



The real miracle
is not to walk either
on water or in thin air
but to walk on earth.



Thich Nhat Hanh

RETHINKING THE UNIFORM CIVIL CODE

The beauty and bounty of Hindustan abounds across its lands and in the hearts of its people....

The rise of communal identity politics in the last decade has raised fundamental questions about the construct of Indian Nation-hood leading to fragmentation and instability, which threatens the very existence of the Indian state as we know it. We believe that the very nature of Indian nationalism has not addressed the diversity of its people and culture, containing within itself the seeds of discontent. The need to recognise and create the space which will encompass the vastness of its histories across the plains and mountains of the sub-continent, recognising all its specificities is an enormous task for us and the future generations.

The debate on the personal laws and Uniform Civil Code is one fundamental aspect of religion, gender, caste and class, that has remained unresolved. As women emerge from the four walls of the domestic sphere, we have begun to articulate a different world view seen through the eyes of women. This position paper: Rethinking the Uniform Civil Code is our attempt to take the debate to women....

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Rethinking the Uniform Civil Code

A Look into the Past

The issue of personal laws have never been divorced from the more vexed ones of communal and identity politics. As Jawaharlal Nehru recognised in the 1940's, "Inheritance, marriage, divorce, all parts of the personal law, is supposed to be part of religion. No change can be imposed from the top".

Prior to and shortly after independence, it appeared that the Muslim Personal Law was more progressive than Hindu Personal Law. In Gujarat, before 1937, Muslims followed Hindu customary law in matters of inheritance — which meant that women could not inherit property. In 1937, the tireless efforts of Muslim liberals led to a change in the law. The Shariat Act, 1937 brought Muslim women within the purview of Islamic law. This gave Muslim women share in ancestral property. While Muslim women did not inherit an equal share of the property with men, they were still in an enviable position compared with Hindu women, who did not possess any inheritancy rights to property. What is striking is that in 1937, the Shariat Act did not raise the hackles of fundamentalist Muslims. On the contrary, Muslim liberals presented it successfully as a progressive step which was in consonance with Islamic tenets.

Contrasted with the furore surrounding the Shah Bano case in 1985, this approach is refreshing. What happened between 1937 and 1985 that the image of Islamic law and the Islamic community changed in the popular mind (Hindu and Muslim) from a progressive, open-minded image to that of a closed one?

Perhaps some of the answers lie in the Hindu Code movement initiated by Nehru soon after independence. The Hindu Code Bill committee toured India between 1941-47 and presented a revised Code, which claimed to offer Hindu women equal rights in divorce, marriage, inheritance and guardianship. However, when the Draft code was introduced to the select committee in 1948, the founding fathers of the constitution, who had, a short while ago passed the constitution, accepting in principle the absence of discrimination between the sexes, now opposed the Bill.

The Hindu fundamentalists inside and outside the congress united to oppose the bill. Some congress members, Sardar Patel and others, openly supported monogamy. The Hindu Mahasabha and its women's wing — Shyama Prasad Mukherji, N. C. Chatterjee and others felt that the bill threatened the religious foundation of Hindu society. The Hindu Mahasabha feared that Nehru's ideology was a religious identity of India (read Hindu India) and would bring about a "Godless state". What was most significant to the Hindu Mahasabha members was that the Muslim personal law was not tampered with. They felt that if monogamy was enforced *only* on Hindus, they would commit "racial suicide", since the Muslim population would multiply out of

proportion. They also suggested that the Hindu Code Bill was a communal measure and a Uniform Civil Code be made instead.

This pattern has remained an integral part of legal history in India. Through the years, the spectre of UCC has been raised by the Hindu personal law have been suggested. The result: sections of Hindu Law has remained largely unchanged. Nehru could not push the proposed laws in the original form. Major compromises were made in the Hindu Succession Act: joint family was retained, agricultural land was excluded from the pale of legislation, women could not inherit ancestral property, guardianship was vested with the father.

.... it is a pity that the issue of Muslim personal law has been politicised by motivated people, and thus vitiated the atmosphere for a serious debate. As a Muslim, I am only too well aware of what needs to be done. But let me make it very plain, I won't oblige those who regard any identity except their own identity (as) inferior, alien and unpatriotic and who would shed copious tears on the plight that have no sympathy to spare when these very women are made widows.... As a Muslim, I would not mind having a common civil code provided the code incorporates the good points of all the existing codes.

— M. V. Kazi

SC rejects writ on common civil code

A Division Bench of the Supreme Court on Tuesday dismissed a writ petition seeking a direction to the Union of India to enact a common civil code for all citizens of India, saying "it is for Parliament to enact such legislation".

The petition by Maharshi Avadesh, founder president of the Rashtriya Party, also sought a direction refraining the Centre from any "arbitrary acts and actions" discriminatory to Muslim women and Hindus.

The petitioner further prayed that the code should declare void and as being arbitrary and discriminatory the Muslim Women's (Protection and Rights) Act.

The petition was dismissed by a Division Bench comprising Mr Justice K. J. Reddy and G. N. Ray.

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Through the decades following this controversy, attempts to reform the personal laws have created unpleasant situations. Muslim personal law is no longer seen as positive and progressive for its women. Besides, Muslim women fighting for their rights in India are disarmed from the start. Any struggle to improve their condition is seen by Muslim fundamentalists as undermining their community, but is used by Hindu communalists to do precisely that. Shahnaaz Shaikh, who had filed a petition against the Indian government, that Muslim personal law be revised so as to remove its discriminatory aspects, found that her lawyer belonged to RSS and was using her campaign to discredit the entire community. Again, the mixed responses of Muslims, many of whom remained suspicious of her unless she could convince them that she was not anti-Islam, made her feel that unless great care was taken, the community might intensify oppression against its women. As is better known, Shah-Bano was forced to recant. She is reported to have said, "If there is going to be bloodshed, then let this judgement be withdrawn." It would have been impossible for Shah-Bano to act differently when she was threatened not only with ostracism, but with the indirect responsibility for communal riots.

The role of Hindu communalists in this judgement is worth commenting on. They upheld it enthusiastically. Bal Thackeray, leader of the Shiv Sena said, "Our country must have only one rule of law and no concession should be made at all to anyone in drawing up a draft. There might be many religions in the country, but there must be one constitution and one common law applicable to all.... Those who do not accept our constitution and laws should quit our country and go to Karachi and Lahore."

For Thackeray, Muslims are not a part of our country. Hindus own the country and Muslims live here on sufferance. Islam is seen as non-Indian. Vikram Savarkar, Akhil Bhartya Hindu Mahasabha President stated: "... no Muslim is patriotic since he believes only in the Quran". Savarkar also demanded that the present Hindu Code Bill be made applicable to all Indian "since Hindus are well over 80 per cent of the total population", until the UCC formed by legal pandits be created.

Meanwhile, Muslim fundamentalists raised a furore against the judgement. An article in the Urdu *Times* demanded that, "if some Muslim women oppose Muslim personal law or want changes in it or if they desire... a common civil code... then such women should renounce Islam..." The Muslim Women's Bill, which in fact took away many rights from women was welcomed by them. According to one view "the Muslim Women (Protection of Rights on Divorce) Bill takes away whatever rights have been guaranteed Muslim divorcees by the Holy Quran." An eminent Urdu poet feels that it is "an insult to Islam." The law entitles the divorcee woman to maintenance during the iddat period, to her children until they are 2 years old and the Mehar where the woman has not remarried and is unable to maintain herself after the iddat period, the magistrate "may make an order directing such of her relatives as would be entitled to inherit her property on her death to pay such reasonable maintenance as he may determine fit..." If she has no relatives, the magistrate directs her to the state Welfare Board.

Progressive Muslims oppose the bill on several grounds as being un-Islamic. The Quran specifies that a husband must provide a reasonable and fair provision to his divorced wife. No time period has been specified. The reasoning being that the responsibility for maintaining a woman passes to her husband on marriage and remains his unless she remarries or dies. The bill also forces the woman to remain at the mercy of her relatives. Also, under Islamic law, the father must maintain his children throughout their minority, no matter whose custody they are in.

While it is reassuring to recognize that there is no single voice within any community, yet Hindu and Muslim fundamentalists appear to be *the* dominant voice. As feminists, we have to recognise that the women's movement has not yet provided a space within which women can articulate their multiple identities of being women of being Hindu, Muslim, Christian... Also, the women's movement is not large enough or powerful enough to provide an alternative. Most women live within their communities: they cannot choose between their own rights and their rights as members of and community.

This is compounded with ignorance. Most Muslim women do not know that the Muslim women's law passed by Rajiv Gandhi's Govt. was anti-woman and un-Islamic. They had no choice but to accept the verdict and the interpretation of their male fundamentalist leaders in the context of the minority community striving to assert its identity.

The Shah Bano controversy and the subsequent legislation known as the Muslim Women's Bill tended to highlight the utter "helplessness" of Muslim women in the face of what was widely propagated to be the sole and unidimensional version of the Muslim Personal Law. Muslim women were thus 'victims', doomed to silently acquiesce to obscurantist laws which were ironically hailed to be in their favour and in keeping with the tenets of Islam.

However, such a ahistorical and monolithic view of the situation lay unacknowledged or conveniently overlooked during the ensuing debate on the supposed 'fundamentalist' and 'regressive' trends within Islam. Such a world view reinforced and buttressed existing long-standing stereotypes of a militant Islam which subordinated and oppressed its women through all-encompassing draconian laws. The demand for equal rights by liberal feminists was not grounded within the parameters of any genuine understanding of Muslim Personal Law. Rather, it was based on the incorrect notion that any and all aspects of the Muslim Personal Law were either implicitly unfair or overtly discriminatory. Such a short-sighted opinion lay parallel with the manner in which the West has effectively conjured up vision of an 'enemy' Islam with its Khomeini-like fanatics and followers, and regressive cultural norms and values, representing a potentially dangerous threat to (western) civilization.

This is not to insist that Muslim Personal Law is perfect, for it is not. There has to be a debate and it has to change. But even before this practically happens, the myth of

a monolithic and unidimensional Islam has to be broken. We have to know and realise that the extremely regressive Hudood Ordinance in Pakistan and the promulgation of Bangladesh as an 'Islamic' republic were events which took place under military dictatorships against widespread civilian dissent. Or that the regimes of Khomeini in Iran or Nimeiri in Sudan do not necessarily reflect civilian realities. The ideology of any ruling group in the Muslim world is seldom based on religious or theological belief. It almost invariably derives its force or legitimacy from political imperatives. Likewise, different countries within the Muslim world face differing political realities, which in turn impinge in varying ways on women.

If we can understand and appreciate the diversity of Islam across the globe, we can come to the logical conclusion that the Personal Laws of these countries are a reflection of this diversity. Personal laws across the Muslim world have never been static. They have been subject to constant shifts and variations. Unfortunately, from a feminist point of view, any genuine debate on women's position or gender within Islam has been considered insignificant or unnecessary in comparison to the patriarchal realities which shape it. Again, this is not to say that there has been no feminist debate within the Muslim world, but to reiterate that in recent years there has been an increasing awareness among Muslim women on the dichotomy between interpretation and implementation of the Shariat, specially in the Middle East. What are the implications of all this on Indian Muslim women? It demystifies the static nature of Islam, and by extension, the Muslim Personal Law. An immediate inference of this would also be to highlight the potential possibility of *change* within the Muslim Personal Law in India. Once women realise that such a possibility exists, they can act upon the potential gains this throws up — of the possibility of a debate within India on the Muslim Personal Law. This would serve the dual purpose of envisioning change, together with creating and initiating a wider understanding and debate on Islam.

The need and demand for change within the Muslim Personal Law has been expressed by women. Shehnaz Sheikh and Shah Bano are the evidence of the desire for such a need for change. Though few, their voices have effectively highlighted the inadequacies and shortcomings of the Shariat. These voices of dissent are not synonymous with betrayal of the community, but all are signs signifying the urgency of change within it.

Another case in point would be the voices of Goan Muslim women who have protested against any imposition of the Muslim Personal Law in place of the erstwhile Common Civil Code dating back to the colonial period.

These different realities of variation and dissent can become precursors of change. By challenging the Shariat, Muslim women are not disowning or negating their religious traditions, but merely echoing the possibility and desire to reinterpret male versions of the Shariat. As Riffat Hassan observes, 'It is not a little ironic that the term "Shariah" which has the idea of fluidity and mobility as part of its structure, should have become the symbol of rigid and unchanging laws to so many Muslims in the world.

Personal Law and Identity

Personal laws are intimately linked to the identity question and to fundamentalism. What gives the identity question its particular force is its strong moorings in faith and in the 'personal' space in society. A state like India, driven on by the crisis of legitimacy turns to communal institutions and movements for authority. Women continue to be significant victims of such a nexus.

Within communal organisation like BJP and Jamat-i-Islami attempts to move away from established gender roles is forbidden. As text books in a BJP ruled state put it, women who come under the influence of "women's lib" and leave their home and hearth to earn money outside the home risk ruining their life. During attempts to give Hindu women increased property rights, members of the Hindu Mahasabha felt that it would destroy the joint family and hence, ruin the structures that make up this society.

Given the situation that since centuries, women have been seen as the repositories of culture and tradition, as the icons that symbolise the community, identity politics play a special role for most women. Religion in all its forms, situates itself in the 'personal' spaces in society. The association of the personal and the domestic with women is fairly well known. Gender roles are not unchanging or monolithic in any religious faith, but today, there is a collective feeling that inequality is the basis of relationships between men and women in the family in any religion.

Scholars have tried to work through this impasse. As far as Hindu tradition is concerned, the over zealous efforts of fundamentalists and the state have managed to create the image of the Hindu woman as eternally suffering, as a good wife. The television versions of the *Ramayana* and the *Mahabharata* have successfully presented the women characters as unidimensional figures. It has underplayed dissent or subverted it: be it Gandhari's lament or Sita's anger or the rebellious, earthy Draupadi's anguish. Scepticism and doubt have also been matters of faith in the Hindu tradition. Mirabai's questioning of gender roles and of religion is as much a part of our tradition as Manusmriti's laws that relegate women under the guardianship of men all their lives.

Ambiguity, doubt and dissent, however is conveniently swept away by Hindu communalist rhetoric regarding law. Vijayraje Scindia's statement supporting *sati* and projecting it as the *right* of Hindu women is too recent to be forgotten. The Rastriya Sevika Sangh trains women to be primarily good wives and mothers, who would not conceivably ask for their rights in ancestral property or would want to end their lives with their husbands. Hindu fundamentalists have tried to silence voices of dissent. Feminists of the Hindu community need to retrieve these spaces, these multiple voices. Else, we may well be complicit to a culture of fascism that will destroy us.

Within Indian Islam, the question of identity and law is complicated. Legal experts and Muslim women feel legitimately that Islam was the first religion to formally grant women equal status to men. However within India, social conditions have led to the Muslim community adopting Hindu customs. While dowry has no legal requirements in Islam, it has become a custom among Indian Muslims since the seventeenth century. On the other hand, the women are being compelled to contract marriage forsaking meher. This fundamentally changes the independence that Muslim women enjoy through Islamic law.

On the one hand, Hindu customs have been incorporated within the culture of the Muslim community in India. On the other hand, fundamentalist interpretation have deprived Muslim women of their rights within the Shariat. Today the Muslim women finds herself in a double bind, the questioning of which is seen as un-Islamic. What is perhaps necessary for Indian Muslim liberals and progressive men and women is to question the fundamentalist view of Islam as un-Islamic.

The Uniform Civil Code & the Women's Movement

In the early '80's, the Indian Women's Movement demanded the Uniform Civil Code. A nationwide campaign demanding changes in personal laws had been based on the belief that gender oppression unites women of different religions. Socialist feminist concepts of Equal Rights informed their stand during this period. There was a feeling that the different personal laws encouraged communal identities which divided women.

There has, however, been re-thinking on this position by some Indian feminists. We recognised that the earlier stand created a false dichotomy between religious faith and feminist politics. Religion, or rather institutionalized religion legitimized through faith, custom, and tradition, the patriarchal control and dominance of women. Though we continue to take stands against anti-women practices, we have begun to see the significance and need for the personal aspects of ritual, spirituality, just faith and belief in the lives of women.

The insistence of the BJP and other Hindu communal forces for a Uniform Civil Code is intended not so much to grant equal rights to all women, but rather impose the Hindu Code Bill upon the personal laws of minorities — Muslims, Christians, Parsees, Sikhs, poor, dalit and tribal women. Dalit and tribal have been denied access to legal system as it exists today while their customary means of legal resource no longer exist.

Even the Indian Women's Movement has focused almost entirely on the "plight of Muslim women? The Shah Bano controversy and the Muslim Women's Bill are important entry points into the debate. There is no doubt that with the women's movement, Hindu women play a significant role numerically and as leaders. Many of them may feel that a UCC is the way out to fight gender inequality. But the question is: What kind of common civil code would answer the needs of all women. Such generalisations will harm many women. The differences in class, caste and culture cannot be ignored.

This approach obscures the multiplicity of oppressions within women's lives (class, caste, race, religion) and the extent to which other oppressions mediate the ways in which women experience gender.

Unless differences between women of different communities are recognised, there is a very real danger that women belonging to minority communities will be discriminated against.

Muslim women have found that it is only as Muslim women that they can fight this battle. All India Democratic Women's Association launched an effective campaign against the Muslim Women's Bill (1984). Yet, they too initiated the formation of a committee for the protection of the Rights of Muslim Women and held a Muslim women's march in Delhi to protest against the bill. Central to this is the attempt to break the myth that there is only one Muslim voice, one that is fundamentalist and obscurantist.

For Hindu women however, options remain unclear. Hindu laws are not monolithic or singular, but within Brahminical law — which is the law that has been codified, by the British and is accessible, to us today, there seems little scope for women to fight patriarchy. Most Brahminical texts support *sati*, the Manusmriti's anti-women's stance is perhaps more well known than Kautilya's Arthashastra's. If Hindu women today appear more privileged legally than Muslim women, it is not because their religion has decreed so. Whatever rights they have got — right to divorce, inheritance rights, etc. are due to a belief by legislations in the liberal theory of rights.

Struggling for change in the personal field (at home) is next to impossible for most women. As many feminists have observed, most women have close emotional ties with the men (and women) who oppress them under the guise of patriarchal control. In the realm of personal laws this emotional tie is extended to their community and religious faith. Even if these are seen as oppressive, it becomes difficult to unlearn the emotional dependence that women of a community feel for their men and their community. This dependence is not one sided. The community and its men needs the women as symbolic repositories of their tradition. If women stay within these paradigms, they appear to be protected from dangers. Feminists have to search for ways to find answers for these questions.

Perhaps, the feminist movement today needs to stop and consider its own history at this point. Have its attempts to work through the legal process helped to empower women in substantial ways? Or, by demanding changes through the state machinery, is it reducing the movements own ability to protest and fundamentally challenge the State? Are there viable alternatives to the legal system for feminist interpretation and women's empowerment? Or, should the feminist movement work out strategies to control law? Perhaps these questions can enable the feminist movement to negotiate its strategies with regard to the complex and powerful relationship between law, religion and social change and find creative ways out of its current impasse.

— Geetanjali Gangoli, Gouri Choudhury, Seema Kazi

Suggested Readings

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