ABSTRACT. This article speaks of a debate in contemporary India: that surrounding the validity of enacting a civil code that applies uniformly to all communities and religions in the state. In certain feminist arguments, such a code is seen as possibly providing a sphere of rights to Indian women that is alternative to the rights—or wrongs—given to them by the plural religious laws, which form the basis of the civil law in India. India, however, is a heterogeneous polity, encompassing a diversity of cultures and religions, some dominant and others forming minorities. Given these differences, some critics see the feminist call for a Uniform Civil Code as an essentialist move that prioritises gender over other agendas and politics. They argue that the site of the ‘universal’ in this feminist move is a liberal site that inherently excludes marginalised Others and benefits the dominant subjects in India. In my article, I contest this critique and question whether the site of the universal and its authorial subject in postcolonial India is, in fact, an exclusionary liberal ruse of power. I draw insights from the history of the formation of the postcolonial nation-state in India to posit an experience of the state and the universal within it, which is alternative to the Western liberal model. The aim of this article is, therefore, not so much to debate the in/validity of a Uniform Civil Code, as to address certain contemporary post-structuralist critiques of the site of the universal in postcolonial India and posit a departure from them, based on perspectives drawn from history.

KEY WORDS: citizenship, difference, India, postcolonial state, universal, Western liberal state

INTRODUCTION

Universal foundations in feminist theory and praxis have been critiqued for presuming their subject as a site that exists prior to relations of power.¹ For instance, postcolonial feminists have pointed out that Western feminism sets up its own authorial subject, i.e. the white, upper class woman as a universal referent who represents cultural Others, by erasing the intersections of race and class in gender (see, e.g. Mohanty, 1984). The postcolonial feminist intellectual,

¹ For an interesting critique of universal foundations in feminism see Butler (1995, pp. 35–57).
however, finds herself similarly embattled in her local contexts, for
the universal feminist foundations she herself has posited. I will
examine this embattlement in the context of a controversy in con-
temporary India. This is the controversy surrounding the proposed
enactment of a Uniform Civil Code (henceforth, U.C.C.) in India.
The subject of Indian feminism has been critiqued in this controversy
as the dominant Hindu, upper caste, upper class, urban woman, who
speaks for and represents marginalised Others, and thereby silences
them. This paper will discuss these post-structuralist critiques of the
subject of Indian feminism, as they are articulated in the U.C.C.
debates.

Similar post-structuralist critiques are also extended to the site of
the universal citizen-subject in the postcolonial Indian state. Post-
colonial, postmodern critics in India today see the post-colonial
Indian nation-state as a state constructed on the Western liberal
model, owing to the liberal discourses derived through the colonial
encounter. Critiques of liberal universal citizenship that are being
articulated in Western contexts are therefore transposed to the
postcolonial Indian state in the contemporary postmodern moment.
The site of the universal citizen-subject in the postcolonial Indian
state is critiqued as an exclusionary site that instates a dominant
subject who can speak to the exclusion of others who cannot. The aim
of this article, however, is to question whether such post-structuralist
critiques can, in fact, be applied to the Indian context.

My point of departure from these critiques is to posit that the site
of the universal in the postcolonial Indian nation is not analogous to
that in Western states, and in that sense, is not exclusionary. This is
because the formation of the postcolonial nation-state in India is the
result of a different history. I will explore this different history by
retrieving from the archives an instance when a uniform civil legis-
lation was passed in India. This was when the Child Marriage
Restraint Act was passed in 1929, at a time when India was still under
the colonial rule of Britain. I will examine the enactment of this
legislation to examine whether there were, during this time, dominant
subjects who spoke to the exclusion of others who did not. The
debates surrounding the Child Marriage Restraint Act provide a
moment of recognition for the contemporary U.C.C. debate, since
these debates raised many of the issues that the U.C.C. discussion is
fraught with today. Yet, the Child Marriage Restraint Act was passed
in 1929. This article seeks to understand why.