The Pseudo-Secularization of Hindutva and its Campaign for Uniform Civil Codes

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The continuing presence of the Muslim in India, in spite of the partition is a symbol of the ‘failure’ of the Indian nation. That presence is a sign of a lingering disease, a psychotic split to be precise, in the discourse of Indian nationalism between the “secular” and the “properly Hindu”. This sense of failure is what Partha Chatterjee calls an unresolved contradiction between the (post)colonial nation’s (European) enlightenment project and its nativist consciousness of difference. That difference is inscribed in the discourse of communalism which was introduced during the Raj and used by the colonial state, then by the Muslim League; and the major Indian nationalist factions carried it into independent India to put limits, if not brakes, on the dominance of secularism. The paradox is that there has been at least two senses of secularism operative within the Indian nationalist discourses: and both have been seen as the cause célèbre or the failure of the Indian nation, while both claim to represent the ‘true nation’. More pertinent though, it is the hermeneutics, including an intervention in moral governance and juridical processes, that puts the respective claims into practice in real politik. And this is my concern here.

Nationalism, or the ferment built around the desire for a nation-state that breaks away from the chaotic patterns of traditional governance or domination by outside forces, is a modern creation; as is communalism, that divides people into monolithic religious communities - ‘Hindu’, ‘Muslim’; ‘majority’, ‘minority’ -- both owe their emergence in India to orientalism and colonialism.
[van der Veer, p. 19: The British did not invent the communities, rather their classification – on a par with the discourse of caste following the census of 1872 – and use in political representation] Secularism, in the Enlightenment sense of the separation of religion and state is another of modernity’s export.

Nationalism of any kind is usually desirous of a homogenous nation, reclaims nativism, chants to the demands of its populace or manipulates its desires, seeks to empower different segments of society (usually the youth), demands loyalty and allegiance to a single cause, and condemns those at the margins of difference as basically irrational and immoral. A fledgling Hindu nationalism, apprehensive of its own marginalization under both the colonial state and, later, the secular nationalist’s stigma of Hindu communalism, would place itself in the interstices of the variant political nuances, claiming that both have reached their limits and are therefore ‘pseudo’ (*banawati*), meaning, ‘pretend only’, and hence hide a failure.

Put it another way, Hindu nationalism turns the coat or dhoti of secularism inside out, and points to the obfuscation over the precise interpretation of what this entails in the Indian context – and this is nowhere more apparent than in the pervasive polemic of ‘pseudo-secularism’ that Sangh Parivar and in particular Bharatiya Janata Party leadership have all too readily utilized in criticizing the nation’s serious lapse in not being able to deal with its ‘other’. But this polemic is made possible to a large extent by the inherent ambiguity in the very concept of ‘secularism’ and, more significantly, its apparent failure in the Indian context. This claim is not original to the Hindu right or the ideologues of a strident Hindutva.

The version of secularism that has failed, as scholars such as Ashis Nandy, T N Madan, Mushirul Hasan, and Pratap Banu Mehta have argued, is one that seeks to distance religion and collective religious aspirations from the political structuration and legal processes of a society in a multicultural and pluralist environment. This was an impossible project for India. As Mushiral Hasan observes: ‘Delinking of state and religion remains a distant dream; secularization of state and society an ideal.’ (1994, ‘Minority Identity and Its Discontents’, *South Asian Bulletin*, Vol XIV No 2, p. 26). But secularism, in the nuances taken on board by the Constitution makers and markers, adverts to a healthy diversity and harmony of all religions, *ceteris paribus*. What the term ‘pseudo-secularism’ undergirds then is a convoluted attack on both nuances; and to an extent *rightly* so. The former nuance – a legacy of the Enlightenment - is being seriously undermined in world politics; and it was never true of pre-British India and much of the Christian and Islamic principles of governance.
The Indian society is basically religious, historically and continuing into the vanishing present. The latter nuance is shown to be rather weak in the face of real challenges, short-changing of religious rights, etc., in the state’s agenda for tighter political control and an uneven economic liberalization. In the climate of communalization, any group in control or through certain manipulative machination could engender a situation of insufferable compromises to the religious freedom, rites and rights of another group, while at the same time placing the onus of the Constitutionally-nuanced project of secularization on the doormat of the weak-kneed state which for its part abrogates the executive responsibility of reining in harmony and culture of toleration. As I will demonstrate, this is precisely the argument used in the show of force with which the charge of ‘pseudo-secularization’ is meted out by the ideologues of Hindutva. They are the ones on the loosing end, the slippery slope of the secularizing promise, it’s their religious freedom that has been severely compromised, and so on. Appeasing the minority communities is communalism abetted by Nehruvian ‘pseudo-secularism’.

The idea of secularism that prescribes a complete separation of church/religion and state had much appeal in the elite fragments of the nationalist freedom movement, for which Nehru has been accorded most credit. The Constituent Assembly on the other hand was all too cognizant of the diversity of the highly politicized religious communities, and so its recommended draft Constitution reflected a series of accommodations and compromises on the design of the secular state and the normative order. It reasoned that a state can in principle be secular but its disposition towards the society made up of divergent religious community could be one of (principle #1) toleration, regulatory neutrality and reformative justice (principle #2) (see Dhawan, p. 311). And a corollary to this would be a careful calibration of an active rather than a passive principle (#3) of ‘religious freedom’ which covers a range of liberties, including the right to beliefs, rituals, religious institutions, and non-discrimination on grounds of religion, race, and gender. Nevertheless, on substantive issues, such as for example the extant and manner of religious reform, social welfare, caste justice, gender issues, education, the Constitution chose to remain silent or ‘neutral’ and at best relegated these to either the perfunctory articles under the Fundamental Rights or to the unenforceable Directive Principles. Still, with Indira Gandhi’s addition to the Preamble, ironically, of the very hitherto absent place-marker (with the term) ‘secular’, there could be no argument, in principle, that the nation was ready to make a firm commitment to an inclusive and mutually tolerable co-existence of
different faith-traditions, thereby affording respect to the Articles in the Adhikarapatra that enshrine and protect the right of each religious community to profess, propagate its own faith and, by being free to establish places of worship, educational institutions and self-sufficient procedural means, realize its own values and aspirations.

It is here that the Hindutva Parivar and political cohorts have focused their attention in isolating a single group as the cause of this failure, and are grieved that even as the majority populace its own religious rites/rights, representation, preferences and needs are not being honoured by the secular state, nor respected by the minority community (or that there is some kind of collusion between the two, as in the heydays of the Congress rule, the Communist interlude, hybrids in the South, and so on.

Even more than the political shifts, or stagnation, or back-firing, one platform on the national scenario that is likely to sustain and feed the continuance and re-growth of the Hindutva ideology is the silent symptom in the nation’s alleged pseudo-secularism, namely, Uniform Civil Code, or its absence. The question of common civil law covering all citizens doubtless occupies centre-stage in any discussion of community identity or gender justice (Zoya Hasan and Ritu Menon 2005, p. 7), but it takes a more saffron shade under the diya (lamp) of Hindu nationalism. Hence you had Anglo-Muhammandan Law and Anglo-Hindu Law; and Christian and Parsis retained their own Personal Laws.

A brief note first on the genealogy of Personal Law [PL] more broadly. Personal Law in India constitutes a legacy from the British Raj (since Warren Hastings actually) when a hybrid system of Law based on an egregious bifurcation of extant mores, customs and textual into the ‘public’ and ‘private’ was instituted. Public codes governed fairly uniformly the criminal and certain civil codes, in commerce, public safety and security and services and welfare, and so on. Laws applicable to the private sphere of morality, which largely govern what is nowadays called Family Law, but inclusive of property rights within family, were brought under Personal Law. Personal Law would then govern marriage, fiduciary partnerships, divorce, maintenance, inheritance, succession, and adoption. The jurisdiction of Personal Law remained strictly within the community's own continuing customary, scriptural, communal and traditional legal practices. The legislature and civil courts would tread on this institution with utmost care and caution, and their jurisdiction was restricted to only those matters or disputes that were brought under the communities' provisions, dispensation or exemption within Personal Law (property
distribution in an extended family upon death of the father or husband), or litigated under the Criminal or Penal Code where there is a real threat to the life and livelihood of an individual within a family dispute (e.g. enforced vagrancy following a divorce or denial of coparcenary entitlement). Hence there was the Anglo-Hindu Law for Hindus,

Along with the Penal Codes of the previous two centuries this system has survived with some modifications into the twentieth and twenty-first centuries and it has been a source of much anguish, strife, and debate in post-independent India. Personal law of Hindus have been largely codified, i.e. traditional laws are reconfigured in the light of secular humanitarian standards via the so-called Hindu Code Bill (1955-57). Thus the Hindu Marriage Act, 1955, reins in prohibition against the practice of bigamy. Hindu Succession Act, gave widows right to absolute maintenance, and daughters the right to inherit. Family courts had also been set up. While the Hindu Code eased the pressures on divorce and marital difficulties, property rights and inheritance among Hindus, it created other barriers and difficulties -- Ambedkar resigned from Parliament in his disillusionment -- for it did not override the proclivities of caste, patriarchy and race under Mitakshara law. For example, under Hindu law, sons can claim an independent share in the ancestral property, but the daughter's share is based on the share received by the father. Hence a father can effectively disinherit a daughter by renouncing his share of the ancestral property, but the son will continue to have a share in his own right. Additionally, married daughters, even those facing marital harassment, have no residential rights in the ancestral home\(^1\) remained ambivalent over issues such as the inheritance rights of tribal women, coparcenary rights in matrilineal communities, widow re-marriage among certain caste Hindus and so on, not to mention being unable to weed out the practice of sati, dowry, bride harassment, child marriage, and continuing bigamous practices among Hindu men, and a few other anomalous remnants from the medieval times. And just who counts and does not count as 'legal Hindu' is also a matter of some debate: should the Code apply unequivocally to Sikhs, Jains, Buddhists, and tribals (such as of Nagaland, without exemptions as an afterthought?) Careful case studies have shown that Hindus, particularly in rural area, remain largely ignorant of the Hindu Code Bill or the Special Acts and continue to follow localized legal traditions, such as Mitakshara, Deobarg and so on. The State for its part also fosters patriarchal relations in negotiating political power and global capitalism (Basu, 1. 180). Hence the tension between

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\(^1\) I got this from Carol S. Coonrad, 'Chronic Hunger and the Status of Women in India', www.thp.org/reports/indiawom.htm.
'tradition' versus 'modernity' cuts both ways, and it does not augur for a movement toward sanguine common code. And it was the Hindu nationalists and secularists who foiled many opportunities to effect comprehensive gender equity on the grounds of preserving patriarchy (Parashar 1002, Basu in Larson p. 164)

Nevertheless, in the eyes of the Hindu nationalists, Hindu Personal Law is far ahead for its time, it is much secularized and this reformative feat has been achieved indeed at almost a 'civilizational' cost, implying – and here is the rub – the minority religious communities continue to enjoy the glories of their own archaic and un secularized PL, and the secularist vote bankers support in particular the Muslims and Christian through a forged hermeneutic of the Fundamental Rights, ignoring the mandate of the Constituent Assembly (Article 44 under the Directive Principle) of the State to move the society towards "uniform civil code". It must be emphasized however, that this non-juridical directive does not say the State should univocally legislate or enact the UCC in the fashion of Justinian Roman Law or the Napoleonic Code, but through gradual reform and initiatives undertaken by the communities concerned. As we see with Hindu Code Bill, this is a step in that direction, but codification, and specially under a universalist strain – that is, locating a common denominator in terms of justice and equity, across all religious communities,-- may simply be consolidatory rather than reformative “on the ground”. (Dhawan p. 317)

These are then just some of the quiddities, quandaries and challenges that any intelligent observer should be aware of, and Gary Larson has brought together some of these in an anthology on Religion and Personal Law in Secular India, with a succinct introduction.

Returning to the Hindutva imagined charge sheet, the claim is that PL of Muslims and Christians and Parsee is a system alien to the majoritarian ethos and the larger trajectory of nation-building: a unified nation with a common code. And why should the Hindus alone have to bare the burden of the regulatory and reformative agenda under the watchful eyes of the secular state, bent on secularization every aspect of Hindu faith and life, while the Muslim is exempted and is a willing claimant to the Constitutional license to continue with their own religiously sanctioned social practices, customs, and laws?

Indeed, this sort of qualm had reared its head quite a few times, in the Maha Sabha assembly, in the writings of Savarkar and Golwalker, with the passing of the Muslim Sharia’t Act in 1937. It had exacerbated the debate in the Constitutional Assembly on a three-way divide, between those who, like Ambedkar, desired a uniformity of codes across all communities – religious,
caste, non-castes — those like Nehru who while they desired uniformity of codes thought India was not developed enough to adopt such a fully-secular judicial system, and in any event it is better to reform Hindu PL and worry about the minorities later; and those among the Hindu nationalists, such as Munshi, who favoured its continuation in self interest but feared its consequences and implicit abetting of communalism. What could tame the flagrant communal Muslim?

I wish to dwell a little on the last ambivalence by going back to the genesis of the Hindutva discourse and highlighting for background effect the kinds of attitude that prevailed and were fostered, seeded and festered, that demonstrates a long-standing proclivity that in some ways has informed and directed the debate over distinctive Personal Laws in India. And I will call this political voice ‘The Sangh’\(^2\) (comprising at the helm RSS the Rashtriya Swayam Sevak Sangh (RSS), a breakaway from the Hindu Sabha, was founded in Nagpur, Maharashtra, in 1925. Its ideologues are V D Savarkar (who gave the term ‘Hindutva’), K B Hedgevar, Balasaheb Deoras, and M S Golwalkar, succeeded by Rajendra Singh, who launched Sangh Parivar (‘family organisations’ or network of Hindu rightist groups), to which were inducted Jan Sangh (now defunct), the Vishwa Hindu Parishad (VHP), Kar Sevaks, Bajrang Dal, Shiva Sena and a splintering of various saffron shades. One of its main activities from inception has been to impart para-military training and ideological indoctrination (Bacchetta, 204, p. 6). It founded two political parties: Jan Sangh (now defunct) and the Bharatiya Janata Party (BJP), and has representations in the other major parties (NDA), with infiltrations into Communists and Muslim factions, ADMK, and other parties in the South.

From its inception the infiltrative, and in some ways both volatile and clandestine, the Sangh Parivar has maintained — as if it has the mandate to speak

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\(^2\) The Sangh defines its goal in spiritual terms, namely, to ‘unify’ Hindus, and ‘build’ their character — essential Hindu ‘self’ (swayam) in order to ‘resurrect’ (by helping as a sevak) the Hindu nation (Rashtriya) Rajya, in the form of Ram Rajya, the State, is added later more by the political groups, like BJP. (See, Golwalker’s *We, Our Nationhood Defined*, 1939; (Ibid, p6, p. 102). Parallel to this male dominated Sangh is the Rahstra Sevika Samiti, founded in Wardha in 1936, by Hedgevar and Lakshmi Bai Kelkar, predominantly to uplift the status of Hindu women. The absence of any reference to Muslims in the early literature of Sangh and Samiti (apart from Sarvkar’s decisive exclusion of Muslims for their supposed inallegiance to the *pitrabhum*, fatherland), is also their way of erasing of the Muslim identity, since it has no right to be right ascendants or heirs (i.e. the future carriers of the genes of the Hindu race — which smacks of Nazi Aryanism). Or it returns in the form of the *Muslim problem*. Let us explore this trope a little.
for all Hindus - that Hindu men and Hindu women, their rights and dignities, their families and their space, have to be protected. Protected from whom? Who is the other, the threat? Amongst the others are mainly Muslim women and Muslim men respectively, and the state, for reasons gone over earlier.. The presumption is that the Hindu family is an intact unit, governed by moral norms, dharma (and as a Unified Hindu Family they can have dual tax accounts and exemptions); while the Muslim family is a loose entity, where women’s honour is not respected and men practice polygamy, talaq (unilateral divorce), prostitution, sex slave trade, and they attempt to lure Hindu women into their havelis or harams as well. The masjid stands as a symbol of Muslim male sexual aggression (ibid p. 29). The Muslim women are also promiscuous and they desire Hindu men. (Kelkar 1988, chp 1, ); or they are inversions of Hindu women. One solution to this delinquent presence is to absorb (some say, re-absorb) the Muslim into the ‘naturally universal’ Hindu ethnicity, or one among the varna-vyavastha, caste orders: Allah is merely one God among the myriad pantheon of Hindu gods. This inclusiveness may be sanguine and genuine, but it de-historicizes the Muslim, and denies difference. What comes to mark Hindu nationalism, particularly post-independent, is not the concept of ‘difference’ but of the designated Other; without the other there may not be much to build Hindu nationalism upon. Much of the contemporary discourse then on the construction of Hindu male and female identity, and of Hindu dharma and Hindutva ideology at large, is bricked on the antithesis of the “muslimness’ “musalmans”, “miyan” [Modhi’s favoured trope] i.e. the essentialised and disturbing Muslim embodiment, rhizome.

When this imaginary is transposed on to the Personal Law debate, some interesting representations and re-constructions and contradictions follow. Since Muslim women are oppressed by Muslim male, particularly in the practices of polygamy, talaq, relinquishing of maintenance, retaining the mehr or asking for excessive dowry after marriage, allowing child or under-aged marriage under the unregulated nikah practice, their emancipation is desirable. And so it supported the amendment to the Indian Penal Code (Section 95) which would outlaw polygamy (even though the practice is as rife among Hindu men). (Ibid 107-108). Yet, curiously, it expresses sympathy with the ‘victimised” Muslim men on a par with the powerlessness of all male, Hindu men included, by women and their sexual prowess: all men must unite and resist the women whose domain of action is rightly domestic affairs. But Muslim women encourage polygamy and polyandry among men.

The Sangh’s most explicit and vociferous stance on Muslim PL that
propelled a campaign for UCC, surfaced in the aftermath of the famous 1985 Shah Bano case. Here a 75 year Muslim woman's petition for increasing the amount of maintenance from her ex-husband was upheld and judged in her favor under the Section 125 of the Criminal Procedure Code (Cr Pr.C) - that prevents vagrancy due to destitution, desertion or divorce. The husband's argument was that the claim is in violation of MPL provisions as inscribed in Islamic law, he provided evidence from statements made by the MPLB (Muslim Personal Law Board). In the landmark judgment Justice Chandrachud pronounced, presumably, *obiter dicta,* that the judgement was consistent with Qur'anic injunction [he cited two verses from the Qur'an] in respect of the right of a woman to be properly maintained by their divorcing husband. [The verses were provided by Danial Latifi, the lawyer who represented Shah Bano along with Sona Khan.] The bench also remarked on the desirability of moving towards common code.

There was a nation-wide uproar. While progressive Muslims declared it was consistent with the Qur'an; the conservative Muslim orthodoxy was up in arms for this beaconed the death forever of MPL; feminists and progressives, communists and hard-core secularists, welcomed this as a step in the direction of women's rights (Bocchetta p. 122). And they unwittingly banded together with Hindu nationalists to attack the principle of communal personal law itself, calling instead for uniform civil code, which the Muslim community remained opposed to. The ulema issued a fatwa against the Apex Court's judgement, and the then Prime Minister Rajiv Gandhi panicked. Opposing the judicial verdict became the cornerstone of its policy of appeasing Muslim clerics who, he believed, controlled the minority votes for ever. He did not listen to the most rational Muslim voice in his own Parliament in support of the judgement, and instead responded by hurriedly passing the Muslim Women's (Protection of Rights on Divorce) Bill, to "specify the rights of Muslim divorced women at the time of divorce" that effectively barred the Muslim women from access to the Cr Cpr Cd for redress after divorce; she has to bring her case and grievances under MPL, unless her marriage was under secular civil code. A non-converted Hindu woman married to a Muslim man in a nikah ceremony and divorced would face the same constraints.

The Hindu nationalists were incensed at the retrogressive intervention by the state on what was a judicial pronouncement to circumvent MPL. As Baccetta notes: 'Although they took the same position as progressives and feminists their underlying motives differ(ed) sharply. The progressives and feminists sought to defend women's rights, and they favoured the enactment of a secular uniform
civil code. The RSS’s motive was to divide Muslims along gender lines, and to use Muslim women to denigrate Muslim men.’ (p. 123) And so they played the card of majority-minority relations and identity politics.

The rhetoric itself had its high moments and seeming promises: The “unfortunate slaves” and “sacrificial goats” that Muslim women are, victimized by their “backward” male counterparts, placed behind the purdah, and subjected to repudiation, talaq, vagrancy, polygamy, and child marriage, must be saved and their rights protected from any religious law. (*Organiser*, various cited in ibid p 124). RSS’s *Organiser* pointed out that Muslim women ‘can’t inherit’, ‘can’t divorce,’ ‘can’t get maintenance’, and cannot benefit from the Hindu Marriage and Divorce Act. There has to be real empowerment, education, employment and enlightenment for Muslim women. One such means – perhaps the only concrete solution offered – was the common civil code, an all-in-one panacea for such historical injustices.

To that end, Murli Mahonor Joshi when he was at the helm of the BJP, commissioned, and possibly since he is a scholar of the classics himself penned, a model of common civil code. In spirit it was a re-write of an earlier such template issued by the Law Commission of India Planning Board shortly after the Shah Bano judgment, though it would be uniformly Hindu rather than secular civil code.

But is there really a commitment to women’s right across the communal groups, 'community-ships'? In the Hindu Code Bill debates of the 1940s and 1950s, the Hindu nationalists (RSS in particular) opposed granting of unilateral rights to women, and it was even opposed to the Hindu Marriage and Divorce Act on the grounds that it compromised the Hindu identity and racial purity. It opposed the Hindu Law of Succession which allowed women to inherit, for it signifies a return to the ‘matriarchal family’. While on the one hand it maintained that the State had no right to intervene in family affairs – a patriarchal proclivity it shares with the AIMPLB and the mullas, and therein the elitist collusion – when the call came from women’s groups, such as Saheli and National Federation of Indian Women (c.1986), and the Muslim Women's Forum, on the coat-tails of the Shah Bano case, it was the male right that staked the claim over women who were Muslims, and gave both an opportunity to divide Muslims in terms of gender, and show support as it were to the weaker sex, so they could stand up to Muslim men. In effect, this was no defence of women’s rights. (ibid p.125). In the pamphlet it issued: *The Shah Bano Case; Nation Speaks Out* (1986), - had no articles by women, and each (male) excerpted author denounced Muslim fundamentalism; there was really no
discussion of women’s rights across the communal boundaries.

Finally, the Sangh Parivar, and its political wings such as the BJP, has shown, little to no sensitivity to the feelings of the Muslims on this matter, nor have they canvassed the variety of positions, views, opinions that might, and does, prevail in the Muslim community on the issue of PL. Like its own hierarchical self-reference, its seeks out the voice of orthodoxy in the Muslim community and engages in a tug-of-war with just that entity, notably, the burly Imams and muftis of Jamia al-Ulama, and Shahabuddin of the All India Muslim Personal Law Board (AIMPLB), and Jama Masjid’s Shahi Imam, Sayed Ahmed Bukhari. It serves their purpose to show how stubborn, tradition-bound, archaic and recalcitrant the Muslims are, resistant to any kind of progress, reform, and unification with the juridical and legal processes of the nation – in tatters partly for that reason. This has been true in the deliberations and imbroglio over Ayodhya. And indeed the two issues are linked. There is no conversation or dialogue for instance with stalwarts of Muslim reformists who have followed the tradition of Jamaluddin Afghani, Mohammad Abduh, Rashid Rida, Syed Ahmad and Abul Kalam Azad, Zakir Hussein; instead the monologues take place with perceived adversaries of the unified juridical cause for the calculated outcome, and those discredited with some association with Muwduudi, Deobandhis, and plain ‘mulla-culture’, or ‘miya populism’ as Modhites refer to them: ‘All Muslims are not terrorist; but all terrorists are Muslims!’ howls the loud-speaker in a public gathering in Ahmedabad, drowning the call to prayer from the Mosque the other side of the maidaan. And even the modernist-secularist voices among the Muslim intelligentsia are not heeded to -, such as Maulana Wahiduddin, Imtiaz Ahmad, Zarina Bhatti, Syeda Hameed, Sona Khan, Tahir Mahmood, Aiyid Hamid, Anwar Ali Khan, Rehana Sultana, Seema Mustafa, Ali Asgar Engineer, each of whom have been pained to address the shortcomings of the MPL as inherited from the Raj days and are too aware of the injustices, gender inequity and other disparities that bedevil the effective and just execution of MPL. There are prominent Muslims who belong to the BJP ranks, such as Muktar Abbas Naqvi and Hysna Subhan, who express the same concerns. As noted earlier, its was a Muslim Parliamentarian and a close confidant of Rajiv Gandhi who defended the supreme Court verdict based on Cr Pr Code rather than on M P L and thus was opposed to the Bill introduced by Rajiv Gandhi’s government. It may be a procedural matter, it may be legislative matter, it may even be a Constitutional matter; but the resolutions cannot be forthcoming without cool-headed dialogue and initiatives for reform, amendments and reparations from within the community (that is another part of
the story, in which I am involved as a scholar-activist, time does not allow us to go into here). A number of alternative strategies are being explored by Muslim Women’s groups and a network of social workers, Muslim women advocates, and intellectuals at regular “Meets”, and seminars. With a little bit of encouragement and rethinking among the clerics also, in one instance, the conservative Ahl-i-Hadith school in June 1993 declared that it was un-Islamic to pronounce *talaq* thrice in one sitting (Hasan, p.31; after the Allahabad High decision). Islamic jurisprudence is not static, and a number of modernizing Muslim countries have shown this to be the case.

Even so, in actual reality, triple *talaq* is really not that common, as the husbands are aware of the social constraints and stigma associated with it. Muslim women also have a right to divorce their husbands in a practice known as *khul’*, although they loose claim to maintenance, and sometimes husbands push them to do declare *khul’*. And contrary to common belief that early marriage is the usual practice among Indian Muslims, data from sample collected by Sylvia Vatuk in Chennai Family court litigants show a mean age at first marriage of 21 years. So they keep to the legal age of 18. Again, divorce figures do not show high degree to which it exists in Western societies: 3-in-5. Husbands readily return the mehr (dower) pledged at the time of signing the *nikahnama* for fear of social opprobrium but also to evade maintenance beyond the *iddat* period. There are, as scholar-lawyers like Tahor Mahmood point out, minimal criteria for family welfare enshrined in the Hadith and in certain jurists schools. Succession, inheritance, re-marriage of widows, participatory role of qazis and mutawallis in mosques, who are approached first to resolve marital and family conflicts, have very firm foundations in respect for the rights and dignity of the individual. Not all of the practices and aspects of Islamic law are beyond criticism or rebuke. But who should and should not tread on these sacred grounds?

It has been the MPLB’s reaction that any form of interference in the PL would undermine ‘a separate Islamic identity’ that more than any other signs of an inter-community dialogic progress provides fuel, masala, for the political spectrum of the Hindutva to grease their palms for another public onslaught. Hindu leaders of all shades remain oblivious to declarations such as these coming out of “Muslim Intelligentsia Meet”, initiated by Imtiaz Ahmad (professor of sociology from JNU): that the *millat* can retain links to the cherished religio-cultural traditions without spurning ideas of change, progress and social transformation. Islam is not, after all, “necessarily anti-feminist, a religion of harsh punishments, militancy or *jihad*. It is up to Muslims to interpret
Islam anew and put it within Indian framework” (Hasan, p.38) And it is not a matter that needs to be overstated, but noted that Indian Muslim stands apart in many ways from Islam, Islamic culture and politics elsewhere. In the past it has demonstrated much more progressive elements within the Islamic scholasticism and social reform movement than elsewhere, with its close links also to Sufi and Chistii and Jamia Islamia schools. According to Sona Khan, the woman advocate who represented Shah Bano, and who is called out to mediate in difficult cases concerning Islamic law in distant parts of the globe (e.g. the prescribed stoning of the Nigerian woman alleged offender), and in drafting the Constitution of Afghanistan, if only the mullas stop falling into the hands of Hindu nationalists, old-fashioned secularist, neo-traditionalists, and the state apparatchiks, with the help of their Hindu friends, secular modernists and others with a stake in genuine nation-building (even along Gandhian lines), Indian Muslims can and must move forward to set a decent standard, an example of a balanced society, between tradition and modernity, and between the ideals of secularism and multiculturalism. But who listens to such a sane, rational and at once Muslim voice from within?

Of course, in this regard education or literacy has been the sacred plank that is endorsed by all sides of the spectrum - secularists, nationalists, Gandhians, Christian NGOs, the orthodoxy, progressive Muslims, and the alike. Even though the decline of “Urdu” and the rescinded support for its continuation and expansion in regional areas goes unnoticed at the national level. Similarly, today, Narendra Modi has schemes for teaching Muslim women family planning, while his campaign speeches are studded with anti-Muslim sentiments and hundreds of Hindus (youths that BJP and Kar Sevaks empower or arm with trisul and lathi and kerosene bombs) who committed such violent atrocities against Gujarati Muslims, raped their women and children and set them on fire, have not been bought to account for their legal crimes. His state-wide seva jatra that won him the election despite the post-Godhra atrocities, underscored in rather loud terms this one single message: ‘Yeh saale Miyan, mane Musalman behar kabi nahi badelsake; yadi wo Pakistan chale jawe, wanda hamara Hindu Ishwaro aur dharm ko palen... is ke bigaar aur koi azaadi ya rashtriya ki ekta ka rashtta hoonhi nahi sake.’ [I have cobbled these together from comments recorded in ‘Final Solution’ that is applicable here.]

In the 1990s the political wing of the Sangh, the BJP, took up the enactment of UCC, along with Ayodhya and Article 370, as one of the three agendas for the national cause: indeed the “ideological mascot” of Hindutva in achieving Ram Rajya, in the words of L K Advani. Political and media analysts
who have followed the shifting emphasis on the issue of the UCC vis-à-vis Ayodhya and other issues, have noted that during election times the issue is given preeminent importance – as if the unity of the nation hangs on this single pending uniformity – while the issue of Ayodhya is kept alive by the cultural and religious wings of the Sangh (VHP, et al). There is a clever division of labour here, and an attunement to the right song that will capture the votes bank: since the minority allegiance in this respect counts for little (and mostly captured by the Congress in any case), it is more important and expedient to placate the majority community.

By 1998 curiously, L K Advani made not even a passing reference to the demand for a uniform civil code. At the National Executive meeting held in New Delhi in April, he had talked of a "new BJP" to address the demands of governance. He later clarified that the call for a "new BJP" did not mean jettisoning the BJP's stand on core issues such as Ayodhya, Article 370 and uniform civil code. The party leaders then interpreted the statement as meaning that the party would not press these issues, at least until it had the requisite majority in the Lok Sabha.

As late or as recent as 2004 the BJP remains committed to the enactment of a uniform civil code but it has slightly altered its rationale: it views it "primarily as an instrument to promote gender justice". But "social and political consensus has to be evolved before its enactment". Overall, there is absolutely no change in the BJP's stand on the minorities, claims the Frontline. But the further anomaly that has gone unquestioned in the Parivar stance, and especially the mechanizations of BJP politics, is the precise template for and contents of the prescribed UCC, the manner in and means by which it is to be promulgated (if not imposed ab extra), and their position on the rights of religious communities: balanced against rights and equality of citizens, equal respect and religious liberty of all religious communities, and civic equality of minorities, protected under the more compelling Fundamental Rights in the Constitution, Articles 14,15,29-30 respectively.

But it is palpably clear that the Hindu nationalists are responding in part to the Muslims allowing 'themselves to be used as vote-banks by the established parties, who evade the imperative of Hindu populism by playing up the issue of minority rights', and trumping the juridical avenues opened up to them post-Shah Bano judgment and the now mollified Muslim Women's Act. Muslims fall in-between the wedge of two strands of nationalism: secularist and Hindutva; in that regard, the protagonists of the latter continue to charge the nation with perpetrating the pseudo-secularist agenda, when in fact it is the Muslim who
have been caught up in the agenda from both ends. Muslim cannot be part of the cultural nationalism as the definition of Hindutva does not permit it, how can then the political machinery bend backwards to accommodate their inclusion in the Ram Rajya nationalism?

My claim here is that keeping the issue in this obscure terms and juxtaposing it to the polemics of pseudo-secularism, is a deliberate strategy to gain support of the majority community and to forge alliances with conservative parties, especially in the North and the South. While ameliorating its stance on a range of social and economic issues, but holding steadfast to the deafening call for UCC – even though when in power, the BJP did little or nothing to reform Personal Laws or enact legislations towards UCC. Meanwhile, the judiciary largely in its own wisdom since the Shah Bano judgment, remains opposed to any such move, in the interest of preserving democratic liberties. In their own way, judgment after judgment across the country the Muslim Women’s Act is interpreted in give wider meaning and in more liberal terms than might have been the original intend, without disregarding, indeed informed by the Cr Pr Code and other civil liberties that are afforded to the disadvantaged in the Articles of the Fundamental Rights in the Constitution. This has been so in cases brought by divorced Muslim women to High Courts in Kerala, Bombay, and Calcutta. Thus, as Rajeev Dhawan, notes, 'if personal laws are discriminatory to women, they would have to be tested against the doctrine of equality, and then struck down if found to be discriminatory and unreasonable' (p. 316) In terms of the three principles of secularism I began with both the state and society have to develop a consensus for social change; it may cautiously empower the society to do so; neither is there scope for unlimited religious freedom, nor should the state exceed its neutrality in matters of religion, or discriminate against a religion, or favour one over another. The principles of secularism (the 'third' especially of regulatory reform), 'was certainly not devised to arm political Hindu fundamentalists to chastise Muslims for not making their law "gender just", or vice versa.' (ibid). If, again as Dhawan notes, the "uniform civil code" was once a serious constitutional objective, it has now been trivialized into becoming a tragic farce. Politics has taken over. Hindu politicians, who are not really concerned about personal law reform, use the idea of the uniform civil code to chastise Muslims for not emulating the Hindu example'. (p 317).

While the Parivar as a whole, and RSS in particular, are aware that they must ameliorate and go steady on their path to power, -- especially after the blood shed in Gujarat - it will however not compromise on the principle of
Hindutva. It will nevertheless tolerate the BJP moderating its stance in the public space by toning down the anti-Muslim attitude, effectively giving the appearance of distancing itself from the Hindutva sacred plank, and tending more toward pragmatic, liberal-bourgeois policies, as though coming to power is an end-in-itself, or for the greater good of the nation with its myriad fragments. Learning from its excesses in the April 2004 national elections, its claw-back in regional and state elections in the Hindu belt in recent months is indicative of this paying-off move – which, though, is tantamount to putting suede on hard leather.

And we are too close to Godhra and its aftermath in Gujarat, the communal violence perpetrated by Modi’s seva jatra, the increasing rise and rise of the RRS and VHP, the popularity of Bajrang Dal in the northern, Hindi belt, and Shiv Sena to the West under the watchful eyes of Baba Bal Thackeray, and the continuing commitment post-Babsri Masjid to construct the fanciful Ram temple in Ayodhya… and so on, to as much as pronounce the advent of a post-Hindutva era.] There is an unstated suspicion among Muslim intellectuals that Babri Masjid – and all the strife and carnage that has followed under the various ‘charge of saffron lathi brigade’ -- was in effect the Sangh’s revenge on Rajiv Gandhi’s reinstatement of MPL with the Women’s Protection Act.

A post-Hindutva yuga would only arrive when the Muslim ceases to be the symbol of he failure of the Indian nation, and the pseudo-secularization that underpins the call for UCC is set aside; not the secular project as such, which awaits integration in the nation’s agenda, but with the inclusive voice of Indian qua Indian Muslims, Sikhs, Christians, Jains and Parsee – as indeed of women and other marginalized, minority, and disadvantaged groups or communities. Jai Hind aur Salaam ale’iukam!

Select References (Apart from those given in the text)


Faisal Fatehali Devji, ‘Hindu/Muslim/India’ (Public Culture, 1992, 5, 1)


Zoya Hasan and Ritu Menon, Unequal Citizens A Study of Muslim Women in India (Delhi: Oxford University Press, 2004 – although Personal Law is not one of the main focus in this study, chapters on Marriage and Domestic Experiences, are instructive and informative).

Zoya Hasa and Ritu Menon (eds) In a Minority Essays on Muslim Women in India. Delhi: Oxford, 2005:

From this following chapters:

- Sylvia Vatuk, ‘Muslim Women and Personal Law’
- Nasren Fazalbhoy, ‘Muslim Women and Inheritance’


- Srimati Basu, 'The Personal Law and the Political: Indian Women and Inheritance Law'.
- Sylvia Vatuk, 'Where will she go, what will she do?'
- Rajeev Dhawan, 'The Road to Xanadu: India's quest for Secularism'


Organisor, Official Newsletter of the RSS.
The Pseudo-Secularization of Hindutva.../Bilimoria


Legal sources
Criminal Procedure Code (Enacted) 1873
Constitution of India, January 1950 with Amendments
Annual Reports of Minorities Commission
Cases and Materials on Family Law-I. National Law School of India University, Bangalor (1994)

NCUCC = National Convention on Uniform Civil Code for All Indians


Vrinda Narain. Gender And Community: Muslim Women's Rights In India, Toronto: University of Toronto Press, 2001
14 years old but married to 3 shiekhs', Deccan Chronicle (Hyderabad) June 29, 1997.

Diwan & Diwan, Women and Legal Protection, New Delhi, 1995; Engineer, The Shah Bano Controversy, Hyderabad, 1987;
Anderson, "Islamic Law and the Colonial Encounter in British India," P. Menski "The Reform of Family Law and a Uniform Civil Code for India," in Islamic Family Law,
Mallat & Connors, eds. London, 1990; Mahmood, "India" in Statutes of Personal Law in Islamic Countries, 2nd ed., New Delhi, 1995;
Zarina Bhatti, Husna Subhani, Syed Shahabuddin, Maulana Asad Madani, Prof
See Appendix of news article clippings.

Other Sources

Baxamusa, Ramala M. (1998), The Legal Status of Muslim Women: An Appraisal of Muslim Personal Law in India. Mumbai: Mimeograph from Research Center for Women’s Studies (Gender & Law, Book #3)
______ Religion, Law and State in India (London: Taber)
Devji, Faisal Fatehali, ‘Hindu/Muslim/Indian’, Public Culture, vol 5 no 1, 1992 pp.19-46


