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Uniform civil code: Towards equality and integration

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Abstract
The article is a contribution to the debate around the implementation of the Uniform Civil Code reignited by the Prime Minister's address to a rally in Bhopal. It argues that while implementation of the UCC is a constitutionally mandated duty for the government, it faces hurdles from the constitutional protections extended to different communities. It further delves into the history of legal administration and argues that the country has progressed well in codifying several laws and that the time has arrived to take a further leap by codifying Muslim personal laws to achieve gender justice.

Keywords: Uniform civil code, Muslim personal laws, CEDAW

Introduction
The Prime Minister of India recently advocated for the implementation of the Uniform Civil Code while addressing a rally in Bhopal, emphasizing that the country is a family of 1.4 billion people and thus there should be one uniform law for all. Since then, a fresh debate around the idea has started in the public sphere. The idea of UCC is not new, and it was debated at length in the Constituent Assembly. Finally, the idea was enshrined in Part IV of the Constitution under Article 44. The state was asked to secure the UCC in the future. Therefore, it is constitutionally a mandated duty of the Central Government to implement the UCC throughout the territory of India. It will eliminate all inequalities and integrate the nation into one entity. However, it has not been achieved yet, and those who have governed the country since Independence have never opened a dialogue that could lead to the achievement of this goal. We founded our Republic with the most modern constitution, which guaranteed complete equality and voting rights for all, irrespective of wealth, gender, colour, race, and religion, at a time when many peoples and races were fighting for the basic human right of equality. In continuation of the policy of justice and equality for all, we have ratified the International Covenant on Civil and Political Rights, 1966, and the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, to promote gender equality. Unfortunately, till now, we have not been able to satisfy international agencies on the issue of gender equality, and every report of theirs reprimands us for not taking a substantiative step towards achieving gender justice. (Rattan, 2004, p. 577) [2].

Prime Minister Narendra Modi has shown the courage to open a debate for the implementation of UCC-one law for one family, India. It is not a simple task to draft a law. The UCC is expected to achieve two major goals: (a) gender equality in civil matters-marriage, divorce, succession, and adoption of children; and (b) through the implementation of one law for all the communities, the goal is to achieve the integrity and oneness of the nation. The Law Commission has already invited suggestions from stakeholders on the issue, and after deliberation, a report will be submitted soon. But differences in opinion among the ruling dispensation have already surfaced in the public domain. The head of the Parliamentary Standing Committee on Law, MP Shushil Modi, has suggested that the tribals be exempted from the UCC. Vanvasi Kalyan Samiti, an affiliate of Rashtriya Swayam Sevak Sangh (RSS), and political parties from the Northeastern states have also suggested the same for their respective constituencies. Whereas Firoz Bakht Ahmad, former Chancellor of Maulana Azad National Urdu University and a petitioner in the Supreme Court for implementation of the UCC, is of the opinion that the UCC should give no exception to any group and be implemented for all to achieve the oneness of the nation.

Therefore, it is important to understand why such an exemption is being sought when the goal is to implement one nation-one law. For this reason, we need to go into the legal history of India.Colonial administration in India initially continued the earlier Mughal system of administration of justice, which was based on communities. Civil matters were in the hands of caste *panchayats*, and criminal matters were handled by the *shihnas*. Muslims were governed by Qazi courts, and non-Muslims were governed by their respective caste *panchayats*. If the matter was between two different communities, then the law of the defendant was applied. The East India Company government, to streamline the system, opened two different courts, namely, *Diwani Adalat* for civil matters and *Nizamat* for criminal matters under Sadar Deewani Adalat and Sadar Nizamat Adalat, respectively. Criminal courts functioned according to the earlier *zawabet* laws (state laws), whereas civil courts were presided over by an English judge who used to work with the advice of a pundit in matters related to Hindus. The pundit obviously advised the court in light of the shashtras. In matters related to Muslims, qazis were consulted. Later, the British decided to do away with the system and inquired from the Hindus and Muslims about their authentic books of law, and finally, they got some of the texts translated into English. For Muslims, they translated *Hedaya*, a bulky book on jurisprudence. The book had to be translated by Charles Hamilton, who did not know Arabic. Therefore, the book was first translated into Persian by a group of Muslim scholars, then into English. This translation became the basis of Anglo-Mohammadan law, which was certainly different from what one would like to imagine as sharia. Similarly, Hindu civil law was interpreted based on different translations of the shashtras, and Manusmriti was given prominence in the judicial interpretations. This created uproar in society because different communities within Hindus and Muslims had their own traditions and customary laws, which were considered prominent for them. Therefore, the British judiciary in India came up with the idea that customary practices would be given prominence over religious laws. That is why some Muslim communities still practice Hindu laws in their civil matters. Some of these are discussed in the following paragraph. The diversity and complicated judicial interpretation of the civil laws of communities by the British created different laws altogether, which were neither customary nor *shashtric* nor *shari*. (Singh & Kumar, 2019) [4]

Further, the colonial legacy gave us a divided country. We, as a nation, had to collect all the pieces and knit them into one. This created additional sets of laws, which is again a hurdle in the way of the UCC.

Laws guaranteed by political cessation Treaties of different states into the Union of India cannot easily be dissolved to pave the way for the Uniform Civil Code, such as Pondicherry Customary Hindu Law (and the Pondicherry (Extension of Laws) Act, 1968, sec. 3 and Schedule give uniqueness to the Union Territory of Pondicherry), which is guaranteed by a treaty between the Government of India and the Government of France dated October 21, 1954, after which the erstwhile French Settlement of Pondicherry, Karaikal, Mahe, and Yanam were annexed to India. Similarly, Articles 370 and 371 (A) of the Constitution of India grant considerable autonomy to the states of Jammu and Kashmir and Nagaland, respectively. (Shoib Daniyal, 2017) [3] Under these Articles of the Constitution (which were added later to accommodate the state and its uniqueness when it was made part of the Union of India), any law to come into force in the states needs to be passed by their respective Assemblies-Article 370, however, was made defunct through a Presidential Order dated August 5, 2019 and subsequent Parliamentary procedure. The Supreme Court of India is presently examining the constitutionality of the action. Similarly, Section 42 of 'The Manipur (Courts) Act 1955 provides for deciding 'questions regarding succession, inheritance, marriage, caste, or any religious usage or institution' according to their personal or custom laws.

The Fifth Schedule of the Indian Constitution is dedicated to the preservation of tribal communities' rights, customs, and culture in Scheduled Areas, which are regions with significant tribal populations within the territories of Himachal Pradesh, Odisha, Chhattisgarh, Madhya Pradesh, Andhra Pradesh, Gujarat, Telangana, Jharkhand, Rajasthan, and Maharashtra. It safeguards their land rights by forbidding tribal land transactions to non-tribals without state legislative authorization, therefore maintaining their livelihoods and preventing exploitation. The Schedule acknowledges the value of tribal customs and traditions, permitting the survival of customary laws even if they deviate from mainstream legal norms. This acknowledgement helps preserve these groups' traditional identities and practices. The establishment of autonomous district councils and regional councils gives tribal communities self-government, allowing them to pass legislation on specific matters that are in conformity with their customs. Consultation structures, such as the Tribal Advisory Council, ensure that the community has a role in decisions that affect them. Furthermore, the Schedule allows for the modification or exemption of legislation for Scheduled Areas, reflecting the special needs of indigenous inhabitants while supporting their development. The Fifth Schedule, in essence, functions as a framework for protecting tribal rights, customs, and culture while ensuring their overall well-being within the Indian constitutional system.

The Sixth Schedule of the Constitution addresses particular provisions for tribal government in the states of Assam, Meghalaya, Tripura, and Mizoram. The provisions of the Sixth Schedule provide these tribal communities with some autonomy, allowing them to enact their own laws and regulations in areas under their jurisdiction. The possible conflict between the Sixth Schedule and the Uniform Civil Code stems from the fact that the Sixth Schedule grants indigenous communities some autonomy in certain areas, such as laws and customs. These locations have their own laws that govern parts of social life and practices that may conflict with a unified civil code. Implementing a common civil code in these places could conflict with the Sixth Schedule's autonomy and be regarded as an imposition on their particular cultural and customary practices.

Apart from personal laws based on religion, several district-level customary laws are prevalent in India. These laws give precedence over communities' religious laws in matters of inheritance, marriage, and adoption. Gujars, Meos, and several other tribes and castes have their own district-wise customary laws of inheritance and marriage. [i] Uttar Pradesh (formerly United Province and Oudh) have their own Rawaj-i-aum, which is given precedence in the matter

of inheritance and succession. Madras and Bombay Presidency High Court Acts provide for 'giving preference to customary laws in succession and marriage. Hence, many Muslim communities, like the Khojas and Kutcchi Menons, are governed under their customary laws, which are contrary to the Sharia Laws. Mapillas (Mopla Muslims) of the north Malabar region are governed under the Marumakkathayam law (Mappilla Marumakkathayam Act, 1938), a system commonly associated with the Hindu Nayars and Tiyyans and based on Mitakshara Law (A Haberbeck, 1982) [1]. The complexities of coming up with a set of laws for all are not about only convincing Muslims to give up their personal laws; they are about removing the legal obstacles explained above. This herculean task must be taken up for bringing up one law for one family, India. It is, however, not an impossible task. The country has shown courage by reforming and codifying Hindu personal laws despite massive protests and reservations from Hindus. This could not be done with Muslim laws. It is still not codified and is arbitrary and unjust to Muslim women. Judicial courts have many times tried to intervene in the matter, but the poor will of the government and the rigid attitude of the Muslim leadership got in the way. The infamous Shahbano case is well-known enough to repeat here. Academics, Muslims as well as non-Muslims, have written many articles in support of the UCC since then. But the orthodoxy in Muslim society always opposed the idea. The Muslim Personal Law Board and its members mobilized support among the masses by misleading them. Muslim preachers like Maulana Obaidullah Khan Azmi were very vocal against the Supreme Court's judgement in the Shahbano case. His speeches were played on cassettes at village gatherings. He and others like him were becoming celebrants among the Muslim masses. He was recognized as the leader of the Muslim community by rewarding him with Rajya Sabha membership. An NGO, the Muslim Personal Law Board, was given a kind of sole official spokesperson status for the Muslim communities, and other organizations and individuals were marginalized who were in support of gender-just laws. It is shameful that Muslim MP Arif Mohammad Khan, at that time, was not given any ear by the government of the day. The Rajiv Gandhi Government then brought a new piece of legislation, the Muslim Women's Maintenance and Protection on Divorce Act 1986, to overturn the Supreme Court's judgement in the Shahbano Case. Such was the rigidity then. When the Supreme Court of India banned triple talaq in 2019, prevalent among Sunni Muslims, the Muslim Personal Law Board and its members started campaigning against the judgement. The strategy they adopted was that they started distributing a pro forma of an application to the government on behalf of Muslim women. These letters, signed by the Muslim women, advocated non-interference in Muslim laws and argued that it was against the religious freedom guaranteed by the Constitution. These same clerics never tried to build any opinion on the fact that Muslim women are guaranteed a share in the inheritance by the Sharia, which is denied by the Muslim Application of Shariat Act 1937, which does not apply on agricultural land since it is a state subject. The selective outrage of the Muslim Personal Law Board over changes in the personal laws of Muslims benefiting only men shows the nature and character of the board, and it must not be given any credence.

Just laws are important for any society to prosper. How can a community prosper if it discriminates against its own members? If the Muslim community wants to prosper, it needs to recognise equal rights and duties for both men and women in society. Laws not only govern people and ensure justice for them, but they also create a mentality, a psychological state that helps people become more civil and respectful towards each other.

[i] For a detailed study of Customary Laws of erstwhile territory of Punjab see, Digest of Customary Law, http://punjabrevenue.nic.in/cust20.htm, accessed on December 27, 2017

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