any case caught up in a process of “decay,” which is accompanied by changes in other spheres of social and political life. The displacement of communities’ authority by the state’s may well be the result simply of an “institutional vacuum” caused by these changes, rather than by active or aggressive state intervention.<sup>8</sup>

Before I move into the next stage of my discussion, some clarifications are required to introduce greater nuance and complexity into this too-quick summary of the secularism debates.

First, I must repeat that communitarians, though opposed to the state’s imposition of a UCC, speak as “secularists”: they are critical (only) of official or Nehruvian secularism. In its place they advocate religious *tolerance* as being both more authentically “Indian” and more effectively “secular.” The problems of identifying some essentialized cultural “Indian-ness” in this formulation are obvious.

Second, there is a spectrum of communitarian positions that I have so far described in a somewhat undifferentiated way, ranging from the strong antimodernity stance of Ashis Nandy, who nostalgically conjures up a premodern vision of community derived from the Gandhian idealization of village societies; to Partha Chatterjee’s Foucauldian antigovernmentality, from which derives his advocacy of autonomy to communities as a (indeed, the only) way of resisting the state’s totalizing and sovereign power; to Akeel Bilgrami’s critique of Nehruvian “Archimedean” secularism, whose corrective is a state-initiated “negotiation” with communities for reform.<sup>9</sup> Much creative energy is evident in the ways the rights of communities are sought to be made not only *not* in conflict with but also central to democratic politics.

Third, we may say that, despite the initial strongly polarized opposition between the parties, these debates have brought them to agreement about some positions. One is about the limits of the model of secularism as the separation of state and religion that Jawaharlal Nehru, the chief architect of post-Independence Indian secularism, hoped would prevail in India as in the West: its failure (even impossibility) has been conceded by Left/liberals. The failure, as I have explained, has been variously attributed to India’s multireligious polity, the persistence and strength of religious faith and affiliations among the “people,” and the Indian Constitution’s version of secularism as the official protection of all religions. Significant attempts to evolve more historically and socially sensitive theoretical paradigms for secularism, as well as to search for and interpret models of intergroup amity, have been made from broadly liberal



premises.<sup>10</sup> Even more clearly, the initiatives of the state in the matter of a UCC, as a matter of actual politics, and especially under the present government, are suspect: they are therefore resisted by both communitarians and Left/liberals.

A final observation, which will lead me into the discussion of gender and feminist politics in the next section: In the secularism debates, as I have mentioned before, the question of gender is nowhere directly addressed, though the conflict that is noted between the Constitution's equality provision (Articles 14 and 15) and the freedom of religion and rights of minorities provisions (Articles 25 to 30) marks the space of such an address. The reasons for the repression of gender in these different positions are different and complex. I shall not belabor an explanation here but instead quickly sketch one: for communitarians grounded in an anti-Enlightenment agenda, women's rights are problematic (though they are not explicitly rejected as such) because they fall within the arena of modernity, egalitarianism, and secular law. For the Left, there is the familiar conflict between the categories of gender and class for primacy in understanding social structures and in conducting political struggle.<sup>11</sup> In liberal thinking the individual is necessarily conceptualized in unmarked terms as the bearer of universal rights.<sup>12</sup> In all these ways of thinking, the claim of women's rights in the UCC question tends to be fudged, or at least marginalized, in contrast, as I shall be explaining, to the way the issue is addressed by women's groups.

### **Gender, Identity, and Citizenship: Feminist Positions on the UCC**

The UCC debates both in the Indian Parliament and in other forums remained for a long time restricted to arguments about uniformity versus minority rights, secularism versus religious laws, and modernization versus tradition, in the context of the new nation-state. Though the threats to patriarchal norms and the control of female sexuality, especially in relation to inheritance and marriage, were explicitly brought up in the discussions around the Hindu Code bill, women's rights even in these contexts appeared only fleetingly as a consideration. Even women's organizations like the All-India Women's Conference (AIWC) stressed the need for a UCC mainly for the reason that uniformity of laws would unify a nation split along religious communitarian lines.<sup>13</sup> It was only from the 1960s on that the AIWC and other women's groups began to press for a UCC as a means of ensuring gender-just laws for women of all communities, a demand that of course became considerably more complicated following

the communalization of the Shahbano issue in the mid-1980s. In the years since, the differently evolving positions on the UCC among different women's organizations have resulted in sharp divisions on a range of fundamental issues related to and emerging from it. This discourse is both different from and yet closely related to the positions articulated in the secularism debates.<sup>14</sup> The major difference of emphasis is of course the primacy in feminist discourse of securing gender-just laws, a matter of little concern and sometimes active repression in the secularism debates, as we saw. The parallels are to be found in a similar split between leftist-liberal and antistatist-communitarian positions, though it is important to recognize how feminist imperatives inflect these positions in significantly different ways.

The only unanimous feminist perception in the matter of the UCC is that all religions' personal laws are at present gender-discriminatory. To some extent all women's groups also agree that therefore (1) these laws must change and (2) women must be involved in bringing about these changes. Beyond this, major disagreements divide feminist thinking on the subject. Nivedita Menon has usefully outlined the different positions on the UCC issue discoverable within the women's movement, which variously advocate:

1. compulsory egalitarian civil code for all citizens;
2. reforms from within communities, with no state intervention;
3. reform from within as well as legislation on areas outside the personal laws;
4. optional egalitarian civil code;
5. reverse optionality, that is, all citizens to be mandatorily covered by a gender-just code across "private" and "public" domains, but with the option to choose rather to be governed by the personal law of their religious community.<sup>15</sup>

The first of these, a compulsory egalitarian civil code for all citizens, has been more or less given up as a feasible or even desirable demand, and ceded to the Hindu Right. The compromise version of this is envisaged in the last two positions, as an optional or reverse-optional civil code. The idea of a uniform civil code that will replace and exactly take the place of the present personal laws (as envisaged by Hindu Right groups) has also been discredited: Instead the third position envisages a common civil code of much wider ambit, which will include domestic violence, homosexuality, and women's rights in work in its place, in this way refusing both the division of "private" and "public"—as well as the restriction of gender relations to the sphere of the "private"/"personal" alone—that underpin

the structure of “personal” laws. The conflict is then reducible to the issue of reforms from within communities as in the second position versus versions of a state-sponsored common civil code.

These opposed positions derive from and correspond to the division between communitarians and Left/liberals that was reflected in the secularism debate, with this difference, however: that women’s groups’ concession to religious communities’ rights to personal laws is less a recognition of the legitimacy, even less of the value, of communitarianism than a pragmatic reconciliation to the realities of the Indian situation. Thus even the All India Democratic Women’s Association (AIDWA), the central left-ist women’s organization in the country, conceded at their convention on equal rights and equal laws (December 1995) that a two-pronged strategy would be necessary to achieve this—both common gender laws as well as reforms from within—and, specifically, that Muslim personal laws must be reformed “within the scope of Islam.”<sup>16</sup> This is a concession to the current crisis of minority identity in the context of majoritarian fundamentalism and an attempt to distance feminist positions from the Hindu Right’s demand for a UCC. The most influential proponent of this view, Flavia Agnes, has argued that outcomes are important—in this case, gender justice, not uniformity for its own sake. This is best achieved by reform from within communities, by piecemeal legislation, and/or an optional civil code, and this is all that may be reasonably expected in the present context. There is also the recognition that in India women are closely tied to their communities and to their religious identities both because of an inequalitarian multireligious social arrangement and because of an inherently traditional social structure and that therefore women’s groups cannot assume an “isolationist” stance by pressing for a “secular” civil code.<sup>17</sup>

It would be incorrect, however, to identify the support for internal reform of personal laws as only a strategic position. Increasingly, more substantial and foundational grounds for feminist opposition to proposals for reform from outside are being advanced. One source of dissatisfaction with outside initiatives is a problem internal to the women’s movement, while the other reasons for resisting it occupy the theoretical ground proposed by communitarians. Flavia Agnes has expressed the dissatisfaction in the form of a criticism of the implicit “secularism” of the urban mainstream women’s movement, which disavows and refuses recognition to differences among women deriving from their “primordial” identities, especially religion. Agnes and, most recently, the Anveshi group maintain that this has led not only to the homogenizing of “Indian women” but also to the hegemony of implicit upper-caste majoritarian norms in defining “women.”<sup>18</sup> “Secular” feminists have issued denials of such designs and

assumptions on their part.<sup>19</sup> But the real question surely is one not of the intentions and good faith of the women's movement but rather of whether differences among women are best recognized and respected by having separate religious laws. This would continue to be a problematic issue even if the accusations were valid.

If the question of "women" is one of the theoretical issues that the UCC debate has made urgent in feminist political struggle, other radical questions have been raised with equal political urgency from an antistatist position that resonates with communitarian arguments (especially those of Partha Chatterjee, who has figured prominently in these feminist debates). The hostility of many in the women's movement to the state, to legal reform, and to the promises and premises of liberalism—individual rights of citizenship, legal equality, and state-sponsored secularism—draws support from their experience of activist struggle. The limits of nationalist ideology, the fiction of citizenship, and the dubious progressiveness of the law are all exposed by women's issues like the Shahbano case, to mention only the most prominent among innumerable instances.<sup>20</sup> The most radical formulation of this antistatism, the Anveshi group's statement referred to earlier, is critical of the women's movement's preoccupation with self-evident "gender issues" such as personal law reform and identifies instead with the struggles of minority communities and oppressed castes.<sup>21</sup> It discounts the impact of progressive legislation and therefore trivializes feminist struggles directed at legal reform. In the formulation of these arguments, poststructuralist theoretical support for the critique of the modern nation-state combines with the radical politics generated by powerful other "new" social movements in India.<sup>22</sup>

The most explicit cultural/communitarian position among feminists engaging in this debate is that of Madhu Kishwar, editor of the feminist journal *Manushi*. Kishwar has been a major advocate of India's "living tradition," like Chatterjee deriving impetus for this position from opposition to the totalizing and leveling moves of the modern state. From this position she opposes *both* personal law *and* a UCC because codification of the law only fixes and homogenizes the diversity and flexibility of customary laws. According to Kishwar, even today "each caste and sub-caste and occupational grouping continues to assert its right to regulate the inner affairs of its respective community and does not pay much attention to either ancient textual authorities or modern parliament-enacted laws."<sup>23</sup> But in general there is strong feminist resistance to a position such as Chatterjee's—even where his communitarianism may be otherwise supported—on account of its gender-blindness. Nivedita Menon, for instance, complains that he ignores a particular trajectory of community formation in India: "The very selfhood of religious communities as they have come

to be constituted is contingent upon marking their difference as male in the 'inner' realm, so that to challenge this is to threaten their very existence as communities."<sup>24</sup> We might link this to Fatima Mernissi's observation about the "feminization" of the male in the postcolonial state, with the "access of women as citizens to education and paid work" in the modernizing state.<sup>25</sup> This explains why the impulse for men to retain control over women within the bounds of religion grows reactively stronger, in India as in Morocco. Another objection, the failure to distinguish between different kinds of communities, especially those based on caste as opposed to religion, and between majority and minority religious groups while valorizing "community" in the abstract, has been noted by the Working Group on Women's Rights in their response to the Anveshi group: "Anveshi equates community with minority community, and caste with dalit. Would they grant the same rights to custom and practice where the majority community and brahminical customs are concerned?"<sup>26</sup> Antistate women's groups recognize the bind: that most religious communities cannot be valorized as protectors of women's rights in rivalry with the state, that democratic space for reform within them is hard to win, and that support for "community" in a loose sense may well implicate them in an undesirable support for hegemonic and majoritarian caste and religious groups as well.

At the same time feminists on the Left are by no means unequivocal in their support of the state, either: the Indian state's record in the matter of protecting and promoting the rights of minorities, scheduled castes, and women would in any case be hard to defend. The liberal defense of reform movements, legal activism, rights struggles, and citizenship is instead based on more modest claims for their efficacy than the attacks of its opponents would indicate—and surely it need consist of nothing more resounding than the simple claim that having rights is more empowering than not having them, that progressive laws are better than regressive ones (though not perhaps than none), and that universal citizenship is preferable to a political system that reflects social differences and hierarchy.<sup>27</sup> The main point to note here is that the conflict between the two feminist positions that I have been outlining does not arise from an absolute defense of either state or community but rather from a muted and qualified support of legal reform from "outside," that is, by the state, on one side, versus a muted and qualified support of reform from "within," that is, by religious communities themselves, on the other; this is accompanied, however, by strong opposition to autonomy for communities in regulating their internal affairs by the first group, and strong opposition to state intervention by the second.

Both the secularism debates and the feminist debates around the UCC point to the need for, even as they are reflexive about, the space for

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deliberations, consultation, argument, discussion, and consensus, which alone can produce meaningful social transformation such as that envisaged by a UCC. This space, which lies outside the state and its institutions, is commonly referred to as “civil society.” If postcolonial civil society in India is, as has often been noted, a contested space invaded by both religion and (secular) modernizing reform,<sup>28</sup> then the question of a uniform civil code will be decided through the clashes that take place on these terms and in this sphere, rather than by a peremptory intervention by the state or by initiatives within communities.

### Women and Community, State, and Society

The secularism and feminist debates in India provoked by the UCC issue have differed, as I have attempted to show, on where the national subject’s best interests lie: whether as member of a primordial community (here primarily religion-based), or in relation to the state as citizen and rights-bearing individual. Feminist arguments, as we saw, have emphasized the difference that gender makes in determining these outcomes. How do women relate to the community, to the state, and to other women? I am specifically interested in seeking an answer to what sort of *political* subjecthood they may attain in terms of each of these affiliations/identities/locations. In the concluding section of this essay I try to sketch the public space that women might stake out to enable their participation in a matter that touches them so closely, which I mark as the social, economic, political, and affective sphere of work.<sup>29</sup> What, in the present Indian context, is women’s access to this space; how does it relate to religion, community, and the democratic political process? The focus in this section will therefore be on the question of women in relation to the community, to the state, to women-as-communities, and, finally, to the domain of work.

#### Women in Religion-Based Communities

It is useful to think of religious community in two distinct ways, one as a political identity, and the other as an actual anthropological and historical entity.

Religion has undeniably come to provide a strong sense of identity to people widely scattered geographically who may share little else by way of class, language, custom, or history—or even nationality; and it is this identity that is upheld even as it upholds personal law. It is also this politicized religion that is increasingly seen to take over the public sphere

(often, literally, invading the streets), occupy various forums of public discussion, and set the agendas for regional and national issues. Necessarily such groups appear reactionary and resistant to change, mobilizing only to assert identity in increasingly fundamentalist ways.<sup>30</sup>

The second kind of understanding of people within “living” communities in a bounded geographical territory is provided by ethnographic studies that explore the interaction among and between men, women, family, religious leaders, the state’s personnel, and other communities. Kalpana Ram’s work on the Christian Mukkuvar fishing community in southern Tamilnadu is a valuable example of such an undertaking. Ram shows how both Catholic clergy and state intellectuals make interventions into the reform of the Mukkuvar community in the name of “modernization” and “development,” impinging in particular ways on the reform of “bodily regimes,” which includes women’s sexuality.<sup>31</sup>

This study, and similar ones,<sup>32</sup> point up the importance of marking the heterogeneity of “communities”: the differences between minority and majority communities; the differences between different minority communities (Muslim, Christian, Parsi, Sikh)—their size, status, beliefs, origins, and affiliations, politics, transnational affiliations, and political clout as a consequence of all these factors; the fact that religious denomination is inflected by other aspects of identity and location, such as region (North versus South, Northeast versus the rest of India, urban versus rural, for example), occupation, class, caste. As historical studies reveal, religious communities are constructed, not natural, entities. Personal laws were codified by colonial administrators for the sake of administrative convenience, in many cases by overriding or fixing customary laws, and do not in every case have scriptural sanction. Communities are far more heterogeneous, their boundaries far more permeable, and their norms far more flexible than the political rhetoric or the state’s classificatory schemes would lead us to expect.<sup>33</sup>

Our understanding of women-in-communities would differ according to how we read the community in the postcolonial nation. If we understand communities primarily in the political sense, we emphasize their separateness, their isolation from the “mainstream,” their stasis and their resistance or refusal to change: all in the sole and supreme interest of maintaining their identity. Religion-based communities in this sense—like families, with which they are closely tied, and the nation to which they are culturally allied—are self-evidently centered on and led by men. But women are not excluded from or marginal to them; on the contrary, they form a crucial component of them. Their inclusion is indeed central to the identity communities, as well as women themselves, come to bear, as we saw. But women—in specific contrast to men—are not viewed as *consti-*

*tuting* these spheres; they are described instead as *belonging to* them. The primordality of religious identity, which is an aspect of being born into a religious community, is not “naturally” available to women but is a secondary aspect of their relationship to the men of the community. The complexity and contradiction of such “belonging” is indicated by the double meaning of the word: as both “affiliated to” and “owned by,” the one indicating voluntary and participatory membership, the other secondariness, functionalism, and (merely) symbolic status. (Though religious identity is legally inescapable in India, it is not for that reason nonvoluntary or merely passive.) For women, even where the first, more agential meaning is operative, “belonging” is a reactive mode. They arrive on a scene that is always already set, and their membership is conditional on their conforming to the preexisting rules, roles, practices, conventions, histories, and meanings that have been instituted. In every case obedience and loyalty are rewarded by (the promise of) accommodation, protection, praise; while disobedience and disloyalty are punished by (the threat of) boycott, expulsion, violence. (This is the reason for the paradoxical conformity of women even in situations of power within religion-based political parties in India and explains why they have only ingratiated themselves into these structures, not transformed them). It is in this sense that women become symbolic figures for communities, especially at moments of real or perceived crisis.

Within such an understanding of religious community, as an autonomous enclave within the space of a larger public life from which it is isolated, it is difficult not to see women as merely pawns, prisoners, or deluded subjects. Ram’s conclusions about the Mukkuvars’ relations to both religion and modernizing reform are developed, coincidentally, in opposition to an essay on the Shahbano case that I co-authored some ten years ago (in which we came out in favor of internal reforms within the Muslim community rather than an immediate UCC).<sup>34</sup> She objects to the concept developed in it of family- and religion-based community (especially a minority community) forming a “state-within-a-state,” which ignores, she holds, the “dynamics of historical change within the ‘inner state.’”<sup>35</sup> Such a model is, in her view, “inadequate at the intellectual level,” not only because it is inaccurate—since it does not record the changes happening within communities—but also because it stigmatizes (minority) communities and, as a result, “isolates and damages the prospects of minority women by further reinforcing the taint of ‘backwardness’ associated with minority status by a dominant modernity.”<sup>36</sup>

Ram’s study convincingly shows the changes that modernizing reform in the areas of marriage and sexuality brings about in Mukkuvar women’s behavior, their status, and their well-being, in opposition to the assump-



tion of minority communities' stasis and backwardness that many feminist studies, like our own, worked with. But in the end she marks the limitations of the modernizing project, the "relations of power in each model of emancipation and reform," and the renewed attempts, ultimately, to recontain the sexuality of women.<sup>37</sup> Such a concession must not be taken to negate the lessons of her work. While it reinforces the reading of women's relation to the community as one of subordination and subjection to control, it also in important ways opens the door, as she maintains, to the larger context of "postcolonial nationalism, and its allied legitimizing discourse of development."<sup>38</sup> It is an entry that I shall want to explore more fully in the last part of this essay.

### Women's Rights

The recourse to legal remedies and the assertion of rights and autonomy by individual women are often viewed as isolating and individualizing moves, especially when posed against the affective solidarities offered by family and community. The trade-off between (gaining) legal rights or legal victories and (losing) family and community support is invariably one that must give women pause. That such choices have to be made is a problem, it is argued, arising from the liberal conception of rights as inhering in the individual. The perceived limits of individualism and liberal rights for women has been responsible for calls issued by some feminists to abandon them as failed promises and return to family and community solidarities and values.

The politics of legal rights is a complex and charged issue, and not one that I wish to explore here in any depth in terms of an abstract debate.<sup>39</sup> What is relevant for the present discussion is that for Indian women, the state is not in any case a readily available recourse from the problems of violence, injustice, discrimination, exploitation, or oppression experienced in family, society, or community. The laws are tardy, the police corrupt, welfare and employment opportunities negligible, and the individual's knowledge of her rights and entitlements itself vague. To speak of women as rights-bearing individuals in this context is to invoke a situation that does not exist in any meaningful way.

It is not hard to see that in addition to the conceptual and practical limitations of the law and of state-sponsored welfare or protection, there would also be the problem of significant social resistance to women's access to or deployment of these resources. The social status quo is defined by women's place within the structures of family and community being maintained and is challenged when attempts are made to change it in the

direction of greater egalitarianism, autonomy, or freedom for them. The powerful moments of rupture occur when women are disaccommodated within these structures, and a process of exorbitation ensues. These, in recent Indian history, have been the moments when women challenged their religious laws or customs and became public and nationally visible figures, as in the widely publicized cases of Shahbano and the child-bride, Ameena. The dimension of national crises that these cases developed into was unprecedented and indicates as nothing else does the political reverberations of women's issues.

### Women as Communities

Though the concept of *group* rights, gaining increasing prominence in communitarian thinking, has sought to extend rights beyond the individual by insisting on identitarian claims based on race, religion, sexuality, region, and minority status of different kinds, it does not engage, as we have seen, with the problem of women's rights within or in conflict with the community. Nor have women been envisaged *as a community themselves* in any significant rights-bearing sense. Archana Parasher holds that this inability lies at the heart of the explanation for the Indian state's continued discrimination against women in the conflict between the (ir) fundamental rights to equality and the (community's) right to religious freedom which supports personal law. By way of illustration, she asks us to substitute women for any other group: "For instance, in the case of the Hindu community it would be almost unthinkable for the State to enact or enforce laws to discriminate against the scheduled castes on the ground that the right to religious freedom of (higher caste) Hindus prevents the State from modifying the untouchability rules of Hindu law."<sup>40</sup>

Feminist theory provides different perspectives on the question of "women," whether as a (biological) sex, a (social) class, a (sociological) community, or a (theoretical) category. Women have traditionally been identified in terms of a binary opposition to men, a "difference" that is grounded in the biological aspects of their sex and reproductive abilities and provides a definition of "the female sex." Feminists' refusal of this biological essentialism removed one of the available forms of female identity. The debate over essentialism—what the female essence is if not this biological "uniqueness" and whether feminism's embrace of female identity based on a "common" oppression is productive or reductive—is unresolved.<sup>41</sup> Real difficulties remain, therefore, in conceptualizing women even as a viable category of analysis. Further, as "difference" theorists have been insisting, women are divided by caste, religion, class, race, and

nationality, and so their interests cannot be identical; they are so deeply embedded in structures of family, neighborhood, religion, and community, which offer them their primary identity, that these would claim their loyalties in a situation of competing rights; they do not naturally cohere in groups in any significant numbers or situations.<sup>42</sup> Even in the organized women's movement women are brought together in a problematically identitarian unity, as we have seen. Therefore, beyond the terms of gendered "difference" and (shared, but not identical, or even equally shared) discrimination, what do women bear by way of a *positive* collective identity in the modern democracy?

#### Women and Work

If it is true that women are only secondary and subordinate members of religion-based communities and, worse, subjected to severe controls in any fundamentalist resurgence; and if both their individual and collective/communitarian gendered identity as rights-bearing citizens is of limited potential for their well-being (however that may be defined), how do they become "national" subjects? For as we attend to contemporary public discourses in and on India, we cannot fail to notice that women figure prominently in them as such national subjects, to whom considerable influence is being attributed.<sup>43</sup> Developmental agencies of the state and international organizations target them as beneficiaries of reforms and welfare schemes (literacy, health, employment, credit) from the recognition both that they are deserving recipients and that the improvement of their status produces immediate and significant developmental benefits.<sup>44</sup> Political parties view them as a significant vote-bank by identifying issues like prices, water, sanitation, and prohibition as "women's issues" and wooing them accordingly with promises of delivering these benefits. Above all, the market, newly liberalized, has been quick to identify them as consumers having money and decision-making powers and has brought them into the ambit of advertising and customer profiles.

It would be naive to report these as all equally empowering, or as solely empowering. There is no denying that these forces and institutions can and do view women in merely instrumental terms, add to their burdens and responsibilities, delude and exploit them, and subject them to new forms of coercion and regulation in the interests of "development."<sup>45</sup> "Women" are also here viewed in terms of specific class, geographical (urban-rural), and age factors, so that no singular collective identity is activated by this new visibility. Nevertheless, neither this collective influence nor the signifier *women* that is in circulation in these discourses is

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easy to dismiss as irrelevant when we are seeking to identify spaces for women in the public sphere that derive from functions and identities other than the reproductive, the symbolic, or the legal that family, community, and state traditionally grant them. Nor should “market-related liberties” be regarded as solely responsible for this development, as Amartya Sen warns, for they are complementary to “freedoms that come with the operation of other (nonmarket) institutions” (his examples are women’s organizations, like SEWA, and credit and cooperative organizations in India and Bangladesh).<sup>46</sup>

What all these addresses to women implicitly acknowledge is the identity and function of women as workers and producers.<sup>47</sup> Women’s work, both waged and nonwaged, is clearly no longer denied or deniable in public, specifically official, discourse.<sup>48</sup> The recognition of the economic value of women’s work has an impact on their relationships within the family and the community by providing them with bargaining power. My purpose in identifying work as a possible locus of civil society is also to search out an alternative to the all-subsuming private sphere of the family and the (sole) public sphere of the religion-based community to which they are otherwise limited in membership and participation.<sup>49</sup> Without idealizing work or workplaces—where admittedly several and multiple kinds of oppression exist (sexual harassment, hierarchy, discrimination in wages, to name only the most obvious)—or overlooking the double burden that wage-earning women carry, we can visualize the possibility that the shared conditions of work may produce solidarities among women and provide the grounds for their mobilization. The most striking examples of women’s collectivities in India today are organizations like SEWA (Self-Employed Women’s Association, whose members are women workers in the unorganized sector) and peasant women’s organizations; the urban women’s movement too is largely made up of professional women, lawyers, journalists, teachers, social workers, whose initial politicization often happened within professional associations.<sup>50</sup> The workplace promotes the furtherance of shared interests, is a place of close physical proximity among its members, and offers freedom of membership and exit; it therefore functions as a voluntary community. It is not my point that the places and conditions of work are more egalitarian or democratic than nonwork spaces—undoubtedly, as part of larger social structures and practices, they are gender-, class-, and caste-segregated to a greater or lesser extent. But they do provide the conditions of work-related activism (such as unions), and ultimately of women’s participation in the political process.

This argument admittedly takes too little account of the problems and contradictions of women’s work. Some of these are obvious. Work is

the site of class exploitation and, for women, also of domestic oppression, and so skepticism about its liberatory potential is well grounded. Women's autonomy as workers is likely to be as threatening to patriarchal structures as their abstract political entitlements and legal rights. The difficulties of organizing women workers, the vast majority of whom are in the unorganized sector, are virtually insurmountable—and this does not take into account women performing nonwaged work within the household. Most crucially, women's entry into world production markets, especially in the Third World, is significantly related to multinational capital and its industries, a well-documented form of exploitation especially as it results in the increase of informal labor. Even where women's work is recognized as central to the economy, as in East Asian countries, this has only meant increased controls and exploitation of their labor. Finally, the protection of wages and work conditions are inescapably dependent once again on the state's intervention and its laws, which are at best fitful, and even this would obtain only in the organized sector.<sup>51</sup> All of these are valid and major arguments in countering a belief in any absolutely emancipatory potential of work for women, which I shall not seek to refute.

My point in any case is less an exhortation to women to join the paid workforce than an observation that in India there is at present an official, public recognition of the agency of women as workers in national life, not a guarantor of rights in itself but a form of attention and an opening for participation in its affairs. (Needless to say, my brief is not for working women as a category separate from women who are considered not to work but an argument that women are always already contributors to production, a recognition that has entered public discourse, including that of economics, belatedly). Both such recognition and the actual material aspects of economic improvement, political mobilization, and social solidarities that work facilitates have seemed to me significant for women in a context of the state's neglect and primordial communities' controls. It is a meager and compromised space but, precisely for that reason, one whose resources we should seek to expand, not write off.

The exploration of the anomaly of personal law in a modern secular democracy has brought this essay to an unexpected destination, an explanation for women's new visibility in contemporary Indian public discourse in terms of their only recently acknowledged productive capacities. I have identified in this phenomenon the possibility of women's exercising the agency to activate their rights and to resist community strictures and control, the larger preconditions for personal law reform. By pushing the terms of the debate on personal law beyond the dispute between the state and the rights of religious communities, Indian feminism has identified *women* as the rightful agents of change. My location of this agency in the

fact of their productive capacities is based on an intuition about the extent and significance of women's work, and on the hope that it might constitute their claim to genuine political enfranchisement.

## Notes

This essay was originally presented as a paper at a conference on gendered communities at Tel Aviv University, March 1998, and at the South Asia seminar of the George Washington University, April 1999. I am grateful to audiences at both forums for their responses and their responsiveness. Anupama Rao's questions and comments proved to be, as always, invaluable. An earlier version of this essay appeared in *Historia: Journal of the Historical Society of Israel* 4 (June 1999) (in Hebrew).

1. In 1985 the Supreme Court of India ruled in favor of Shahbano, a seventy-two-year-old Muslim woman, in a case of maintenance in divorce. It was awarded to her, as was customary, under Section 125 of the Criminal Procedure Code. The husband and the Muslim Personal Law Board, however, protested that this was contrary to Muslim personal law, under which no maintenance was payable beyond a stipulated period (*iddat*). In response to Muslim sentiment on the issue, the government, under Rajiv Gandhi, passed the Muslim Womens' Protection of Rights on Divorce Act in 1986, removing Muslim women from the ambit of Section 125's provision for maintenance to destitute women. There was a nationwide controversy over both the Supreme Court judgment and the new legislation. The Hindu Right protested that the ruling party was seeking to "appease" the Muslim community.

2. As Achin Vanaik points out, the *Hindutva* parties have made no effort to formulate a gender-just UCC despite the BJP's electoral promises, "because their going about this job would definitely alienate the Hindu male bastion and the Brahmanical base of the party. Indeed, comprehensive and genuine gender just laws will trigger an uproar from the overwhelming majority of men, be they Sikh, Hindu, Muslim or Christian." See "The BJP's manifesto," *The Hindu*, 2 March 1998, 12.

3. There is a large body of feminist writings on the struggles of women in the Arab world against religious fundamentalism, and specifically personal law structures. See Deniz Kandiyoti, ed., *Women, Islam, and the State* (Philadelphia: Temple University Press, 1991); and Margot Badran, ed., *Feminists, Islam, and the Nation: Gender and the Making of Modern Egypt* (Princeton, N.J.: Princeton University Press, 1994). Badran has recently described the feminist efforts in Yemen to protest the imposition of a reactionary personal status law in 1997. See her "Unifying Women: Feminist Past and Presents in Yemen," *Gender and History* 10 (November 1998): 498–518.

4. Sandra B. Freitag, "Contesting in Public: Colonial Legacies and Contemporary Communalism," in *Making India Hindu: Religion, Community, and the Politics of Democracy in India*, ed. David Ludden (Delhi: Oxford University Press, 1996), 211–34, esp. 228.

5. Sumit Sarkar, "Indian Nationalism and the Politics of Hindutva," in Ludden, *Making India Hindu*, 270–94.

6. Sugata Bose and Ayesha Jalal, "Nationalism, Democracy, and Development," in *Nationalism, Democracy, and Development: State and Politics in India*, ed. Sugata Bose and Ayesha Jalal (Delhi: Oxford University Press, 1997), 1–9, esp. 7.

7. Amartya Sen, "On Interpreting India's Past," in Bose and Jalal, *Nationalism, Democracy, and Development*, 10–35.

8. Pranab Bardhan, "The State against Society: The Great Divide in Indian Social Science Discourse," in Bose and Jalal, *Nationalism, Democracy, and Development*, 184–95, esp. 190–95. Harish Khare asks the pertinent questions: "Does the Indian nation-state need to survive? . . . should the 'Indian' social scientists place their intellectual creativity towards disintegration of this undesirable nation-state?" See his "Resisting without Clarity of Purpose," *Book Review* (May 1997): 15–16, esp. 15.

9. Many of these essays have been conveniently brought together in Rajeev Bhargava, ed., *Secularism and Its Critics* (Delhi: Oxford University Press, 1998). See, in this volume, T. N. Madan, "Secularism in Its Place"; Ashis Nandy, "The Politics of Secularism and the Recovery of Religious Toleration"; Partha Chatterjee, "Secularism and Tolerance"; and Akeel Bilgrami, "Secularism, Nationalism, and Modernity." Also in line with Nandy's position, Sudhir Kakar, "The Construction of a New Hindu Identity," in *Unravelling the Nation: Sectarian Conflict and India's Secular Identity*, ed. Kaushik Basu and Sanjay Subrahmanyam (New Delhi: Penguin, 1996), 204–35; and Richard G. Fox, "Communalism and Modernity," in Ludden, *Making India Hindu*, 235–49. For a critique of Madan, Nandy, and M. N. Srinivasan, see also Joseph Tharamangalam, "Indian Social Scientists and Critique of Secularism," *Economic and Political Weekly*, 4 March 1995, 457–61.

10. Some examples are Rajeev Bhargava, "What Is Secularism For?" in Bhargava, *Secularism and Its Critics*; Rustom Bharucha, "The Shifting Sites of Secularism: Cultural Politics and Activism in India Today," *Economic and Political Weekly*, 24 January 1998, 167–80.

11. Exceptions among leftist intellectuals, those who have supported feminist positions on the UCC, are Gautam Navlakha, a member of the Working Group on Women's Rights, which prepared the statement "Reversing the Option: Civil Codes and Personal Laws," *Economic and Political Weekly*, 18 May 1996, 1180–83, and author of "Women's Rights: Walking the Tightrope," *Economic and Political Weekly*, 24 February 1996, 454–55; Achin Vanaik, *Communalism Contested: Religion, Modernity, and Secularization* (New Delhi: Vistaar, 1997); Praful Bidwai, "Revamping Personal Laws: Reform, Yes; Common Code, No," *Times of India*, 17 August 1995. While the first two toe the orthodox Left line in supporting a UCC, Bidwai comes out in favor of leaving personal law reform to religious communities to bring about internally. Clearly there is room within a broad leftist-feminist alliance for negotiating questions of gender like the UCC.

12. An exception is Niraja Gopal Jayal, who incisively (and extensively) explores the contradiction of gender in her analysis of secularism and democratic government, using the Shahbano issue as the case in point. See chapter 3, "The Secular State," of her book *Democracy and the State: Welfare, Secularism, and Development in Contemporary India* (Delhi: Oxford University Press, 1999).

13. Archana Parasher, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (New Delhi: Sage, 1992). This book has been invaluable in initiating the recent feminist work in India around the UCC question and

in providing access to and information about a complicated constitutional, historical, and legal-political issue. See, on this, esp. 241.

14. See Amrita Chachi, "Identity Politics, Secularism, and Women: A South Asian Perspective," in *Forging Identities: Gender, Communities, and the State in India*, ed. Zoya Hassan (New Delhi: Kali for Women, 1994), 90.

15. Nivedita Menon, "State/Gender/Community: Citizenship in Contemporary India," *Economic and Political Weekly*, 31 January 1998: PE-3-10, esp. PE-10, n. 2.

16. The position of AIDWA is outlined by Gautam Navlakha in "Women's Rights."

17. Flavia Agnes, "The Hidden Agenda beneath the Rhetoric of Women's Rights," in *The Nation, the State, and Indian Identity*, ed. Madhushree Dutta et al. (Calcutta: Samya, 1996), 68-94. The book is based on a seminar organized in 1994 by the Majlis, a Bombay-based legal and cultural resource center. Proposals from feminists working for change from within a Muslim community were also presented by Nahida and Vahida at another seminar, "Gender, Law, and Culture: Engaging with the Religious Right," organized by the Centre for Feminist Legal Research, New Delhi, 15-17 February 1996.

18. Ibid.; see "Women's Movement within a Secular Framework: Redefining the Agenda," *Economic and Political Weekly*, 7 May 1994, 1123-28. The Anveshi group's statement appeared as an article, "Is Gender Justice Only a Legal Issue? Political Stakes in UCC Debate," in *Economic and Political Weekly*, 1 March 1997, 453-58.

19. Amrita Chhachi et al., "UCC and Women's Movement," *Economic and Political Weekly*, 28 February 1998, 487-88.

20. There is by now a substantial body of feminist legal studies and political analyses in India, including and going beyond the UCC. Book-length studies include Parasher, *Women and Family Law Reform*; Flavia Agnes, *State, Gender, and the Rhetoric of Law Reform* (Bombay: SNDT Women's University, 1995); Ratna Kapur and Brenda Crossman, *Subversive Sites: Feminist Engagements with Law in India* (New Delhi: Sage, 1996); Maitreyee Mukhopadhyay, *Legally Dispossessed: Gender, Identity, and the Process of Law* (Calcutta: Stree, 1998). Important anthologies are Hassan, *Forging Identities*; and Kamla Bhasin, Ritu Menon, and Nighat Said Khan, eds., *Against All Odds: Essays on Women, Religion, and Development from India and Pakistan* (New Delhi: Kali for Women, 1994). In addition, there have been numerous articles in newspapers and periodicals by feminist lawyers (Indira Jaisingh, Vasudha Dhagamwar, Geeta Ramaseshan, Usha Ramanathan), pamphlets issued by women's groups and research centers, and articles in the feminist journal *Manushi*, edited by Madhu Kishwar, on these issues. Not all are equally critical of law and feminist legal reform struggles: For example, Kapur and Crossman conclude that the law is a significant site of struggle, and Parasher recognizes its limitations but cautions against "inappropriate expectations" about what it can achieve.

21. "Is Gender Justice Only a Legal Issue?"

22. Especially Menon, "State, Gender, Community." For an earlier critique of the Indian state and bourgeois secularism based on a poststructuralist interrogation of unmarked citizenship, see Susie Tharu and Tejaswini Niranjana, "Problems for a Contemporary Theory of Gender," *Social Scientist* 22 (March-April 1994): 93-117.



23. Madhu Kishwar, "Codified Hindu Law: Myth and Reality," *Economic and Political Weekly*, 8 May 1994, 2145–67, esp. 2148.
24. Menon, "State, Gender, Community," PE-8.
25. Fatima Mernissi, *Women and Islam* (Oxford: Basil Blackwell, 1991), 23.
26. Chhachi et al., "UCC and Women's Movement," 488. Khare also points out that the most successful grassroots mobilization against the state has been, after all, that of the Hindu organization, the Vishwa Hindu Parishad (VHP) (15).
27. For a defense of feminist struggles for equality, see Parasher, *Women and Family Law Reform*, esp. 26–36.
28. Civil society, the crucial space of civic association and public debate in a democracy, is part of a broadly bourgeois liberal analytic framework. I have not the space or, indeed, the expertise to trace the intricacies of this dense political and conceptual term. There is a well-founded and pervasive belief that civil society as conceived in the liberal discourse and actual political context of Western democracies is an underdeveloped (or at least distinctively different) phenomenon in postcolonial countries. This is in part at least because of the takeover of that space by the politics of religion. On this, see Freitag, "Contesting in Public"; Neera Chandhoke, "The Assertion of Civil Society against the State: The Case of the PostColonial World," in *People's Rights: Social Movements and the State in the Third World*, ed. Manoranjan Mohanty et al. (New Delhi: Sage, 1998); Achin Vanaik, *The Painful Transition: Bourgeois Democracy in India* (London: Verso, 1990); Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Delhi: Oxford University Press, 1994), esp. chap. 11. As against such a diagnosis of failure, we might turn again to Gramscian studies like Kalpana Ram's, which would force us to more productively rethink the emerging relations among different communities, and between the intellectuals of religious groups and state intellectuals, especially in their consequences for women's identity, status, and functioning in the context of a modernizing society. See Kalpana Ram, "Rationalism, Cultural Nationalism, and the Reform of Body Politics: Minority Intellectuals in the Tamil Catholic Community," in *Social Reform, Sexuality, and the State*, ed. Patricia Uberoi (New Delhi: Sage, 1996).
29. See Devaki Jain, "Drafting a Policy," *Indian Express*, 7 January 1996. Jain demands that a policy "on" women be replaced by a policy *by* women, "being the subjects who lead, construct, speak to policy."
30. Freitag, "Contesting in Public." Valsan Thampu has remarked on the culturally heterogeneous character of the Indian Christian community: "There is little in common between a Tamil Christian and his Punjabi or Gujarati counterpart." Yet, under the new threat to their minority identity, they "are transcending the denominational, caste and culture barriers and rediscovering their common destiny." See "Christians Unite under Attack," *Pioneer*, 5 December 1998.
31. Ram, "Rationalism," esp. 298–99. Her book-length study of the Mukkuvar women is titled *Mukkuvar Women: Gender, Hegemony, and Capitalist Transformation in a South Indian Fishing Village* (Sydney: Allen and Unwin, 1991).
32. For example, Prem Chowdhary, *The Veiled Women: Shifting Gender Equations in Rural Haryana, 1880–1990* (New Delhi: Oxford University Press, 1994).
33. Kumkum Sangari, "Politics of Diversity: Religious Communities and Multiple Patriarchies," *Economic and Political Weekly*, 23 December 1995: 3287–3310, and 30 December 1995: 3381–89. On the "fuzziness" of boundaries of communities, see Sudipta Kaviraj, "The Imaginary Institution of India," in

*Subaltern Studies VII*, ed. Partha Chatterjee and Gyan Pandey (Delhi: Oxford University Press, 1992): 1–32.

34. Zakia Pathak and Rajeswari Sunder Rajan, “Shahbano,” *Signs: Journal of Women in Culture and Society* 14 (spring 1989): 558–82.

35. Ram, “Rationalism,” 298.

36. *Ibid.*, 299.

37. *Ibid.*, 316.

38. *Ibid.*

39. An eloquent defense of rights discourse for blacks in the United States is presented in Patricia Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991). The limits and actual harm of rights struggles has been most forcefully presented by the Critical Legal Studies school, as she points out. For a review of feminist debates on rights in the United States, see Elizabeth Kiss, “Alchemy or Fool’s Gold? Assessing Feminist Doubts about Rights,” in *Reconstructing Political Theory: Feminist Perspectives*, ed. Mary Lyndon Shanley and Uma Narayan (Cambridge: Polity, 1997).

40. Parasher, *Women and Family Law Reform*, 19.

41. The most extensive discussion of the problem of essentialism for feminism is Diana Fuss, *Essentially Speaking: Feminism, Nature, and Difference* (London: Routledge, 1989).

42. In relation to the last, see Elizabeth Fox-Genovese, *Feminism without Illusions: A Critique of Individualism* (Chapel Hill: University of North Carolina Press, 1991). Fox-Genovese dismisses, rightly in my view, the political valence of “female communities” that some feminist theorists and historians have sought to resurrect and valorize in response to the failures of both individualism and communitarianism in addressing women’s oppression. Such communities, whether found within existing social arrangements or in more “formal” associations, would continue to be “hostage to the legal and political relations of our society as a whole,” she argues. Moreover, separatism does not offer “a practical model for a society that still requires cooperation and fellowship across genders in order to survive and reproduce” (53).

43. Urvashi Butalia remarks on this in “Women and Alternative Media (India),” in *Reports and Papers on Mass Communications* 107 (UNESCO, 1993): 51–60: “At the national level today, it is no longer possible to ignore women. Whether it is with regard to planning documents, policy decisions, electoral politics and so forth, the question of the specific needs of women has to be addressed” (59).

44. On this, see Naila Kabeer, *Reversed Realities: Gender Hierarchies in Development Thought* (New Delhi: Kali for Women, 1995); Mary E. John, “Gender, Development, and the Women’s Movement: Problems for a History of the Present,” in *Signposts: Gender Issues in Post-Independence India*, ed. Rajeswari Sunder Rajan (New Delhi: Kali for Women, 1999); Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999). Sen has been particularly influential in pushing for women’s empowerment as a developmental strategy. See also Jean Dreze and Amartya Sen, *India: Economic Development and Social Opportunity* (Delhi: Oxford University Press, 1998).

45. Aparna Mahanta discusses the Indian state’s attitude toward the question of women and work as still located within a “familial” context and therefore far from empowering. See her “The Indian State and Patriarchy” in *State and Nation in the Context of Social Change*, ed. T. V. Satyamurthy (Delhi: Oxford University

Press, 1994/1997), 87–131, esp. 97–99. This situation has to some extent changed since her essay was written (at least in terms of the state’s “attitudes”), under the new imperatives of economic liberalization, as well as international reports like the U.N. Human Development Report.

46. Sen, *Development and Freedom*, 116.

47. Manufacturers may represent women (at least in market research and advertising) as leisured wives spending their husbands’ money, but there is an implicit acknowledgment of the work of women—in the form both of a canny recognition of their earning capacities, and their identity as the users of goods associated with household labor—food, detergents, gadgets. I am arguing here against the grain of recent scholarship in India, which puts forward the view that it is *consumption* (in contrast to *production*, in the early post-Independence socialist decades) that defines national citizenship in liberalized India today. See, for example, several essays in my edited volume, *Signposts*, especially Arvind Rajagopal, “Thinking about the New Indian Middle Class”; Mary E. John, “Gender, Development, and the Women’s Movement”; Barbara Harriss-White, “Gender-cleansing”; and Susie Tharu, “The Impossible Subject.” Mary John points to the contrast between this emphasis on middle-class consumerism and the World Bank reports on poor women’s economic productivity as precisely being the way poor women are both classed and gendered in development discourse (112–14).

48. For a documentation of the extent and range of women’s work in the unorganized sector, their dismal conditions of work, and demands for benefits and other guarantees to them, see the landmark report *Shramshakti* (New Delhi: National Commission of Self-Employed Women and Women in the Informal Sector, 1988).

49. Where I have marked places of production and labor as constituting a distinct though not separate civic space, some would no doubt argue that civil society itself is reducible to one or more of the institutions of the modern nation-state: religious and other communities, the family, the state itself, and the economy, particularly markets. Civil society, obviously, is not an autonomous realm but one closely related to and dependent on its “others” in terms of complementarity, continuity, overlap, and opposition—as indeed these are to each other; and arguably they are all driven by the single motor of capital. (In Partha Chatterjee’s idealized view, “community” alone is exempt from its hold. See his “Community in the East,” *Economic and Political Weekly*, 7 February 1998, 277–82. The contrary view, of religious communities’ institutional “compatibility” with capital, is advanced by Kumkum Sangari, “Politics of Diversity,” esp. 3291.) My position here, arrived at by an admittedly circular argument, is that civil society is whatever institutional space that is not identical with any of these others. I am unable to discover an uncontaminated actual and historical space that is not traversed by these institutions or to imagine how women may arrive at emancipatory citizenship without negotiations within and with these constraints and contradictions.

50. Naila Kabeer has discussed SEWA’s working in chapter 9, “Empowerment from Below”; see also Ela Bhatt, “‘Doosri Azadi’: SEWA’s Perspectives on Early Years of Independence,” *Economic and Political Weekly*, 25 April 1998, WS-25–27. On peasant women’s organizations, see Gail Omvedt, *Reinventing Revolution: New Social Movements and the Socialist Tradition in India* (New York: M. E. Sharpe, 1994). On women teachers in Delhi University’s Teacher’s Association, see Rajeswari Sunder Rajan, Rashmi Bhatnagar, Nira Gupta, and Nalini

Natarajan, "Women Teachers and the DUTA Strike," *Manushi: A Journal about Women and Society* (May–June 1986): 27–33.

51. These counterarguments were advanced by several penetrating readers and critics of earlier versions of this essay: Niraja Gopal Jayal; Judith Plotz; Rachel Reidner; and Ann Pelligrini. I am grateful to all of them for engaging so generously with my argument and for helping me to limit the scope of its validity.