

**SECULARISM AND GENDER JUSTICE:
PHILOSOPHICAL PERSPECTIVES ON THE
UNIFORM CIVIL CODE**

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CIVIL CODE**

by

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Submitted

*in fulfilment of the requirements of the degree of Doctor of
Philosophy
to the*



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Certificate

This is to certify that the thesis entitled, “**Secularism and Gender Justice: Philosophical Perspectives On The Uniform Civil Code**” submitted by **Sania Ismailee** to the Department of Humanities and Social Sciences, **Indian Institute of Technology Delhi**, for the award of the degree of **Doctor of Philosophy**, is a record of the bona fide research work carried out by her. She has worked under my supervision and the accompanying thesis is her genuine and original work. She has completed the necessary courses to the requisite standard.

This thesis has not been submitted, in part or full, to any other university or institute for the award of any degree or diploma.



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Abstract

“Family law” is a term used to refer to laws governing, among other things, marriage, divorce, inheritance, maintenance, succession, guardianship, and adoption. India currently provides a diverse family or “personal” law regime based on tribal and religious affiliation. The “Uniform Civil Code” or “UCC” debate concerns the question of whether this diversity should be retained (along with internal reforms of the laws governing the different communities), or whether family law should be governed by a single Code which will apply to all individuals irrespective of their communities.

Examining from the lens of political theory, I assess academic discourses around the UCC debate. To this effect, I engage with arguments from secularism and gender justice. I argue that existing theoretical responses for and against the UCC are premised on “contingent contextual considerations” such as the political undertones of a UCC, its subsequent consequences for Muslim minorities, statements of some religious organizations, and state’s intervention in personal laws. In contrast, I engage with the debate by “abstracting” from the existing context. By abstracting, I mean detaching from background political context to examine the debate from a general principled perspective. I propose this will help in a better understanding of the problem posed by religious personal laws. Engaging in an abstract principled enquiry is a novel contribution because it is not how the debate is usually approached in India. Furthermore, moving beyond contingent contextual considerations will facilitate better discussions around proposed solutions. However, it is beyond the scope of my dissertation to propose a policy solution regarding the implementation of a UCC or the content of family laws.

My dissertation engages with the research question what are the normative justifications (principled arguments) in favour of and against a UCC and personal laws? I

argue some versions of secularism offer the strongest principled pro-UCC argument. Additionally, I show that the pro-UCC arguments from gender justice are essentially arguments from secularism. Understanding this helps in moving beyond the two points where current discussions are centred. These are Hindutva politics and Muslim personal law. By pointing this out, I reframe the starting point of conversation on the UCC debate.

सार

“पारिवारिक कानून” एक ऐसा शब्द है जिसका उपयोग विवाह, तलाक, विरासत, भरण-पोषण, उत्तराधिकार, संरक्षकता और गोद लेने जैसे कानूनों को नियंत्रित करने के लिए किया जाता है। भारत वर्तमान में आदिवासी और धार्मिक संबद्धता के आधार पर एक विविध पारिवारिक या “व्यक्तिगत” कानून व्यवस्था प्रदान करता है। “समान नागरिक संहिता” या “यूसीसी” बहस इस सवाल से संबंधित है कि क्या इस विविधता को बनाए रखा जाना चाहिए (विभिन्न समुदायों को नियंत्रित करने वाले कानूनों के आंतरिक सुधारों के साथ), या क्या पारिवारिक कानून को एक ही संहिता द्वारा शासित किया जाना चाहिए जो सभी व्यक्तियों पर उनके समुदायों के बावजूद लागू होगा।

राजनीतिक सिद्धांत के लेंस से जांच करते हुए, मैं यूसीसी बहस के आसपास के अकादमिक प्रवचनों का आकलन करती हूँ। इस आशय के लिए, मैं धर्मनिरपेक्षता और लैंगिक न्याय के तर्कों से जुड़ती हूँ। मेरा तर्क है कि यूसीसी के पक्ष और विपक्ष में मौजूदा सैद्धांतिक प्रतिक्रियाएं “आकस्मिक प्रासंगिक विचारों” जैसे कि यूसीसी के राजनीतिक निहितार्थ, मुस्लिम अल्पसंख्यकों के लिए इसके बाद के परिणाम, कुछ धार्मिक संगठनों के बयान और व्यक्तिगत कानूनों में राज्य के हस्तक्षेप पर आधारित हैं। इसके विपरीत, मैं मौजूदा संदर्भ से “अमूर्त” होकर बहस में शामिल होती हूँ। अमूर्त से मेरा मतलब है पृष्ठभूमि के राजनीतिक संदर्भ से अलग होकर बहस को सामान्य सैद्धांतिक दृष्टिकोण से

जांचना। मेरा प्रस्ताव है कि इससे धार्मिक व्यक्तिगत कानूनों द्वारा उत्पन्न समस्या को बेहतर ढंग से समझने में मदद मिलेगी। अमूर्त सैद्धांतिक जांच में शामिल होना एक नया योगदान है क्योंकि भारत में आमतौर पर इस तरह से बहस नहीं की जाती है। इसके अलावा, आकस्मिक प्रासंगिक विचारों से आगे बढ़ने से प्रस्तावित समाधानों के आसपास बेहतर चर्चा की सुविधा होगी। हालांकि, यूसीसी के कार्यान्वयन या पारिवारिक कानूनों की सामग्री के संबंध में नीति समाधान प्रस्तावित करना मेरे शोध प्रबंध के दायरे से बाहर है।

मेरा शोध प्रबंध इस शोध प्रश्न से जुड़ा है कि यूसीसी और व्यक्तिगत कानूनों के पक्ष और विपक्ष में मानक औचित्य (सिद्धांतबद्ध तर्क) क्या हैं? मेरा तर्क है कि धर्मनिरपेक्षता के कुछ संस्करण सबसे मजबूत सैद्धांतिक समर्थक यूसीसी तर्क प्रदान करती हैं। इसके अतिरिक्त, मैं दिखाती हूँ कि लैंगिक न्याय से यूसीसी के पक्ष में तर्क अनिवार्य रूप से धर्मनिरपेक्षता के तर्क हैं। इसे समझने से उन दो बिंदुओं से आगे बढ़ने में मदद मिलती है जहां वर्तमान चर्चाएं केंद्रित हैं। ये हैं हिंदुत्व की राजनीति और मुस्लिम पर्सनल लॉ। इस ओर इशारा करते हुए, मैं यूसीसी बहस पर बातचीत के शुरुआती बिंदु को फिर से तैयार करती हूँ।

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forward [PhD] are simply the macro output of tens, hundreds, or thousands of tiny daily steps [your daily efforts, which seem useless and insignificant now].”

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