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Muslim Women's Quest for Gender-Just Laws

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Muslim women are in favour of gender-just laws, but Muslim women's groups recognise that the women have to contest both the Muslim Personal Law and the politics around the demonisation of everything that is Muslim.

With Assembly elections scheduled in four states and the general election coming in a year, the Bharatiya Janata Party (BJP) has whipped out the Uniform Civil Code (UCC), a tried and tested formula. Accordingly, the 22nd Law Commission has issued a notification seeking views from religious and other organisations on the UCC. No draft of the UCC has been shared for comments, so one understands that this notification simply seeks to serve as a reminder that only the BJP can make the Muslims of India "secular law-abiding citizens".

The 21st Law Commission had in 2018 stated unequivocally that a UCC "is neither necessary nor desirable at this stage" in its 185-page consultation paper on *Reforms of Family Law*. Yet, five years later, we have the current notification. While recognising the opportunistic politics behind this move, I argue that progressive groups, Muslims, and feminists who have been advocating gender-just laws should use it to their benefit.

Reforms in family law

In India, Hindus, Sikhs, Buddhists, and Jains are governed by the Hindu law while Parsis, Christians, and Muslims have personal laws drawn from their respective religious texts or an understanding of the texts. Also known as family law, these laws cover issues such as marriage, divorce, child custody, and inheritance. Personal laws as we understand them today were conceived under the British Raj.

> Women from every community - Muslim, Hindu, Christian, Parsi, or Adivasi - have at some point challenged the unjust personal laws in their communities or approached the courts for redress.

The Constituent Assembly of India deliberated on the many laws required to govern the country. These included laws related to family laws such as marriage and inheritance. One assumes that effecting changes in Muslim personal laws at a time when memories of the Partition were fresh must have seemed a difficult proposition. The UCC was added to the Directive Principles of State Policy in the Constitution with the hope that it would be enacted in the future, while reforms for Hindus, who were the majority, were sought to be enacted through the Hindu Code Bill.

Women from every community - Muslim, Hindu, Christian, Parsi, or Adivasi - have at some point challenged the unjust personal laws in their communities or approached the courts for redress. These struggles are compounded by that women have had to challenge the institution of family, often the only support system they have in the country. So gaining equal rights in law and custom has been a long and arduous struggle for women.

When Rukhmabai, a child bride, challenged her marriage in 1885, one of the many opponents to reform in the Child Marriage Act was nationalist Bal Gangadhar Tilak. Mary Roy had to fight her siblings against blatant discrimination in the inheritance laws of the Syrian Christian community in Kerala. Shah Bano had to take her former husband and the father of her five children to court, opening up a controversial (albeit much needed) debate and discussion of Muslim Personal Law. Goolrukh Gupta took the Valsad Parsi Panchayat to court against its decision to disallow Parsi women married to non-Parsi men from attending the funeral of their parents. Ho women in Bihar and Adivasi women in Maharashtra have taken on their community panchayats for their rights to property and sexuality, respectively.

In spite of Hindus being a majority, the task of reform through the Hindu Code Bill was challenged by Hindu conservatives who opposed many provisions in it. B.R. Ambedkar resigned as law minister because the proposed Bill related to marriage and inheritance was dropped on the eve of the first general election.

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> considered anti-minority.

After years of deliberation, Jawaharlal Nehru was able to push through the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoption and Maintenance Act in a piecemeal manner in the period 1955-56. It was only in 2005 that Hindu women were granted the right to ancestral property with an amendment to the Hindu Succession Act.

One would imagine that a common gender-just civil code would serve everyone well. But in the vitiated atmosphere following the Shah Bano judgment in 1985, any move to demand a reform in personal law began to be considered anti-minority. On the one hand, religious leaders within minority communities asserted their "right" to retain their personal laws (no matter how unjust), and on the other, Hindu right-wing groups such as the Sangh Parivar had appropriated the term "UCC" to further their anti-minority agenda.

There was also the concern that a uniform law would not necessarily be gender just. Therefore, some women's groups continued the demand for gender justice and reforms in the law by abandoning the term 'UCC' in favour of an Egalitarian Civil Code or Gender-Just Laws, to differentiate their position from that of the Hindu right (Gandhi, Gangoli, and Shah 1996).

Activism for gender-just laws

It is a myth that serves the political interests of both the Muslim and Hindu right to state that Muslims are against the UCC. Muslims are in favour of gender-just laws and believe that no one religion can provide justice to all women. Repeated attempts by Muslim women to challenge and reform personal laws are evidence of this. Of course, this belief needs the recognition that Muslim women are also members of the Muslim community.

In 1978, Shah Bano filed a petition seeking maintenance from her lawyer husband. The husband, well versed in personal laws, decided to divorce her and refused to pay maintenance beyond the period of *iddat*. A Supreme Court verdict in 1985 granted her relief but it led to protests by conservative Muslims who believed the court had interfered with the Shariat law.

In 1983, Shehnaaz Shaikh, who went on to start Aawaaz-E-Niswaan, a women's organisation, filed a petition in the Supreme Court against a number of provisions of the Muslim Personal Law of 1937. In 1999, women's groups from across the country working with Muslim women formed the Muslim Women's Rights Network. It had the following four-point agenda for reform of the Muslim Personal Law:

- Ban on triple talaq
- Ban on polygamy
- Equal guardianship and custody rights for Muslim women
- Maintenance rights of Muslim women

Later discussions of the Network added the right to equal inheritance to its agenda.

Apart from attempting to work within the framework of religion to address the inequality in law, the Muslim Women's Rights' Network, along with feminist women's groups, also sought legal advice to challenge the Muslim Personal Law in court.

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In 2004, some members of the Network worked towards a gender-just *nikahnama* (marriage contract), laying down the terms of marriage, including for *mehr* (money or possessions paid by the groom to the bride at the time of marriage), divorce, and rights after divorce. The formulation of this nikahnama forced the All India Muslim Personal Law Board (AIMPLB, a non-governmental organisation often mistaken to be a government body that represents Muslim interests) to formulate its own nikahnama, which also laid out the terms and conditions for divorce. The draft of this anti-woman nikahnama by the AIMPLB was condemned by Muslim women, who at a press conference in 2005 tore up a copy of it while branding the AIMPLB a misogynist organisation that was not representative of Muslims.

In 2007, some Muslim women activists formed the Bhartiya Muslim Mahila Andolan (BMMA) to address the issues Muslim women faced. One of its main objectives was the codification of the Muslim Personal Law, doing away with the unjust practices followed in the name of Islam. When Shayara Bano challenged her triple talaq in court, the BMMA, the Beebaak Collective (founded in 2013 to

work for the rights of Muslim women) and other organisations joined the petition, which resulted in the Muslim Women (Protection of Rights on Marriage) Act, 2019. The BMMA has submitted a draft of the codified Muslim family law to the government multiple times but there has been no response to it.

Muslims for Secular Democracy, which was founded in 2003, became Indian Muslims for Secular Democracy in 2016. It has also been a vocal against Muslim conservatism and taken a public stand on contentious issues, including the hijab controversy in Karnataka last year.

There are innumerable organisations across the country working with Muslim women, led by Muslim women with a feminist outlook. These groups have been working with feminist organisations to challenge unjust laws and progress towards gender-just laws for all women.

> The women's groups have also articulated the changes required in the 'secular' Special Marriage Act. They have prepared multiple drafts on gender-just laws and submitted suggestions to the Law Commission every time the bogey of a UCC has been raised.

The Mumbai-based Forum Against Oppression of Women (FAOW) proposed specific gender-just legislations in several areas such as marriage, divorce, and inheritance as early as 1995. The FAOW sees the need for laws to address social security and to broaden women's rights in heterosexual as well as homosexual relations.

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Muslim women's groups seeking gender justice have had differing opinions on the way forward-codification of the Muslim Personal Law is proposed by the BMMA, and secular gender-just laws are proposed by members of the Muslim Women's Rights Network. The demand for secular gender-just laws advocated by Muslim women's groups recognises that Muslim women have to contest both Muslim Personal Law and the politics around the demonisation of everything that is Muslim, including personal laws.

What Muslim personal law can offer

The Muslim Personal Law, like any other personal law, is not entirely good or entirely evil. The UCC in a secular country cannot be the imposition of the existing Hindu laws on the rest of the population. Much like the Indian Constitution drew from the constitutions of countries around the world, we need to draw from laws or the good practices of other countries and religious communities. If we seek gender-just laws, the Muslim Personal Law has much to offer.

Divorce: The unilateral triple talaq has been used as a tool by the right wing to demonise the Muslim community. However, Muslims have a number of options for divorce and the religion recognises that marriages can break down for lack of compatibility or for no fault of either spouse. This recognition of a no-fault divorce or the irretrievable breakdown of marriage is not there in our secular laws. According to Quranic procedure, an attempt at reconciliation and arbitration is a must for all forms of Islamic divorce.

The UCC could incorporate the spirit of Talaq-e-Hasan, which provides for a three-month period of arbitration for resolving the dispute before the divorce comes into effect. Faskh-e-Nikah is divorce proceedings initiated by the wife when the husband refuses to give her a divorce. A Qazi can end the marriage by pronouncing Faskh-e-Nikah if the husband refuses to reconcile or grant a divorce. This option is used by Muslim women who find their spouses unwilling to grant them a divorce, much like the spouses who refuse to show up in court in contested divorces, dragging the divorce proceeding over years.

> In this day and age, we need to recognise that couples are aware of their expectations from a relationship and recognise that incompatibility is a sufficient reason to part ways.

The family courts across the country are overburdened, with the average time for a contested divorce being three to five years and sometimes more. The absence of a no-fault divorce means that a spouse has to have some form of cruelty recorded as evidence to get a divorce. In this day and age, we need to recognise that couples are aware of their expectations from a relationship and recognise that incompatibility is a sufficient reason to part ways. Divorce proceedings need not demonise a spouse or drag on for years disallowing

people get on with their lives.

Polygamy/Bigamy: Another aspect of the Muslim Personal Law that has been used to demonise the community is the permission for men to have four wives. A government survey of 1974 found that 5.6% of Muslim men and 5.8% of upper-caste Hindus were in polygamous or bigamous relationships. The numbers have since then fallen to 1.9% for Muslims and 1.3% for Hindus, according to the National Health and Family Survey (NHFS) data of 2001. Polygamy is highest among the tribal communities.

The second wife of a Hindu man, at present, is penalised for being in a bigamous marriage, which is not recognised by the law. A UCC that outlaws polygamy will leave women in these marriages without any rights.

If the UCC outlaws polygamy for all men, it must consider the rights of the second wife (Hindu or Muslim or of any other religion) in a bigamous marriage, which is now guaranteed in Muslim law. The UCC has to address the rights of women in bigamous marriages if the rights of women in polygamous marriages are being taken away. Women should not be penalised for the actions of men.

Property rights: Much before the Hindu Code Bill granting Hindu women the right to property, Islam provided a share in property for women. As the law stands today, however, women only get an unequal share in inheritance. All Hindus are also unwilling to give their sisters an equal share of property in spite of the law as seen by the many property disputes in court today.

An equal share in property that is formalised by the law will benefit all Muslim women. The Muslim Personal Law disallows willing away of the entire property, which might keep women out of inheritance. The UCC could benefit from adopting this provision.

> Amongst the many changes required in the Special Marriage Act is revoking the requirement of a notice period, which has been known to endanger the lives of couples in inter-religious relationships.

Muslim women seek equal rights to custody and to guardianship, and also the right to adopt (not just for themselves but for all women in the country). They also demand that social security be provided for women and the elderly.

Apart from equality in the law related to family, the women's groups have time and again raised the need for recognition of marital rape. The provision of Restitution of Conjugal Rights is a legitimisation of rape in marriages, and it needs to be repealed immediately. Amongst the many changes required in the Special Marriage Act is revoking the requirement of a notice period, which has been known to endanger the lives of couples in inter-religious relationships, especially in recent times.

Conclusions

Patriarchs across religions have used faith as a tool to deny women their rights. Muslim conservatives will raise a strong voice of protest against granting rights to Muslim women, similar to the voices of the Hindu Mahasabha members who opposed the Hindu Code Bill, which led to Ambedkar's resignation.

Considering the views of conservatives as that of the entire community only furthers divisions, and erases the struggles that women within the community have waged for their rights. We need to acknowledge women's voices are as important as other voices in the community.

Fully aware of the intent of this regime in proposing the UCC, I reiterate that Muslims are in favour of gender-just laws and believe that no one religion can provide justice to all women. We need to use the opportunity being presented by the regime to the benefit of all women. It goes without saying that any move towards a UCC requires consultations with women's groups and other stakeholders across the country.

(I would like to thank my feminist comrades, especially the women of the Forum Against Oppression of Women for many conversations and activism towards gender-just laws, which have shaped my politics and informed this piece. Thank you to Chayanika Shah and Sujata Gothoskar for their comments. A big thank you to Sana Contractor for being a sounding board and for editing this article.)

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