NIVEDITA MENON

A Uniform Civil Code in India: The State of the Debate in 2014

THE RECENTLY ELECTED BHARATIYA JANATA PARTY (BJP) government in India has once again brought to the foreground an issue that has plagued Indian feminists for decades: that of a uniform civil code (UCC) for all Indian citizens. On the surface, enforcing a uniform code in matters of marriage, property inheritance, and guardianship of children appears entirely consistent with feminist goals. The specific manner and context in which the UCC is formulated in India, however, reveals why Indian feminists now oppose the measure. This is an especially important time to understand the complexities of Indian feminist positions on this issue, since the Hindu right BJP actively seeks to present itself as secular and pro-women, and portrays opponents of a UCC as "pseudo-secular" and anti-women.

The debate over the UCC in contemporary India is produced by the opposition between two notions of rights contained in Part III of the constitution, "Fundamental Rights," within which the bearer of rights is construed both as individual citizen and as member of a collective. The former is the subject of Articles 14 to 24 of the constitution, which ensure the individual's rights to equality and freedom, and the latter is the subject of Articles 25 to 30, which protect religious freedom and the educational and cultural rights of minorities. It is from the latter that religious communities derive the right to be governed by their own "personal laws." Since these personal laws cover matters of marriage, property inheritance,

and guardianship of children, and since all personal laws discriminate against women, the tension in Part III of the constitution is a contradiction between the rights of women as individual citizens and those of religious communities as collective units of a democracy.

The idea that providing universal laws for all citizens is the properly modern goal for a nation-state is reflected in Part IV of the constitution, "Directive Principles of State Policy," which calls on the state to bring about a UCC. Although most dominant narratives, especially those of the Hindu right, frame the necessity of a UCC as a matter of national integrity, a key change since the 1990s is that the UCC has also come to be posed as a "women's rights" issue. In the BJP's majoritarian Hindu rendering of the UCC, only minority women need saving, because "we" (Hindus) have already given "our" women equal rights. Self-styled leaders of minority religious communities, on the other hand, oppose the UCC on the grounds that it would destroy minority cultural identities, the protection of which is crucial to democracy. However, both these positions are deeply problematic for feminists. Within the women's movement, the debate has developed in complex and multiple directions over the decades, which this essay will briefly outline.

NATIONAL INTEGRITY AND "WOMEN'S RIGHTS" VERSUS COMMUNITY RIGHTS

The argument that presents national integrity as the rationale for a UCC along with its conflation with "women's rights" is unacceptable because of its implicit homogenizing thrust. To begin with, it is wrong to assume that while Hindus have willingly accepted reform, "other" communities continue to cling to diverse and retrogressive anti-women laws and threaten the integrity of the nation-state. It is misleading to claim that Hindu Personal Law was reformed: it was merely codified. Laws intended to overhaul marriage and inheritance were dropped from consideration in parliament in response to pressure from conservatives in the Congress party on the eve of the first general election, held in 1951. B.R. Ambedkar, who drafted the original Hindu code bill, even resigned as law minister in protest. Eventually, in 1955-1956, Prime Minister Nehru did push through four pieces of legislation: the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoption and Maintenance Act. What these laws achieved was the codification of the vast and heterogeneous practices of all

communities that were neither Muslim, Parsi, nor Christian, bringing them into conformity with what were assumed to be "Hindu" norms, but what were, in fact, North Indian, upper-caste practices. Other practices that did not match these norms were explicitly dismissed during the debates in parliament as being "un-Indian." These mid-1950s laws were by no means an unqualified advance for women's rights. On the contrary, codification put an end to the diversity of Hindu laws practiced in different regions, in the process destroying existing and often more liberal customary provisions.

Conversely, there are features of Muslim Personal Law that are more advantageous for women than Hindu Personal Law: the Muslim marriage-as-contract protects women better in cases of divorce than the Hindu marriage as sacrament; the Muslim law of inheritance protects women's rights better than Hindu law; and the *mehr* (bride-price) is the exclusive property of the wife. Also, Muslim men who marry more than once are legally bound to fulfill responsibilities toward all their wives, whereas Hindu men who contract polygamous relationships (illegal since the 1955 Hindu Marriage Act) escape this responsibility in their second or third marriages. In practice, the BJP position that a UCC will take into account "positive features" of all personal laws is actually untenable. For instance, *mehr* cannot be introduced into Hindu marriages, nor can the Hindu marriage sacrament be made into a contract, although both of these are positive aspects of Muslim law vis-à-vis Hindu law.

Another problem with the national integrity argument is that this imagined national integrity is constructed through the marginalization and exclusion of a multiplicity of other interests and identities, and therefore it is not a value that feminists can espouse. At the same time, feminists cannot accept unqualified claims of minority religious communities to their unreformed personal laws in the name of cultural identity. For one thing, the cultural identity contained within personal laws that is claimed today as "natural" and prior to all other identities is no more primordial than the nation. Here, it is important to keep in mind the genesis of personal laws: the British colonial government, in consultation with self-styled community leaders, simplified vastly heterogeneous family and property arrangements within the ambit of four major religions: Hindu, Muslim, Christian, and Parsi. The resultant personal laws of each of these religions that are being defended today in the name of tradition and religious freedom are, thus, colonial constructions of

the late nineteenth and early twentieth centuries. Feminists reject the notion of a religious community exerting rights over women through their personal laws because the gender discriminatory provisions of the personal laws are based on the same logic of exclusions that characterize the coming-into-being of the Indian nation itself.

THE WOMEN'S MOVEMENT AND THE UCC

The response of the women's movement to a UCC has taken many different forms. In 1937, the All India Women's Conference first articulated the desirability for a uniform civil code for all religious communities. This demand continued to be amplified by larger sections of the women's movement until the late 1980s. In the early 1990s, however, there was considerable rethinking.

By 1995, what had emerged was a broad range of positions, from the continued demand for a UCC, to outright rejection of such a move and, instead, a call for reforms within each religion's personal laws. The general consensus in the women's movement by the end of the 1990s was that the campaign for gender-just laws should be conducted at three levels:

1. support for attempts to reform personal laws;
2. a push for legislation in areas not covered by either secular or personal laws (for example, domestic violence and right to matrimonial home), thus avoiding a direct confrontation with communities and communal politics; and
3. setting up a longer-term, comprehensive, gender-just framework of rights covering not only areas covered by personal laws, but to include the public domain of work (laws encompassing day care, equal wages, maternity benefits, etc.), which should be available to all citizens.

In the first two areas listed above, there have been distinct achievements. Feminists made divorce law for Indian Christians more just through sustained engagements within the community, resulting in the passing of the Indian Divorce (Amendment) Act of 2001. Different versions of model marriage contracts (*nikahnamas*) that protect the rights of women have also been prepared by Muslim reform groups, although these have yet to be accepted by Muslim community leaders. The tactic of focusing on areas not covered by personal laws has resulted in the Domestic Violence Act

(2005), which gives women protection from domestic violence as well as rights to the matrimonial home, and in amendments to the Juvenile Justice Act (2006) that have enabled people of all communities to adopt children legally.

THREE FEATURES OF THE DEBATE AT THIS STAGE

It is significant that the term "uniform" has been dropped altogether as a positive value from the debates within the women's movement, even in positions that reiterate the need for state legislation. Thus, in the proposals for a compulsory code made by advocacy groups such as Saheli and the Delhi-based People's Union for Democratic Rights, or for an optional code by the Bombay-based Forum Against Oppression of Women, or for a negotiable common code by the Delhi-based Working Group on Women's Rights, the terms used are "common," "gender-just," and "egalitarian" to describe codes, not "uniform." This overall disavowal of uniformity by the 1990s is significant in that it marks the women's movement's recognition of the need to rethink both the nation as a homogeneous entity and also the legitimacy of the state to bring about social reform.[1]

Uniformity as a value is compatible, paradoxically, with both secularism as well as with marginalizing minority cultures. As we see in France, where the Muslim veil can become the problematic assertion of religious difference, the norm continues to be invisibly marked with the values of the dominant community. For the BJP, it is possible to present itself as a Hindu nationalist party while simultaneously espousing the language of abstract citizenship. Hence its ease in using the label "pseudo-secularist" to describe those who affirm the need for the protection of minorities, or the charge that provisions such as separate personal laws, special status for Kashmir, and minority status for educational institutions are "anti-secular." Within a framework of abstract citizenship, in other words, it becomes possible to claim that it is "communal" to raise the issue of (minority) religious identity and "casteist" to assert (lower) caste identity at the same time as the norm is assumed to be the dominant community and caste.

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1. For a more extensive discussion of 1990s debates on the uniform civil code, see Nivedita Menon, "Women and Citizenship," in *Wages of Freedom*, ed. Partha Chatterjee (Delhi: Oxford University Press, 1998).

The women's movement in India opposes the imposition of majoritarian uniformity, while it simultaneously supports initiatives within religious communities to bring about reforms. Heterogeneous practices need not be inherently inegalitarian, nor does a uniform law necessarily mean the opposite. The women's movement seeks to ensure that the rights of women do not become a casualty of minority communities' fear that reforming their personal laws is a pretext for eroding their identity. When a minority community is threatened with annihilation, the obvious response is to close ranks. It is when a community is confident that it can afford to be self-critical.

A second important development since the 1990s is the stronger interrogation of the assumed heteronormative family at the center of personal laws. Even in the 1990s, the Forum Against the Oppression of Women had in its optional code broadened the concept of "family" to include homosexual relations and heterosexual couples living together outside marriage. Today, in 2014, the question of non-heteronormative relationships is even more central in the uncertain aftermath of the Indian Supreme Court ruling in 2013 that effectively recriminalized adult, consensual, same-sex relationships. Equally important is the need to reconceptualize all intimate relationships in contractual terms that protect all of the women living in them, so that men in bigamous and polygamous relationships that are not formal marriages are forced to take responsibility for all of the women concerned.

A third and final point—the question of women's equal rights to property—may need to be reformulated radically at this stage of the UCC debate. The personal laws on succession and property represent a point of conflict between the imperatives of the state and those of the family. On the one hand, the modern state requires legibility in order to mobilize resources toward capitalist industrialization; that is, it must be able to see and organize different forms of property. To this end, the institution of individual rights to property is crucial for the state. All forms of property must become completely alienable and transparent for the ongoing capitalist transformation of the economy. The family, on the other hand, has its own imperatives of controlling name, descent, and passing on of property, a project disrupted by individual property rights. In light of this tension, we must view the state's gradual granting of property rights to women under Hindu law—the most recent amendment in 2005 giving women rights to ancestral property—as more than

a simple triumph of feminist demands. It also represents the establishment of a bourgeois regime of property for the Hindu community, at least in principle, which makes land completely alienable by every separate individual owner. In the current climate of widespread resistance to land acquisition by the state, this is a considerable achievement for the state as it always easier to pressure or tempt individual owners, rather than communities, to sell land. Should the larger question of land rights and land acquisition by the state be set aside while discussing individual women's rights to property? Clearly, the feminist debate over the UCC has reached a new stage of complexity, and conversations have begun afresh.