DEBATES, FEMINISM, LAW

Uniform Civil Code – the women's movement perspective

01/10/2014 | NIVEDITA MENON | 44 COMMENTS

The BJP has once again raised the issue of a Uniform Civil Code (UCC) for all Indian citizens, posed in a way that presents the BJP as 'secular' and pro-women, and opponents as communal or 'pseudo-secular' and anti-women. Since Independence, there has been very little change in the contours of the debate in the public domain, both within the BJP as well as among public intellectuals not necessarily aligned with the Hindu Right. The only change that has come about since the 1990s is that the UCC is now also posed as a 'women's rights' issue and not only as a matter of national integrity, which requires the eradication of multiple legal systems. This new equation of 'women's rights' with the UCC is at least partly a result of the interventions by the women's movement in the debate in the 1990s. However, within BJP (and mainstream) discourse, it is assumed that only minority women need saving, for 'we Hindus' have already given 'our' women equal rights.

The women's movement has developed this debate in complex and multiple directions over the decades, which this essay will briefly outline.

The debate over the UCC in contemporary India is produced by the tension between two notions of rights in the Fundamental Rights (Part III) of the constitution. The bearer of rights is both the individual citizen and the collectivity – the former is the subject of Articles 14 to 24 which ensure the individual's rights to equality and freedom and the latter of Articles 25 to 30 which protect religious freedom and the educational and cultural rights of minorities [1]. 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 can be read as a contradiction between the rights of women as individual citizens and those of religious communities as collective units of a democracy.

However, the implication that uniform laws for all citizens is the properly modern goal for a nation-state, is reflected in the Directive Principles of State Policy (Part IV of the Constitution), which calls upon the state to bring about a UCC.

While the demand for a UCC is claimed on grounds of national integrity and women's rights, resistance to the UCC from self-styled community leaders comes on the grounds that its imposition would destroy the cultural identities of minorities, the protection of which is crucial to democracy. However, both positions are deeply problematic for feminists.

Was the Hindu law really 'reformed'?

The argument that presents national integrity as the rationale for a UCC, and its conflation with 'women's rights', is unacceptable for two reasons.

First, the fundamental problem with the 'national integrity' argument emerges from the recognition of the homogenizing thrust of the Hindu Code. The entity of the 'nation' was constructed through the assertion of a dominant voice and the marginalization and exclusion of a multiplicity of other interests and identities, and is not a value that feminists can espouse.

Second, we need to address the explicit assumption that while Hindus have willingly accepted reform, the 'other' communities continue to cling to diverse and retrogressive anti-women laws, threatening the integrity of the nation state.

It is misleading to claim that Hindu Personal Law was reformed. It was merely codified, and even that was in the face of stiff resistance from Congress leaders. In fact, the proposed Bill meant to overhaul laws relating to marriage and inheritance was dropped on the eve of the first general elections – (Ambedkar famously resigned as Law Minister on this issue) – and it was only in 1955-56 that parts of it were pushed through by Nehru as the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act and the Hindu Adoption and Maintenance Act.

What the Hindu Code achieved was the codification of the vast and heterogeneous practices of communities termed 'Hindu' if they were not Muslim/Parsi/Christian, bringing them into conformity with what was assumed to be the 'Indian' and 'Hindu' norm – that is, North Indian, upper-caste practices. Other practices that did not match this norm were explicitly dismissed during the debates in Parliament as being un-Indian. These new Acts 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, more liberal customary provisions in many cases.

Conversely, there are features of Muslim Personal Law that are better for women than Hindu Personal Law – the Muslim marriage as contract protects women better in case of divorce than the Hindu marriage as sacrament; the Muslim law of inheritance protects women's rights better than Hindu law, and the right of *mehr*, which gives Muslim marriage the status of a civil contract, is the exclusive property of the wife.

Thus, the anodyne statement sometimes offered by BJP leaders that a UCC will take into account 'positive features' of all Personal Laws is untenable in practice, because for instance, *mehr* cannot be introduced into Hindu marriages, nor the Hindu sacramental marriage made into a contract, though both of these are positive aspects of Muslim law vis-à-vis Hindu law.

The myth of the polygamous Muslim man

As for that straw man, Muslim polygamy, the fact is that Muslim men who marry more than once are legally bound to fulfill responsibilities towards all the women concerned, while Hindu men who contract bigamous relationships (an extremely common phenomenon), escape this responsibility in their 'non-legal' second or third marriages.

In 1974, a government survey found that 5.6% of Muslim men were were in bigamous or polygamous relationships, as were 5.8% of upper-caste Hindus. In terms of numbers, this makes a huge difference. Flavia Agnes points out:

> *Statistics continue to indicate that bigamy among Hindu men (which includes, Buddhists, Jains, Sikhs and other denominations) is, in fact, higher than it is among Muslims. In 1974, a government survey found Muslims to account for 5.6 per cent of all bigamous marriages, with upper-caste Hindus accounting for 5.8 per cent. The difference may appear to be small but in real terms it is big. The 1971 census records 45.3 crore Hindus and six crore Muslims. Allowing for women and children to make up 65 per cent of each group, as many as one crore Hindu men had more than one wife in 1971, compared to 12 lakh Muslim men. (http://www.asianage.com/columnists/don-t-wrong-right-802)*

Sociologist Nirmal Sharma points out that while a Hindu man will desert his lawfully wedded wife to live with another, the multiple wives of Muslim men are entitled to equal legal and social rights. "Closet bigamy in Hindus is worse than open polygamy among Muslims (http://timesofindia.indiatimes.com/home/stoi/Bigamy-An-issue-of-one-too-many/articleshow/5004493.cms)," he says.

This is why feminist lawyer Flavia Agnes urges that attempts to codify the Muslim law to bring in legal monogamy 'should not end up in subjecting Muslim women to a plight which is similar to that of the Hindu second wife. This is an important concern which needs to be taken on board while suggesting reforms within personal laws.' (http://www.asianage.com/columnists/don-t-wrong-right-802)

Why community rights are equally unacceptable

On the other hand, feminists cannot accept the unqualified rights of communities to their cultural identity, although the providing of space for such identity is crucial for a democratic polity. For one thing, the 'community' identity that is claimed today as natural and prior to all other identity is no more primordial than the nation is. The colonial government in consultation with self-styled community leaders, organized vastly heterogeneous family and property arrangements within the ambit of four religious Personal Laws, Hindu, Muslim, Christian and Parsi. These Personal Laws today being defended by self-styled community leaders in the name of tradition and religious freedom, are thus, colonial constructions of the 19th and 20th centuries.

Feminists also reject community rights over 'their' women because the gender discriminatory provisions of the Personal Laws are based on the same logic of exclusions that characterise the coming into being of the nation.

The Uniform Civil Code of Goa

A quick look at the experience of Goa is useful, as the Civil Code of Goa is often touted by the BJP as an example of a UCC that works. This put in place by the Portuguese colonial authorities and is neither 'uniform' nor gender-just. Albertina Almeida has pointed out that marriage laws differ for Catholics and people of other faiths, and this affects the laws governing Catholics after they marry. If the marriage is solemnised in church, the Church can annul the marriage at the instance of one of the parties, as is permitted in church law.

In addition, the 'customs and usages' of the Hindus of Goa are also recognised. 'Limited' polygamy has been allowed to Hindus and bigamy has been recognised to have civil effects. Other inequalities – on issues of adoption and the rights of illegitimate children – are also allowed for in these laws. When it comes to taking an oath in court, differences on the basis of caste have been accepted.

The positive aspect of Goa's Civil Code is the Community Property Law, which guarantees each spouse 50% of all assets owned and due to be inherited at the time of marriage. Not only does a woman own half the property of her husband, and vice versa, but each partner must take the spouse's permission before disposing of any of those assets. However, this provision can be sidestepped in practice, given the power relations in a marriage, and it has not made any impact on the incidence of domestic violence.

It has also been pointed out that the supposed shared income between the spouses is welcome in higher income brackets with one principal earner, because it can result in lower taxes on the joint income (http://scroll.in/article/666255/Goa's-Civil-Code-has-backing-of-BJP,-but-it's-not-truly-Uniform).

Clearly, if gender justice is not placed at the centre of this discussion, both uniformity as well as its dilution only reinforces patriarchy as well as majoritarianism.

The women's movement and the UCC – seven decades of a debate

The response of the women's movement to the UCC has taken different forms from the first articulation in 1937 of the demand for a Uniform Civil Code for all religious communities, by the All India Women's Conference. This demand continued to be made by larger sections of the women's movement till the late 1980s. By the early 1990s however, there was considerable rethinking on the issue.

By 1995, what emerged was a broad range of positions, from the continued demand for a UCC, to outright rejection of such a move, and calling instead for reforms within 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. a) Support for and initiation of attempts to bring about reform within Personal Laws
2. b) bringing about legislation in areas that are not covered by either secular or Personal Laws – such as domestic violence and right to matrimonial home – thus avoiding a direct confrontation with communities and communal politics, and
3. c) in the long term, setting up a comprehensive gender-just framework of rights covering not just areas covered by Personal Laws, but also the 'public' domain of work (crèches, equal wages, maternity benefits etc) which should be available to all citizens.

In the first two areas listed above, there have been distinct achievements. Divorce law for Indian Christians was made more gender just through sustained engagements within the community by feminists, resulting in the passing of the Indian Divorce (Amendment) Act of 2001. Different versions of model *nikahnamas* that protect the rights of women, have been prepared by Muslim reform groups, though these have yet to be accepted by the community leaders. Interestingly, there have been positive outcomes from even the Muslim Women (Protection of Rights on Divorce) Act of 1986 that was passed to override the Supreme Court decision in the Shah Bano case which asserted that Muslim women were covered by Section 125 of the CrPC, thus entitling them to maintenance under a secular provision. The Muslim Women Act of 1986 took Muslim women out of the purview of this secular provision, provoking outrage from the women's movement and anti-patriarchal voices from the Muslim community, but studies of the working of the Act in the three decades since its passing, show that Muslim women have benefited from its creative interpretation by courts (http://www.sabrang.com/cc/archive/2010/jan10/gender.html).

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 and 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. The provisions of the Domestic Violence Act are often interpreted by courts in a manner that goes against a wife seeking to use it, but it remains nevertheless, an important legislation.

Four features of the debate within the women's movement at this stage

It is significant that **the term 'uniform' has been dropped altogether as a positive value** from the debates within the movement, even in the positions which reiterate the need for state legislation. Thus, in the proposals made by Saheli and People's Union for Democratic Rights (Delhi), for a compulsory code, or by Forum Against Oppression of Women (Bombay) for an optional code or by the Working Group on Women's Rights (Delhi) for a negotiable common code, the terms used are 'common', 'gender-just' or 'egalitarian' codes, and not 'uniform' codes. 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 of the legitimacy of the state to bring about social reform [2].

Uniformity as a value is compatible paradoxically, both with '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, while 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 the label of 'pseudo-secularist' for those who affirm the need for protection for minorities; or the charge that provisions like 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 – while the norm is assumed to be the dominant community and caste.

The following of heterogeneous practices need not be inherently inegalitarian, nor the imposition of a uniform law necessarily the opposite.

The women's movement supports initiatives within communities to bring about reforms, so that the rights of women do not become a casualty to the fear of minority communities that reform of personal laws is only a pretext for eroding their identity in this sharply polarised polity. It is not a paradox that some Islamic states have managed to reform laws in the interests of women. 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. What the women's movement demands is the bringing about of gender justice within both religious and secular laws.

A second important development since the 1990s is **the stronger interrogation of the assumed heteronormative family** at the centre of Personal Laws. Even in the 1990s, 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 for the queer feminist movement, especially in the uncertain situation produced by the Supreme Court ruling (2013) striking down the Delhi High Court judgement (2009) that had legalised adult consensual same-sex relationships.

Third, an issue that had been raised during the 1990s is being foregrounded – rather than valorizing 'monogamy', the recognition that non-monogamy even if it is illegal, is very common. **The need therefore, to reconceptualise all intimate relationships in contractual terms that protect all the women living in them**, so that men in bigamous marriages as well as in relationships that are not formal marriages, are forced to take responsibility for all the women concerned.

A fourth 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. I suggest that the Personal Laws on succession and property represent a point of conflict between the imperatives of the State and those of the Family. The modern state requires legibility in order to mobilize resources towards capitalist industrialization, that is, it must be able to 'see' and organize different forms of property in existence, especially land. Towards this end, the institution of individual rights to property is crucial. All forms of property must become completely alienable and transparent to the state – this development is essential for 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 the light of this, 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 well – 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 pressurize or tempt individual owners rather than communities, to sell land.

It is in this context that we must understand feminist legal scholar and activist Nandita Haksar's critique of some feminist initiatives to press for individual rights to property for tribal women over community rights She urges the need for a struggle within tribal communities to evolve new customs that are more egalitarian, rather than forcefully introducing from above, individual rights to property [3]. Feminist land rights activists have also become cautious about focusing on joint titling of family plots while losing sight of the state's encroachment on commons and public lands. Common property, they realize, is the biggest impediment to market relations, and they would rather work for collective ownership of the commons, rather than for 'women's rights to land' – this would necessarily be a political, anti-state struggle, allied to other livelihood movements, and would not be a women's struggle but a community movement.

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.

Notes

[1] Although the right to equality is qualified by riders permitting the state to recognize disadvantaged groups (women, children, socially and educationally backward classes), the subject of this right remains the individual citizen.

[2] For a more extensive discussion of the Uniform Civil Code issue in the 1990s, see Nivedita Menon "Women and Citizenship' in Partha Chatterjee ed *Wages of Freedom* OUP Delhi 1998.

[3] Nandita Haksar "Human Rights Layering: A Feminist Perspective" in Amita Dhanda and Archana Parasher eds., *Engendering Law. Essays in Honour of Lotika Sarkar* Eastern Book Company, Lucknow, 1999

This is an expanded and revised version of an article that appeared recently in Feminist Studies.

GOA CIVIL CODE **SHAH BANO** **UNIFORM CIVIL CODE**

44 thoughts on "Uniform Civil Code – the women's movement

perspective”

1. **krishnapachegonker** says:
   01/10/2014 AT 7:14 PM
   its very interesting & insightful critique!

   1. **Riju** says:
      02/10/2014 AT 12:15 AM
      The bigamy math is flawed. If indeed “Muslims to account for 5.6% of all bigamous marriages and upper-caste Hindus accounting for 5.8%”, then the difference between the two groups should necessarily be 0.2% of all bigamous marriages. The difference can be meaningful in absolute numbers only when the percentages have the community populations in the denominators, but here the denominator is total bigamous men. Moreover, on careful reading the following sentence talks of all “hindu men” and not just upper-caste ones. Is this flawed logic, or worse, a deliberate sleight of hand?

2. **Apyl** says:
   01/10/2014 AT 9:49 PM
   It would be helpful to get a grasp on the numbers if a link to the government survey from 1974 is provided. The way it is presented here creates confusion and possibly severe overestimates of the actual numbers.

   “In 1974, a government survey found Muslims to account for 5.6 per cent of all bigamous marriages, with upper-caste Hindus accounting for 5.8 per cent.”

   This sentence implies that of all bigamous marriages, 5.6% were among muslims and 5.8% were among upper-caste Hindus. i.e if hypothetically speaking there were 100 bigamous marriages in the country, about 5-6 were amongst muslims and 5-6 were amongst upper caste hindus.

   It would be inaccurate to obtain the numbers of 12 lakh muslim men vs 1 crore hindu men based on this statistic. If the latter numbers are correct, the correct statistic to state would be -> 5.6% of all adult muslim males who married had bigamous marriages and 5.8% of all hindu men who married had bigamous marriages. One could then apply these percentages to the populations from 1971 census and get the numbers of 12 lakh vs 1 crore, assuming of course that the populations (45.3 crore and 6 crore are all adults). However, that is not what this, or the quoted article, says.

   An additional puzzling thing is the line “…bigamy among Hindu men (which includes, Buddhists, Jains, Sikhs and other denominations)…”, while the % of bigamy is provided only for Upper-caste Hindu men. So does this mean that the bigamy in ‘total’ hindu population (including Buddhists, Jains, Sikhs etc. is different than 5.8% or is the 45.3 crore population of just upper caste hindu men and not of all the other denominations?

   So the numbers, as quoted, seem very confusing and inaccurate.

   1. **Apyl** says:
      01/10/2014 AT 9:53 PM
      It’s also worth asking why public policy is being decided based on 40 years old data.

3. **Alaka Basu** says:
   02/10/2014 AT 12:16 AM
   Extremely insightful article, except for one sentence being misworded (it is also misworded int the original Flavia Agnes cite:
   “In 1974, a government survey found Muslims to account for 5.6% of all bigamous marriages and upper-caste Hindus accounting for 5.8%.”.
   If this sentence were correct, it implies that about 89% of all bigamous marriages are accounted for by the other (statistically small) religious groups of India.
   What the survey found was that, in 1974, among Muslims, 5.6% of marriages were bigamous and among Hindus 5.8% were.
   And given that Hindus make up some 80% of the population, in absolute numbers they account for the

bulk of bigamous marriages.
btw, the survey probably overestimated bigamy among Muslims and underestimated it among Hindus, given the frequent ploy of Hindu.bigamists converting to Islam to avoid legal action.

1. ★ **Nivedita Menon** says:
   02/10/2014 AT 10:14 AM
   Thanks Alaka, you're right, Flavia's wording (and mine following her) is misleading. (I have rewritten my sentence now.) She is referring to the 1974 government survey to study the incidence of bigamy/polygamy among all communities, which found bigamy/polygamy prevalent among 5.6 percent of Muslims surveyed and 5.8 percent of 'upper caste Hindus' surveyed. From these figures she extrapolates the number based on the 1971 census figures of both communities. You are also right that 'Muslim bigamy' probably gets inflated by Hindu men converting to Islam as a ploy to marry more than once.
   I also assume that when Flavia refers to 'upper caste Hindu men' she is excluding all others listed as Hindu in India – i.e. Buddhists, Jains, Sikhs, Adivasis etc, for as we know, the definition of 'Hindu' is simply – all those who are NOT Muslim, Christian or Parsi. That's how the myth of a Hindu majority is kept up.
   Apyl and Riju, I presume this answers your questions.
   Apyl, if it was the case that the survey showed that of "100 bigamous marriages in the country, about 5-6 were amongst muslims and 5-6 were amongst upper caste hindus", then who accounts for the remaining 90 percent of bigamous marriages? A little thought would have resolved your doubts, as Alaka shows us.
   As for 'policy based on 40 year old data' – please understand one thing – the trend of men across communities marrying more than once and not taking responsibility for second and third wives (and we are not even talking about informal live-in arrangements, but actual marriage ceremonies), is only growing with growing migration of men to cities, leaving families behind in villages. Behind Riju's and Apyl's apparently statistics-oriented questions I sense the anxiety that a carefully constructed and widely prevalent communal stereotype may be falling apart.
   If you would shift your focus to gender justice from the community-based polarization framework, you would be able to see that the issue is not that "Muslim men are polygamous" but that men across communities generally do not fulfill their obligations to the women who contribute both financially and through their labour to the men's well being.

   1. **Apyl** says:
      03/10/2014 AT 12:00 AM
      Thanks for the clarifying the assumptions that went into the numbers here. The sole reason for posting the comments was because the numbers seemed absurd after 'putting in a little thought' and I reckoned it would be a good idea to seek a clarification from the author instead of just assuming further.

      Rest assured, it was indeed a purely statistics-oriented comment and I, like you, believe that the trend of bi-/polygamy is only increasing and needs to be dealt with laws assuring gender justice.

      If the data are that old, I guess that would be a contentious issue when trying to bring about any amendments or new laws when the bill(s) come up for discussion. The possibly higher numbers from more recent data would only bolster this cause.

      Hence my 'anxiety'. Thanks for ascribing a communal tone to my comment.

      1. ★ **Nivedita Menon** says:
         03/10/2014 AT 10:30 AM
         Apyl, apologies for clubbing you with the others coming in here. As you can see from their tone and growing aggression, the entire post has been missed for that one point about Muslim polygamy, and yours seemed to be of the same tenor. Perhaps I was mistaken, but you can understand why that happened.
         When I see the outrage across the board from left to right, from Hindu men about Muslim polygamy ("Hindu men saving Muslim women from Muslim men!"), with absolutely no concern

for justice for the multiple women involved, I begin to suspect it is about a) protecting the Wife from The Other Woman and b) about taking away a lollipop from Muslim men that Hindu men do not have!

2. **Sukla Sen** says:
   02/10/2014 AT 5:28 PM
   Is there any link to the claimed survey? Who carried it out?

   1. **Sukla Sen** says:
      02/10/2014 AT 5:32 PM
      "Who" means which specific department or institute?

      1. ★ **Nivedita Menon** says:
         02/10/2014 AT 8:13 PM
         Flavia is referring to "Towards Equality: Report of the Committee on the Status of Women in India" (1974) that cites a Government survey conducted earlier.

4. **aditya** says:
   02/10/2014 AT 4:16 PM
   Nivedita,whatever might might be the figures,one can also say the problem here is having a law that still allows men to marry more than once,and clearly mislim personal law has that,as for hindus marrying more than once,the women does have an option of taking a legal recourse which is denied to a muslim women.Simply changing a law won't change everything,we need a lot more women empowerment for everything to be right,however having said that,disbanding a law that still allows a man to marry more than one women legally is necessary

   1. **Sukla Sen** says:
      02/10/2014 AT 7:09 PM
      That, to me, sounds pretty much sensible.
      And, the context, that there are some Muslim women's organisations fighting for reforms in the teeth of quite intimidating difficulties has got to be kept in mind.
      As regards the Sangh Brigade, gender justice of course nowhere appears on their mental radar. That goes without saying. They use the issue only to inflame passions to promote their utterly mischievous project.
      But that cannot be ground for sidelining the issue per se, on some clever and contrived pretext.
      Apart from gender justice, even otherwise this is sure to prove counterproductive.

   2. **jyoti** says:
      08/11/2014 AT 9:37 AM
      i agree with aditya. sorry for coming in late. how can the right to marry more than one woman be supported? and maintaining both (or all) wives is done only by those who can afford it. Among the poor, it's a myth. as for the first wife –is she going to be satisfied knowing she will be maintained once her husband takes another wife? i have known dirt-poor muslim women who have filed for divorce as soon as their husbands remarried, and been denied one. & this was in shah bano's time.

5. **Sukla Sen** says:
   02/10/2014 AT 5:25 PM
   There are reasons to apprehend that this piece is just a camouflaged attempt to shield and protect gender unjust personal laws, in a radical garb of course.
   That there is not a word on the Bharatiya Muslim Mahila Andolan's nationwide campaign for codification of Muslim personal laws, by no stretch a demand for the UCC, and concomitant banning of polygamy, oral talaq and halala appears to be a clear giveaway.

6. **Yella Ok** says:
   02/10/2014 AT 7:07 PM
   Whether there was protest or not against codification and reform, codification and reform happened within Hindu society/law. That is positive. Period. Since the time the law has been passed, Hindu society has accepted law to a large extent and reformed – fact. That further reforms may be needed and law may need to be changed is probably also true. All these are signs of accepting change and being ready for reform. ANy change and reform is a process and that process continues to happen in the Hindu Society.

That the writer has not demanded for ban of polygamy by law for religions other htan Hindu religion and instead has blamed Hindu men for having multiple marriages outside of the law only shows the pettiness and bias with which the article is written.

It is because of people like this writer certain sections of society has not been able to fully realize the values of Indian democracy and continue to be mired in dogma that are centuries old and not in tune with the current times. It is like – if a view is pro-Hindu, by Hindu, etc, it should be opposed, even if it is for the benefit of the people, because nothing should be pro-hindu.

Sad state of mind of the self-styled "progressive" intellectuals

7. ★ **Nivedita Menon** says:
   02/10/2014 AT 8:07 PM
   Sukla, you tone is astounding – "this piece is just a camouflaged attempt to shield and protect gender unjust personal laws, in a radical garb of course." As feminists, Flavia and I are invested in protecting gender-unjust personal laws! Using the same perverse logic I could say that you are totally Hindu right-wing in your own position. These kind of simplistic polarizations could be avoided at least within the Left, and at least at this moment in history! Do you think there is anything you have to learn at all from the women's movement debates, or are you always already in a position to talk down and 'give line'?
   I have "nowhere mentioned" the BMMA's demand for legally ending polygamy just as I have nowhere mentioned large amounts of other information, because I was more interested in making an argument. The BMMA demand falls within the position I have described as "Support for and initiation of attempts to bring about reform within Personal Laws". Why is this difficult to understand? To you and Aditya I ask – what part of my essay supports polygamy and says it should NOT be legally ended? What I say is this – and listen if you are at all interested – your responses dont sound like you listen or read very carefully – legally ending polygamy will not necessarily bring about justice for women. What we need is for men to be bound legally to fulfill their obligations to ALL women they are in marriage-like relationships with. It is not only "the wife" who suffers, the other women equally end up being exploited and abandoned. Aditya, the whole point is that Hindu women precisely do not have legal recourse against their husband if he turns out to have been married before, because the second marriage is illegal. Banning polygamy without recognizing that in practice large numbers of Indian men across communities marry more than once, following rituals that make the women believe it is actually a marriage, will only leave all second and third wives bereft of any legal support. Let me reiterate what I said more than once already in the post and in response to comments: the focus needs to shift to gender justice from the community-based polarization framework. Interesting that from this long essay, the only point that has been taken up again and again by Hindu men coming in aggressively accusing me of gender injustice, is "Muslim polygamy", that favourite stand-by of the Hindu Right.
   As for Yella oK – oh, "codification of Hindu law was positive, period"? Of course sir, just as you say sir! Do take a break from the workings of your mighty mind, sir!

   1. **Sukla Sen** says:
      03/10/2014 AT 12:46 AM
      You've not mentioned the demands raised by the BMMA – codification of Muslim personal laws with concomitant banning of polygamy, oral talaq and halala – not polygamy alone, despite the fact there is nationwide campaign.
      And, it's not even a demand for a common civil code.
      The only plausible explanation is that it's because you want to shield and protect the position taken by the Muslim anti-reformists at the cost of Muslim women.
      If you endorse the BMM position, you'll have to clearly and unambiguously come out on that.
      And, don't tell me that you and Flavia represent all the feminist positions on this issue.
      Have you cared to check what the Muslim feminists ask for? What Hasina Khan, for example, is telling?

      1. ★ **Nivedita Menon** says:
         03/10/2014 AT 10:40 AM
         For the last time Sukla, it should clear to any person with a minimum comprehension ability that I see BMMA's and other such initiatives as significant and important instances of "reform from within".
         Two I do not claim that Flavia and I represent all feminist voices on the issue. I have in fact outlined

the debates within the movement as a whole and the various complicated positions within it. I refer to Flavia and myself only in the context of some feminist responses to Muslim polygamy.
Three, of course there are feminist critiques of Flavia's position on the BMMA's demand, in the article that I have cited. But no feminist, including Hasina, would ascribe to Flavia (or myself) what you do – that we are trying to "shield and protect the position taken by the Muslim anti-reformists at the cost of Muslim women."
Your arrogance and refusal to engage is typical of the Leftist Indian Man. In the women's movement we are used to arguing vociferously but listening, even as we make sharp criticisms of one another.

8. **sanjay** says:
02/10/2014 AT 9:25 PM
It is an insightful article. Especially because it keeps its objective of highlighting the gender injustice in sight rather than bogged down in partisan politics. Activists cannot sit on their hands waiting for this and that law to be abolished before starting their work. There is no guaranty that UCC will stop all the gender injustices, given the state of implementation of existing laws. So, there is a need to work for bringing needed legislation to hold polygamous men responsible for their actions.

9. **P Chakraborty** says:
02/10/2014 AT 9:55 PM
You find a law that supports unilateral divorce, allows man to walk away lawfully from providing maintenance to his abandoned wife, and paves ways for men from other communities to take shelter under it to avoid prosecution to be a just law, but I do not. Inadvertently, it gives me an impression of you supporting mullahs despite of your trumpet on feminism, and perhaps shows me to you as a Hindu right wing at worst, or a North Indian upper cast Hindu at best, though I am neither.

I have not yet come across any religion that is not misogynistic, homophobic, supremacist with a proclivity for violence and hence, I do not believe any laws based on scriptures, which are in turn, based on unscientific medieval ideas not to have these tendencies. In a democratic society, people should be able to lay down laws that all citizens will abide by, which of course with a provision to change. Political Left in India should have brought up this topic and put their weight, whatever little was at their disposal, behind it before it is stolen by the Right Wing.

1. ★ **Nivedita Menon** says:
03/10/2014 AT 10:25 AM
P Chakraborty,
You claim that I find just a law "that supports unilateral divorce, allows man to walk away lawfully from providing maintenance to his abandoned wife, and paves ways for men from other communities to take shelter under it to avoid prosecution".

What part of the section I reproduce below from my post do you not understand? And is it lack of understanding or deliberate obfuscation when faced with facts?

Why community rights are equally unacceptable

On the other hand, feminists cannot accept the unqualified rights of communities to their cultural identity, although the providing of space for such identity is crucial for a democratic polity. For one thing, the 'community' identity that is claimed today as natural and prior to all other identity is no more primordial than the nation is. The colonial government in consultation with self-styled community leaders, organized vastly heterogeneous family and property arrangements within the ambit of four religious Personal Laws, Hindu, Muslim, Christian and Parsi. These Personal Laws today being defended by self-styled community leaders in the name of tradition and religious freedom, are thus, colonial constructions of the 19th and 20th centuries.

Feminists also reject community rights over 'their' women because the gender discriminatory provisions of the Personal Laws are based on the same logic of exclusions that characterise the coming into being of the nation

10. **Arindam Das** says:
03/10/2014 AT 11:31 AM

Sukla Sen, it seems the leftist culture represented by people like you still has a long way to go before it can learn minimum norms of debate and decency. Any disagreement with your position, it is apparent from your unwarranted diatribe, can only be a 'cleverly camouflaged' reactionary position. So much in a hurry are you to pronounce your verdict that you do not even care to read what the post says. Let me reproduce a few lines from what Nivedita has reproduced above for P. Chakraborty's benefit:

"Feminists also reject community rights over 'their' women because the gender discriminatory provisions of the Personal Laws are based on the same logic of exclusions that characterise the coming into being of the nation."

Gender justice and outright rejection of the community's rights over its women mean nothing as far as you are concerned. After reading this, and at least granting that whatever else feminists may do, they will not support the 'right' of the men of any community against their 'own women', you can still assert the following:

"The only plausible explanation [of the post not mentioning the BMMA position] is that it's because you want to shield and protect the position taken by the Muslim anti-reformists at the cost of Muslim women."

It looks like you have decided in advance about the truth of your own position. It seems pretty clear to you that there can be no other explanation – not even the one offered by the author that this is still a position within the broad rubric of internal reform and that the post was only discussing the broad positions in relation to the Uniform Civil Code idea. I think this is an act of bad faith that deeply affects Left culture in this country, where disagreements become positions of class war. In an earlier time, a Sukla Sen would have argued that people who differed with him were agents of imperialism, later of the Indian bourgeoisie and now, they must be agents of Muslim men who do not want reform. May I just remind you that it took six years of NDA rule last time round, for the Leftists to shed their arrogance – it seems to have returned full blast now. Perhaps the only good thing to emerge from the Narendra Modi rule now may be that people like you will be forced to learn yet another hard lesson. Too much of a cost for Leftists to learn simple lessons – after all they will not bear the brunt of the right-wing's viciousness and aggression.

11. **atavist13** says:
    03/10/2014 AT 12:08 PM
    I must say not only the article was well worded and apt but the ensuing debate was even more engaging! I feel one of the major obstacles while vying for a 'gender' just code, especially in a country like India, is the overall nexus of 'community' driven definitions or constructs of 'gender' which vary from community to community. The 'codified' laws (and whatever reforms that have taken place) are derived from community based assumptions of 'gender' and also their notions of reform. The need is the separation of gender from community while formulating or codifying laws which might lead to a comprehensive civil code in India.

12. **tu** says:
    03/10/2014 AT 2:15 PM
    1) Uniform Civil Code (UCC) or Common civil law for all is in vogue in many countries. We can learn from that and formulate one for India that is more suited in the Indian context. UCC is a better option as that could address many issues including minimum age for marriage, inheritance, adoption, divorce, and prevention of polygamy etc and provide equal rights to all women.
    2) if UCC is not acceptable then revisions to personal laws could be an option. But what has been the progress in this since 1950s and how this has impacted womens' rights. A reality check on this is needed than rhetoric. For example is it not possible to compare and contrast the personal on each aspect such as inheritance, divorce and point out what needs to be done in each of them in terms of achieving gender equality.
    3) If bigamy is an issue it has to be addressed and changes have to be made. Hindu men still practice bigamy despite of law banning it cannot be an argument for status quo in personal laws.
    4) I am disappointed with this article because it invokes the politically correct bogies and skirts the real issues that inhibit revision in personal laws.For example
    "The women's movement supports initiatives within communities to bring about reforms, so that the rights of women do not become a casualty to the fear of minority communities that reform of personal laws is only a pretext for eroding their identity in this sharply polarised polity. It is not a paradox that some Islamic states have managed to reform laws in the interests of women. 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. What the women's movement demands is the bringing about of gender justice within both religious and secular laws."
is an indirect plea for status quo or no revision in personal laws.
5) 'Creative interpretation by courts' is no substitute for a law that guarantees a right to women irrespective of caste/creed/faith. What happens when personal law contradicts or is in conflict with other acts such laws that prohibit child marriage. UCC can address these contradictions and conflicting interpretations as that could set a norm that is in harmony with the act that prohibits child marriage.
6) '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 – while the norm is assumed to be the dominant community and caste.'
UCC has nothing to do with religious identity or caste and can be based on norms that are applicable to all. If at all anything it will help in overcoming the dichotomy between 'minority' and 'majority' as it can be based on principles that are not favor of one or another but binding equally on both. Refusing to seek merits in UCC just because BJP advocates is not a sound position.
7) A big NO to UCC and almost inaction in personal law reform – is this the way to go?

1. ★ **Nivedita Menon** says:
   04/10/2014 AT 9:20 AM
   tu – I'm bored and frustrated by the unproductive "debate" being set up by a few of you men. If "almost inaction in personal law reform" is what you got out of my essay, clearly your ideological blinkers prevent you from even basic comprehension skills.

13. **tu** says:
    03/10/2014 AT 2:20 PM
    'Third, an issue that had been raised during the 1990s is being foregrounded – rather than valorizing 'monogamy', the recognition that non-monogamy even if it is illegal, is very common. The need therefore, to reconceptualise all intimate relationships in contractual terms that protect all the women living in them, so that men in bigamous marriages as well as in relationships that are not formal marriages, are forced to take responsibility for all the women concerned.'
    I wonder whether the idea of conceptualizing all intimate terms in contractual terms will be acceptable to all communities or will be compatible with all personal laws.

14. **Abhishek Oza** says:
    04/10/2014 AT 4:33 PM
    There are certain loopholes in religious laws that need to go:

    1. In Hindu marriage act, if a husband is Hindu & the wife is not a Hindu, then the husband can leave his wife any time, unopposed. This is grossly unjust, and a blatant disrespect of a wife's faith preference.

    2. Hindu undivided family act gives certain benefits to Hindu families. Unfortunately this law was never extended to other communities. This law either needs to be scrapped or extended as Indian undivided family act.

    3. In Muslim personal law there is a contract at the time of wedding ceremony. Similar facility of prenuptial agreement should be available in all marriage laws including special marriage act.

    4. According to Muslim personal law, the inheritable property is divided into 2 parts: 2/3rd and 1/3rd. The 1/3rd part is distributed among all the daughters & the 2/3rd among all the sons. This should be changed to just: inheritable-property/inheritors irrespective of religion, for all Indians.

    There must be other reformations needed, but unfortunately i cannot recall all of them right now.

    Reforming these laws may not require UCC, but still these reformations are required.

    1. ★ **Nivedita Menon** says:
       05/10/2014 AT 11:50 AM
       True, Abhishek, I agree…these kind of reforms across the board would go a long way in reducing gender injustice.

15. **S White** says:

05/10/2014 AT 12:35 PM

With regards to your comment " mehr cannot be introduced into Hindu marriages, nor the Hindu sacramental marriage made into a contract, though both of these are positive aspects of Muslim law vis-à-vis Hindu law". If dowry has been made illegal and then mehr also must be deemed illegal. There should not be one law for males and one for females. Marriage-as-a-contract is a western/islamic construct and not a sacrament in protestant/islamic societies, there is no sacred obligation to a contract. However in Dharmic cultures marriage is a sacrament. The author wants to inform our culture with a new-fangled culture with a westernism. In other words, she wants to westernize/semitise India with contract cum blood money concepts.

1. ★ **Nivedita Menon** says:

   05/10/2014 AT 12:53 PM

   Thank you, pseudonymous S White, for asserting shamelessly what is at the back of most demands from Hindu (men) for Muslims to reform their barbaric laws (couched though these demands are in the discourse of "women's oppression") – Hindu laws are what everyone should follow, and gender justice be damned., if "we" think of marriage as a sacrament, so should everyone else, what we do to our women is fine, others should stop whatever we tell them to stop and be how we want them to be. "Dharmic" culture is Indian, period.

   The Nair marriage of Kerala is a contract, by the way, so marriage as contract is as much a "Hindu" tradition as anything else, not a westernized or "semitized" idea at all. The Hinduism you espouse is on the other hand, is completely "semitized" – though I myself do not use that term for a variety of other reasons.

   Dowry, if you care to remember, is actually "stridhan" and once followed the same logic behind the mehr. Again, you brazenly assert it as something for men, which has become the practice, but to claim it so proudly!

   I love it when the "S White" types come in and expose the real meaning behind what all the other blah about "oppressed Muslim women" is really all about – imposing North Indian Hindu upper caste practices as "Indian".

16. **Mahesh** says:

    05/10/2014 AT 10:06 PM

    "Nair marriage of Kerala is a contract". Could you please cite some references for this.. Curious as I am seeing this perspective for the first time

17. ★ **Nivedita Menon** says:

    06/10/2014 AT 12:39 PM

    Mahesh,

    You can read Praveena Kodoth's "Courting Legitimacy or Delegitimizing Custom? Sexuality, Sambandham, and Marriage Reform in Late Nineteenth-Century Malabar" (Modern Asian Studies, Vol. 35, No. 2 (May, 2001), pp. 349-384).

    Also G Arunima's book "There comes Papa: Colonialism and the Transformation of Matriliny in Kerala, Malabar, c 1850-1940" (Orient BlackSwan, 2003)

    Briefly to summarize from the complex history of matriliny among the Nairs, and its delegitimizing and ending through an alliance of Nair male elites and British colonial law in the 19th century: the matrilineal 'sambandham' which permitted Nair women to form multiple alliances was gradually demeaned as 'concubinage' in the gradual process of establishing patriliny as proper and natural. Eventually the nuclear patrilineal monogamous marriage legally replaced polyandry, matrilineal joint families (taravadus), and sambandhams (which were contractual in the strictest sense of the term, in that the women and men concerned were equally party to the contract.) The new marriage that replaced sambandham was also contractual, though, Praveena argues, more like the British marriage contract that was weighted against women, rather than like the sambandham which was more like a "real contract."

    Nevertheless, a Nair marriage till today, does not need to be solemnized in a temple, and no priest is required. Although many Nair marriages now include a component in a temple, this part is not necessary for a Nair marriage, which is fully solemnized if the taalikettu (tying of the mangalsutra) and podava kodukkal (giving of clothes to the bride by the groom) is conducted before family elders, a lamp and a container (para) overflowing with grain.

    There is no necessary invocation of "God", Vedas etc. in a Nair marriage ceremony.

I found a simple account of a contemporary Nair marriage ceremony here:
http://www.spiderkerala.net/resources/6694-Hindu-Nair-Marriages-Kerala.aspx

Hope this answers your question.

18. **avinashk1975** says:
06/10/2014 AT 6:44 PM
@ Nivedita Menon >>> matrilineal 'sambandham' which permitted Nair women to form multiple alliances was gradually demeaned as 'concubinage' >> you seems to suggest that 'sambandham' was synonymous with Polyandry. Nair women had only one husband at a time under the system of 'sambandham' but they were free to terminate the marriages at THEIR will as the married women still remained in their Taravad (ancestral home). Two of my grand father's sisters had one sons each from the 1st marriage and then re-married and had many more children.

Thakazhi Sivasankara Pillai in his Magnum opus Kayar has written that "if the 'Nair' finds his Payum thalayanayum (bed and pillow) in the court yard when he reaches the Achi's (wife's) home, it is indication that the relationship no more exists and he need not visit her again!!

This Wiki article http://en.wikipedia.org/wiki/Sambandam gives more info on the matter. Pl see the quote from William Logan's Malabar Manual

1. ★ **Nivedita Menon** says:
06/10/2014 AT 9:15 PM
Avinash 1975 – This is precisely the narrative about matriliny that began with the process of ending it, that Nair women were not polyandrous, because in the view of the British, polyandry was equivalent to prostitution and concubinage, an understanding that embarrassed the Nair male elite, and eventually Nair society as a whole. The repudiation of matrilineal heritage includes the distancing from these non-Victorian sexual mores. Modernization and progress was equated with the patrilineal nuclear family. And please dont cite Wikipedia to me in return for the scholarly research paper and book that that I have suggested!

19. **avinashk1975** says:
06/10/2014 AT 11:28 PM
@ Nivedita Menon, I do not have to quote Wiki on Nair 'sambandham' as I am myself a Nair. I gave the link only for convenience and found the information given there more or less correct.

Matrilineal system of Inheritance was abolished after enactment of Hindu Succession Act of 1956. My Grandfather's Taravad was one of the first to be divided under the act as there were bitter fights (Court Cases) going on between his Mother and her brother. As you also may be aware, disputes over trivial matters and Court Cases were one of the main reason for the decline of the Nair taravads.

1. ★ **Nivedita Menon** says:
07/10/2014 AT 10:32 AM
Avinashk1975, I am suggesting that "being a Nair" is not enough to understand how and why matriliny was transformed and eventually legislated out of existence. A particular narrative about the ills of matriliny developed in the 19th century which was deeply internalized by the modernizing Nair elites. So for instance, when you say endless litigation was "the main reason for the decline of Nair taravads" I think you are putting the cart before the horse. The litigations were the **result** of the legal process of splitting taravadus and transforming matrilineal joint family property into individual patrilineal property.
That's why more engaged scholarship must be referred to rather than in this case, the Wikipedia entry, which I find completely slanted towards reading matriliny (wrongly referred to as matriarchy there), through the lens that I have described. The section titled "Status of Sambandham" uncritically quotes Wingram's Malabar Law and Custom which describes it as a "strange custom" designed to prevent Nair men from loving their wives and children. As if a man, HIS wife and HIS children are somehow a more natural unit as opposed to sisters, brothers and sisters' children, a system that had been considered perfectly natural until the 19th century. That entire entry is written from the point of view of British Victorian morality, notions of the only correct form of family, and the assumed historically progressive nature of patriliny.

20. Pingback: A Response to 'Uniform Civil Code – the women's movement perspective': Rohini Hensman | Kafila
21. Pingback: Uniform Civil Code – the women's movement perspective | Kractivism
22. Pingback: What You Need to Know About the Uniform Civil Code | My Experiments with Politics and Policy In India
23. **v v anand** says:
    08/11/2014 AT 10:58 PM
    to s white
    That hindu marriage is a sacrament has been questioned. Samskara is only samam+karam, a good deed. narendran Subramaniam , a law scholar in London has written succinctly on this as part of his account of the actual process of achieving changes in Hindu law. I do not know if I am right in my reading of the matter. However, it is a fact that there is a lot of evolution in Hindu law. Even mitakshara , authored by vigyaneshwara (badami, chalukya kingdom) in the 10th century is an advance compared to Manusmriti or yagnavalkyasmrti, authored in 1st or 2nd centuries and which ruled the roost for a long time. True, mitakshara cured none of the patriarchy and the gender weaknesses built into the laws of Manu. But, mitakshara made succession to property entirely dependant on birth and not on ritual status. It is a question, tantalising for further research, if mitakshara had the effect of pruning the powers of the brahmin in succession matters and transferring that power to kayasthas and pillais and such castes who may have maintained he revenue records and also birth and death records.

24. Pingback: Debating Muslim Law after Shah Bano – the Model Nikahnama Initiative: Suneeta Acharya | Kafila
25. ★ **Nivedita Menon** says:
    17/11/2014 AT 11:29 AM
    See Suneetha Achyuta on UCC and Model Nikahnama initiatives.

26. Pingback: The need of Uniform Civil Code in India | theunpublishedsourceblog