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Why are Muslims Uniquely Averse to the UCC in India?

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This study delves into the intricacies of the civil law landscape in India, with a specific focus on the vexed issue of the Uniform Civil Code (UCC). Despite a wealth of scholarly contributions, the ongoing discourse surrounding the UCC remains marked by intense complexity. Even though the UCC is opposed by sufficiently diverse segments of the Indian society, the Muslim community seems to be specifically averse to it. This paper, employing a novel analytical framework, seeks to examine why the Muslim community remains specifically resistant to the UCC. The study proposes that the civil law is fundamentally a constitutive part of the the respective "truth systems" for the clashing factions in Indian society. This dimension, which seems to be a primary factor shaping the discussions around the civil law in India, has not been taken into account in the concerned scholarship. This aspect has not only moulded the nature of the interactions between the rulers and the ruled but also the behaviors between various communities across various periods in the political history of India. This analysis unveils how corrective-reactive interplay between "Truths Systems" has attracted multiple stakeholders into this intractable debate. The findings underscore the need to approach the UCC as an element of truth systems to comprehensively understand the matter and mold the policy frameworks accordingly.

Keywords: uniform civil code; civil law in India; *Shari'ah*; Muslim minority in India; truth systems; diversity; legal pluralism; religion and politics

Introduction

The profound heterogeneity of India has consistently posed a formidable challenge for its rulers and policy makers. Ensuring an equal satisfaction for all sections of the state's diverse population has never been a simple task. This issue grows even more difficult when it comes to design a legal framework to govern such a diverse population. By embracing the uniform structure in the criminal law system of India, the framers of the constitution of independent India were able to minimise the contentions in the realm of criminal law. Yet, the inherently intricate and controversial nature of the civil law in India did not allow them to adopt a uniform structure in this realm of civil law. After an intense debate, they found themselves bound to place the provision for the Uniform Civil Code in the Directive Principles of State Policy leaving the space for further contentions on the civil law open for the subsequent generations.

They had thought that with the passage of time, India would become politically more mature and consequently ready to accept the uniformity in the civil law. But, even after more than seventy five years since the independence, and despite India having gained significant political maturation, the

matter of the UCC remains a highly intricate issue, contrary to what was expected by the constituent assembly.

The views surrounding the feasibility and infeasibility of the UCC are wide-ranging. However, on a wider level, they can be put in two broad categories: those who advocate for the implementation of the UCC and those who argue against its implementation. Among the opponents to uniformity, the Muslim opposition to the implementation of the UCC remains special in the sense that an overwhelming majority of the Indian community has never expressed the slightest support for uniformity. The opposition to the UCC shown by the Muslim community is always more vocal, radical and pronounced as compared to other communities and groups.

The fundamental objective of this study is too look for the answer to why the Muslim community is uniquely averse to the UCC. I have employed the conceptual framework of the interplay between the Truth Systems as an analytical tool for this study. Before moving further, let's see how Muslim case is unique and different from other groups in opposition the UCC.

The Special Case of Muslim Opposition

The Constituent Assembly held its sessions from 9 December 1946 to 24 January 1950. The matter of civil law figured three times in the constituent assembly. It appeared in the debates over individual versus community rights, discussion on fundamental rights, religion and secularism negotiations over the question of incorporating the article related to the UCC in the constitution.

B.R. Ambedkar, the chairperson of the Drafting Committee of the constituent assembly was one of the greatest champions of the UCC for India. K.M. Munshi and many others also emphasized the need to unify the personal law in such a way that the way of life of Indians could be unified and made secular in course of time.

Many representatives raised questions against introducing uniformity in the civil law or abstained from falling in this debate. The President of the Assembly, Rajendra Prasad is reported to warn that the Constituent Assembly constituted as it is to-day should not engage with this type of legislation. Pandit Lakshmi Kanta Maitra who was elected from Bengal said that he is present in the assembly only because of four deputies of the Bengali Provincial Assembly. He was not certainly mandated to allow the people to divorce or to “scrap up the law of inheritance”. As is the case with all his colleagues, he has been elected to lead India to independence.

The Congress had its own concerns in opposing the UCC. The Congress leaders were concerned about the social development of India on modern lines. For this reason, they sought not to tamper with the identity markers of minorities. They felt morally bound to show their democratic commitments, which necessitated the respect for minority rights.[1]

While Hindu representatives were divided on the implementation of the UCC, Muslim representatives were unanimous in their opposition to a uniform civil legal framework. Muslim aversion to uniformity was unique in the sense that not a single Muslim representative gave his consent to it.

When the draft article in the Directive Principles dealing with the UCC came up for debate on 23 November 1948, Muslim members opposed it vehemently. Mohamad Ismail Sahib, a

[1] O. Herrenschmdt, *op. cit.* “The Indians”, pp. 309–47.

Muslim member from Madras, Naziruddin Ahmad, a Muslim member from West Bengal, Mahboob Ali Baig Sahib Bahadur, a Muslim member from Madras demanded amendments to the article 35 of the Draft Constitution that dealt with the proposal of the UCC.

Although B. Pocker Sahib Bahadur, a Muslim member from Madras and Hussain Imam, a Muslim member from Bihar did not propose any amendment, they strongly argued in favour of preserving Muslim personal law. Tajamul Husain from Bihar was Amongst the Muslim members who held progressive views as reflected in his ideas expressed during the debate on secularism and religion. However, he did not attend the debate on the Draft Article 35.[2]

The Muslim League had been expressing concerns even before the partition, that Muslim personal law might not be respected in a "Hindu India" after independence. The *Jamiat-e-Ulema-e-Hind* and the *Deobandis* in general, who subscribed to the Congress theory that India was one nation, had been trying to convince the Muslims that just as the British did not touch their personal law, the Indian government would also not tamper with it. In the 1940s, going against the cause of the establishment of Pakistan, *Deobandis* supported the Congress and sought an assurance from Gandhi and Nehru that their personal law would be respected after the independence. What makes the Muslim opposition special is that no single Muslim representative advocated for the UCC in the constituent assembly. Second, what motivated those who demanded a separate state for Muslims was the concern that while staying in India Muslims would not be able to lead their lives in accordance with Shari'ah. It was the same concern that prompted those who preferred staying in India to seek assurance from Indian leaders that they would be free to abide by their religious values and norms in independent India. It shows that Muslims are and have been quite serious with regard to Shari'ah. They do not want any sort of interference with Shari'ah specifically in the domain of civil law.

The Passage of Hindu Civil Code

In accordance with aspirations of the constituent assembly who left the fate of the civil law on the insights of the future legislators and refrained from taking conclusive decisions in the constituent assembly, Indian parliament enacted four Hindu Laws in the 1950s with the purpose of introducing reforms and uniformity in Hindu civil norms. These enactments, however, annoyed a faction within Hindu community who argued that numerous parts of these laws compromised with their religious principles and cultural norms. Even though they were ostensibly labelled as Hindu laws, they sought to undermine the Hindu religion and culture. On the other hand, they were regarded by their proponents as the first step in the way of implementing a full version of the UCC.

It is notable that similar efforts were not made in this decade to codify and uniformise Muslim Personal Law. The opponents of the reforms in the Hindu civil law argued that introducing changes in the Hindu Personal legal framework while abstaining from doing the same in the civil legal structure of other communities constituted an evident discrimination against Hindus. One of the significant factors leading to exempt specifically Muslim Personal Law was that the then legislature understood it well that the Muslim community would not accept changes in their civil

[2] Partha S. Ghosh, *The Politics of Personal Law in South Asia,* London and New York: Routledge, 2018, pp. 65-74.

legal framework in any circumstances. Taking into account the violence that had broken out a couple of years back it was not prudent to force the Muslim community to accept such a law that was threatening to their religious identity.

Then, for nearly three decades, the discussions surrounding the UCC were overshadowed by other issues that were considered more pressing than the reformation of the civil law. Since then even though NGOs and courts had been making sporadic efforts to draw attention to the necessity of the UCC, they did not manage to garner significant public interest. Governments too exhibited reluctance to discuss the issues around civil law in this period.

Shah Bano Case

It was the Shah Bano case that reinvigorated the discussions around the UCC after many years. All India Muslim Personal Law Board (AIMPLB) had come into existence on April 7, 1973 to ensure respect of the 1937 Shari'ah act and to prevent the adoption of a Uniform Civil Code. In 1985, the Supreme Court ordered in the Shah Bano case that she was to receive the equivalent of an alimony as required by the 1973 Code of Criminal Procedure. The court maintained that the concerned article applies to all the communities irrespective of their religious affiliations. Taking notice of the Court's order, the AIMPLB immediately put pressure on Rajiv Gandhi's government to ask the Court to take back his decision. Consequently, on May 19, 1986, the parliament passed the Muslim Women (Protection of Rights and Divorce) Act, 1986. Article 5th of this act provided that Muslim divorces shall not be taken into account by the Code of Criminal Procedure except for when both parties request for that purpose. Article 3.1.a of the act provided that the husband owes his divorced wife a "reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period".[3] The fact that even the Supreme Court had to revise its judgement and the government felt compelled to enact a special act to render the Court's order invalid shows the nature, intensity and uniqueness of the aversion of Muslim community to the UCC.

Two Major Shifts

In the aftermath of the Shah Bano case, two major shifts took place. One of them pertained to the shift in the behaviour of the Hindu Right ight. The other concerned the transformation in the perspective of the feminists and some other sections. Let me first elaborate on the former. Initially, a significant portion of Hindu Right vehemently opposed the Uniform Civil Code as is evidenced by how the enactment of the Hindu Civil Law was responded to in the 1950s by them. By the late 1960, they had started supporting the UCC, but they remained as passive advocates for its implementation. However, at the crucial juncture of the aftermath of Shah Bano case, their stance underwent a shift, turning them to outspoken and vehement champions of it, laying emphasis on its implementation as soon as possible. They began alleging the opponents as pseudo-secular or anti-women.[4]

This transformation in the perspective of Hindu right, in turn, caused a shift in the stances of feminists and some other sections of Indian society towards the UCC. It prompted them to

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[3] *Ibid.*

[4] Nivedita Menon, "A Uniform Civil Code in India: The State of the Debate in 2014", *Feminist Studies,* Vol. 40, No. 2, 2014, pp. 480-486, Special Issue: Food and Ecology.

withdraw their support from the idea of uniformity. It is notable that the All India Women's Conference advocated for a uniform civil code applicable to all religious communities as early as 1937. The demand for a uniform civil code by feminists continued until the late 1980s. In the early 1990s, however, there was a considerable shift. By 1995, some sections of the feminist movement rejected the idea of uniformity out-rightly and, instead, called for reforms within each religion's personal laws. They feared that it would open the door to impose a particular ideology in the name of uniformity and systematicity. There was concern that in India uniformity would be converted into majoritarian uniformity.

In what follows, I seek to examine why Muslims are uniquely averse towards the UCC. As was mentioned in the beginning, the analytical framework employed to examine this issue in this paper is the interaction between different truth systems. Accordingly, first I elaborate the term of the truth system and other allied concepts.

Truth Systems

Multiple truth systems operate simultaneously in a society interacting with each other in numerous ways. Each truth system is underpinned by an underlying fundamental truth that serves as a unifying and explanatory element for the entirety of the respective truth system. It is this overarching fundamental truth at the core of each truth system that builds interconnections between various sub-truths within a given truth system. Each sub-truth finds explication and support in the fundamental truth at the foundational level. Take for instance Islam as a truth system. Islam as a truth system contains numerous truths. For example, God is existent and one. This world will finally come to an end. The angels write down whatever a person does in this world. These are all sub-truths of Islamic truth system. All of these sub-truths rely on a most fundamental truth in Islam, that Allah Almighty is the source of all true knowledge.

Most truth systems possess two subsystems, the epistemological system and value system. An epistemological system refers to the ideological or faith based presumptions, beliefs, ideas, concepts and knowledge framework underpinning a truth system. The value system offers norms, mores, rules and regulations for various areas of human life including political, legal, economic and cultural spheres. Every truth system is in a sustained and continuous process of implementing its legal system on the ground. This very tendency of truth systems seems to be the primary factor underlying the contentions between the truth systems (and the clash of civilizations).

Pathways and Ambits

There may be many pathways through which one can come to adhere to a certain truth system. One may be attracted by the appealing arguments put forth by a truth system making him believe in that value system. Alternatively, he might embrace a certain truth system as he was born into it. One's intuitions or other factors could also lead one to adopt a truth system. While the avenues leading individuals to embrace various truth systems may be diverse, the adherents might experience a common transition at a point of time in their perspective with regard to the respective truth systems. At a certain juncture, the initial motivating factors that led an individual to embrace a particular truth system may recede into the background. This may dilute his inclination to scrutinize the foundational arguments substantiating his truth system. Resultantly, his conviction

in the veracity of his truth system may become entrenched. As a consequence, the mere association of a concept, idea, practice or norm with his truth system proves an adequate ground for believing in the truth of that concept or idea and practicing that norm. He does not feel it necessary to verify the truth underpinning them. This attitudinal transformation turns an adherence to a truth system into a faith. This transformation mat take place for both religious and non-religious truth systems. In the arena of religious or divine truth systems, however, the faith may progresse further. It may develop into an ultra-faith status. At this point, the need to engage in rational argumentation and verification disappears entirely.

Each truth system possesses a distinctive virtual ambit in the same way as a state possesses a territory. Similar to a state's intolerance for encroachment upon its territory, a truth system exhibits a similar aversion to any infringement upon its designated ambit. This virtual ambit includes the fundamental truth and all the sub-systems actionable and non-actionable. In the event a truth system experiences encroachment upon any part of its ambit, it reacts and endeavours painstakingly to rehabilitate that portion of its ambit which is made subject to encroachment. At times, even when a danger of encroachment is only perceived, defensive actions are carried out proactively for the protection of the respective ambits in order to preclude the perceived danger.

A Tendency to Correct

It is a significant dimension of the interplay among truth systems that each truth system has an inherent tendency to perceive all other truth systems as false systems either totally or partially. Since every truth system considers other truth systems as totally or partially false, it seeks to replace them entirely in case it deems them completely false or correct their false parts in case it considers them as partially false. This inclination prompts every truth system to encroach upon the ambits of other truth systems completely or partially. However, the encroaching activities cause the other truth systems to be reactive for defensive steps in the case of anticipated encroachment. The encroachments that are carried out to replace other truth systems entirely or to correct the false parts of other systems could be called as corrective encroachments. While the encroachments made for defensive purposes could be termed as defensive encroachments.

A second distinction must be made between encroachment and endowment. In encroachment, a truth system intrudes into the ambit of another truth system without ensuring agreement from the adherents to the truth system concerned. In this case, the encroaching truth system does not recognise it necessary to explain the underlying reasons for its intervention in the ambit of other truth systems. Conversely, in endowment, a truth system engages in a communicative exchange by presenting cogent arguments to the adherents to other truth systems. If the adherents of the truth system which is sought to be intervened find the presented arguments compelling, they willingly permit the truth system which seeks to intervene to initiate interventions. Contrastingly, in encroachment, such interventions are imposed against the will of the adherents of the truth system to be intervened.

Encroachment and Reactive Attitude

As was stated, the corrective enterprise (in case, it is based on encroachment) by a truth system may invite reactive attitude from the truth systems which are subjected to corrective

enterprise. The comparative analysis of the Mughal and the British eras presents a revealing example of this thesis.

It is acknowledged that the understanding of the legal framework and its responses to the intricacies of a diverse society under Mughal rule remains relatively understudied.[5] Consequently, the assessment of the Mughal legal system, especially concerning aspects dealing with interreligious relations, has been subject to diverse and sometimes contradictory perspectives. However, despite these challenges, there is ample evidence, as would be elucidated in what follows, to support the assertion that the Mughal legal system afforded more freedoms to non-Muslim communities when compared to the legal structures implemented by the British in India.

A Broadened Legal Sphere

The Mughals ensured a certain degree of legal continuity and accommodation of diverse legal systems within the broader framework of their Empire. They refrained, to a significant extent, from imposing radical changes on the legal practices of non-Muslim communities, fostering a system that acknowledged and respected pre-existing legal norms. The Mughals embraced a certain level of religious tolerance, allowing various communities to practice their own customs and legal traditions. Many Scholars like M.L. Roy Choudhury contended that in the legal sphere, the Mughal rulers applied the Muslim laws of marriage, divorce and inheritance only to the Muslims. They largely allowed non-Muslim communities to practice their own laws, traditions and usages. The qazis sought help from Hindu pandits in interpreting the Hindu law in matters that concerned the Hindus exclusively.[6] Elisa Giunchi has observed that the law was plural, contextualized and differentiated in the Mughal era. It was the colonial rulers that sought to uniformize the legal framework of India.[7]

D.K. Srivastava argues:

> The practice of allowing Hindus and Muslims to be governed by their own laws began with the Muslim rule, during which only the criminal law was common to both. The British rulers, however, whilst granting legislative immunity to certain matters of the Hindu and Muslim laws, embarked upon a course of widening the scope of general laws which they applied without any distinction of religion. A few laws were also passed which dealt separately with the Hindu and Muslim laws. These laws were passed with a view to effecting social reforms.[8]

During the Mughal era, a conspicuous absence of pronounced discord between the governing authorities and the governed as well as between various groups of the governed population is observed. The subjects of the state, regardless of their religious affiliations as Muslims or non-Muslims, exhibited a cooperative stance towards the established legal system. There was a reduced level of overt challenges to existing laws, and no concerted efforts were made to advocate for

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[5] Nandini Chatterjee, "Reflections on Religious Difference and Permissive Inclusion in Mughal Law", *Journal of Law and Religion,* Vol. 29, No. 3, 2014, pp. 397–398.

[6] M.L. Roy Choudhury, "Principles of Law in the Mughal Empire", *Proceedings of the Indian History Congress, Vol* 10, 1947, pp. 367-370.

[7] Elisa Giunchi, "The Reinvention of Sharīʻa under the British Raj: In Search of Authenticity and Certainty", *The Journal of Asian Studies,* Vol. 69, No. 4, 2010, pp. 1119–42.

[8] D.K. Srivastava, "Personal Laws and Religious Freedom", *Journal of the Indian Law Institute,* Vol. 18, No. 4, 1976, p. 585.

alterations in the state's legal structure. This occurred notwithstanding the explicit Muslim identity of the rulers, who asserted that their legal system was fundamentally grounded in *Shari'ah*. The rulers did not claim the equality of all citizens within their domain, nor did they advocate for equal treatment of diverse communities and religions. This situation was facilitated by the fact that in this era the truth system associated with ruling power refrained from encroaching upon the ambit of other truth systems. Neither had it allowed other truth systems encroaching upon the ambit of the truth systems of one another. This tendency curtailed the frequency of reactive actions from any truth system towards another ensuring a level of harmony between not only the rulers and the subjects but also between various religious communities in India.

On the other hand, in the British rule, the cleavages emerged not only between the ruling regime and the subjects but also between various Indian communities. This change was an outcome of the variation in the nature of the reactions between the contemporary truth systems in the British era. Subsequent section would accordingly examine the nature of the interaction between the truth systems in the colonial era.

The Dual Policy

With the advent of colonial rule, the period of corrective enterprise began. The colonial authorities opted for a two dimensional policy framework. On the one hand, they sought to maintain legal pluralism especially in the domain of civil law, refraining from the imposition of uniformity upon the diverse population of India. On the other hand, they endeavoured to introduce uniformity in the Indian legal structure with the purpose of making corrections into it.

The acts passed by the British kept on reiterating that the courts should apply to Hindus and Muslims their own laws in the civil matters. For instance, the 17th section of the Act passed by the Parliament in 1781, act provided that the Supreme Court should have power to entertain all suits against the inhabitants of Calcutta

> provided that their inheritance and succession to lands, rents and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of *Gentoos*, by the laws and usages of *Gentoos*; and where only one of the parties shall be a Mahomedan or *Gentoo* by the law and usages of the defendant.

Macaulay laid down the proposition to codify the entire legal structure of British India in his speech of July 10, 1833, on the second reading of the bill which became the Charter Act of that year. His proposition encompassed both the Hindu and the Mahomedan law. The report of the first Indian Law Commission (31 October 1840) presented similar suggestions. However, neither Hindu laws nor Muslim laws were brought under the process of codification. Instead, the second Commission that was set up by the Act of 1853 recommended that the Mahomedan law or the Hindu law should not be enacted.[9]

Why did the British maintain a level of freedom in the domain of civil law has been explained in many ways. Some have argued that it was made with a view to perpetuate divisions

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[9] George C. Rankin, "The Personal Law in British India", *Journal of the Royal Society of Arts,* Vol. 89, No. 4588, 1941, pp. 426–42.

in Indian society with a view to make the British rule in India long-lasting. Others have argued that they abstained from interfering with the religious law of the Indian communities as they in their view it was a sensitive matter. The policy of non-interference was not driven by any sinister purpose, such as divide and rule. For instance, Rankin contended that the guiding principle was to refrain from suppressing the private laws of Hindu and Muslim subjects of Great Britain, taking into consideration the aspect that these laws were sacred to Indians. The objective was to avoid conveying the impression that laws were being "imposed on them by a spirit of rigour and intolerance."

John Herbert Harington, in his *Analysis* (1805), even laid emphasis "on India's sad lack of qualification to derive advantage from complex but excellent system of municipal law" of Great Britain.[10] This implies that the grant of freedom to Indians in the civil legal sphere was not necessarily viewed as inherently rightful from the British perspective.[11] Consequently, where the British deemed it necessary, they endeavoured to reform Indian laws and customs, despite facing significant criticism and resistance.

The Corrective Enterprise

On the other hand, the British made efforts to correct, codify and standardize the Indian legal system, despite encountering opposition, resentment, and challenges.

This divergence in British policy from the Mughal approach was necessitated by many developments during the British colonial era including a fundamental transformation in the conception of law and state. Mughals conceived the legal norms, specifically the ones governing the social and familial lives of the people to be emanating primarily from religion and as thus essentially divine. Accordingly, they refrained from interfering in the Islamic legal system or in the legal frameworks of other communities. In the British era, however, the law began to be considered primarily as a means to fulfil the political and social needs of the people. The divine status attributed to the law was thrown to the background. This altered conception of law significantly influenced British policies and decisions during their stay in India. This paradigm shift motivated them to reform and transform Indian law into a standardized and codified system. In the same way, the state was conceived by the Mughals as an apparatus mainly responsible for the maintenance of security, law and order in the country. It was not the business of the state to engage so deeply with the lives of its citizens. It was assumed that people can maintain their personal, familial and social lives when they are left free to live in the social arena as they deem suitable. The conception of state changed considerably in the colonial era. For the British, the state was not only responsible for the security, law and order, but it was also the responsibility of the state to improve the personal, familial and social conditions of its subjects. This changed understanding of the state allowed them to engage more deeply with daily lives of its subjects.

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[10] George C. Rankin, "The Personal Law in British India", *Journal of the Royal Society of Arts,* Vol. 89, No. 4588, 1941, pp. 426–42.

[11] Mytheli Sreenivas. "Conjugality and Capital: Gender, Families, and Property under Colonial Law in India", *The Journal of Asian Studies,* Vol. 63, No. 4, 2004, p. 939.

It is not to say, however, that the reformative measures were always initiated by the British or that the reforms were condemned by all sections of Indian society. Rather, active advocacy and enthusiastic reception for reforms by specific sections of Indian society and individuals also existed. Nevertheless, on the other side, a substantive manifestation of opposition and resentment also was seen.[12]

Encroachments into "Ambit"

Those who exhibited resistance within Hindu community to the alterations in the civil legal structure by the British claimed that these changes were intentionally and systematically aimed at undermining Hindu culture, religion, and identity, as they mostly touched upon Hindu religious norms.

When Lord William Bentinck, the Governor-General, passed a law in 1829 banning the practice of Sati, the reform was, on the one hand, welcomed by social reformers, but was perceived as interference in religious practices by others, on the other hand. In 1856, Hindu Widow Remarriage Act was passed. The Act permitted Hindu widows to remarry, challenging the prevalent social stigma against widow remarriage. Social reformers supported the move, but it also faced resistance from certain sections who invoked religious and cultural reasons. In 1860, Indian Penal Code was passed to codify criminal laws and in 1861, Criminal Procedure Code (CrPC) was enacted to establish procedures for criminal justice. These codes were generally accepted, but concerns were raised about cultural insensitivity and the potential for misuse.

In 1891, the Age of Consent Act raised the age of consent for marriage, primarily aiming at curbing child marriages. The British also introduced several land revenue systems, including the Permanent Settlement, Ryotwari System, and Mahalwari System, affecting landownership and revenue collection. The responses to these reforms were mixed. One prevalent argument put forth by the opposition characterized the reforms as an affront to Hindu culture and religion.

When the British introduced changes in the laws pertaining to women to reduce the gender gap in the right to property, P.C. Tyagaraja Iyer, a judge in the southern Indian town Chittoor, wrote a letter to the government in which he argued against giving property rights to women. He rejected the notion that daughters and sons could entitle an equal share in the property of their father defending the family as a site of male patrilineal privilege.[13]

In a nutshell, in the colonial epoch, the British administration adopted a dual approach. On one facet, they endeavoured to refrain from interference in indigenous laws, preserving a significant degree of autonomy for the native populace. This approach explicitly acknowledged the adjudication of civil cases involving Muslims and Hindus in accordance with *Shari'ah* and *Shastras*, respectively. On the hand, a belief in the superiority of British law and culture as well as a transformed perception of law prompted them to intervene in indigenous legal framework. Such

[12] Oliver Herrenschmdt, "The Indians' Impossible Civil Code", *European Journal of Sociology / Archives Européennes de Sociologie / Europäisches Archiv Für Soziologie,* Vol. 50, No. 2, 2009, pp. 325–29.

[13] Oliver Herrenschmdt, "The Indians' Impossible Civil Code", *European Journal of Sociology / Archives Européennes de Sociologie / Europäisches Archiv Für Soziologie,* Vol. 50, No. 2, 2009, pp. 325–29.

interventions and alterations, however, incurred disapproval from certain segments of the native population, leading to opposition and resistance against colonial reformations. By doing so, they sought to correct the indigenous legal system. However, this corrective enterprise was also effectively an encroachment on the indigenous truth systems. The emergence of movements and organizations dedicated to restoring the indigenous heritage was a reactive response to the said encroachment.

The colonial period diverges from the preceding Mughal era in that it witnessed the initiation of a confrontation between the ruling authority and the governed concerning certain legal issues, and latter even between two major communities of India, Muslims and Hindus. This confrontation was a result of the fact that the British rulers, by seeking to correct indigenous laws and conventions, encroached upon the ambits of local truth systems. The legal alterations carried out by the British hit primarily the Hindu religion and culture. This was the primary factor underlying the fact that the resistance was mostly seen from the Hindu community. No doubt Muslims were also expressing their opposition to colonial rule, however, their resentment, like most of the Indian population, emanated primarily from their aversion to the foreign rule, not from the fact that *Shari'ah* was put under any major risk by the British. Nevertheless, with the passage of time, some of the factions in the Hindu community started perceiving that not only the colonial rulers were seeking to undermine the Hindu religion and culture; Muslim rulers have also been doing the same for centuries with regard to their culture and religion.

The mere perception, irrespective of its verifiability, of the same was sufficient for inducing the reactive attitude in the said faction within Hindu community against the Muslim community. It was further intensified by the perception of some segments within the Hindu community that the Congress was granting undue favour to Muslims on the one hand, and on the other, it was tilted towards British ideology and was overlooking the Hindu interests. The expression of animosity by some sections in the Hindu community towards Muslims worried the Muslim community concerning the future of their own truth system in India. This fear resulted in the emergence of various organizations and movements in the Muslim community for the protection of *Shari'ah* and Islamic culture.

The emergence of Muslim league and such other organisations could be explained as motivated by the perception of the said risk. Even the birth of the two-nation theory could be traced to the same fear. The two-nation solution offered for Muslims not only a means of safeguarding against encroachment, but also an opportunity to promote and nurture their own truth system. When Pakistan was established, a significant portion of the proponents of this vision migrated to the newly formed country. This migration enabled them to safeguard and preserve what they perceived as their truth system, and it provided a conducive environment for the realization of their vision of an expanded ambit for their truth system. However, those who were unable to migrate to the newly formed Islamic state, due to a variety of factors, continued to harbour concerns about the potential for encroachment of the ambit of their truth system in India.

Aversion or Defence?

The objective of this paper is to show that the Muslims are opposed to the UCC with a view to defend their own truth system. They do not have an intrinsic aversion to uniformity. What they aim at is not to resist uniformity, but to protect their own value system. In the same way, their opposition to the UCC is not rooted in their aversion to the national integrity of India, justice, equality or fairness. It is rather geared by their fear that the implementation of the UCC could encroach upon the ambit of their truth systems. This is why if such a UCC is implemented in India which is not applicable to the Muslim community, what is probable is that they would not oppose its implementation.

Even the support of Hindu Right to the UCC is driven by their commitment to preserve their respective truth systems. For a significant period of time, they remained one of the staunch critics of the idea of the UCC. Earlier they thought that the idea of the UCC is in confrontation with their truth system. But, in the end of 1960s, Hindu Right shifted from its opposition to the UCC to supporting it. They eventually recognised that if the UCC is not implemented, it could empower other communities by providing them the freedom to align their personal lives with their religious norms and traditions. It will serve as an independent in the realisation of their vision of the establishment of a Hindu Rashtra. Instead, supporting the UCC could potentially serve as a less challenging pathway and a groundwork for the realization of their ultimate goal. They observed that supporting the UCC could serve their purpose better than opposing it.

On the other hand, this shift amplified the concerns of the Muslim community with regard to the preservation of their truth system. What frightened them was that the UCC in the forms it is advocated for by the Hindu Right would essentially be a Hindu Uniform Civil Code disguised as a genuine Uniform Civil Code. Such a code would necessarily encroach upon the ambit of the truth system of the Muslim community as well as the truth systems of other minorities.

This realization, however, engendered apprehensions among the adherents of other truth systems such as Islamic, liberal, feminist and modern perspectives. Consequently, the Muslim community intensified its resistance, while certain segments within other ideological domains or truth systems withdrew their advocacy for the idea of uniformity, understanding that the proposed code would pose a potential impediment to the expression and preservation of their respective truth systems.

Then the judgement of the supreme court in Shah Bano Case intensified Muslim opposition to the UCC even more. In this judgement, the supreme court ruled that her husband is obliged to give her maintenance in accordance with criminal Procedure Code going against what was suggested by Muslim Personal Law. What annoyed the Muslim community was that the case of a Muslim couple was not adjudicated in the light of their Personal Law, but in alignment with CRPC. In their view, this judgement encroached upon their truth system, inducing them to protest against this ruling of the court. Pressured by the demonstrations conducted by various Muslim organisations and the Muslim masses, the Congress government enacted a law in which the Muslim community was given an exemption from the application of CRPC. Since the Bharatiya Janata party came to power, Muslim fears of the erosion of their truth system have exacerbated

further. In 2018, Muslim Personal Law Board initiated a campaign in which it asked Muslims to put their signature in support of the continuation of Muslim Personal Law. In 2025 BJP government proposed amendments in Waqf Bill. This proposition is being resisted intensely by the Muslim community. The reason for resistance presented by them is that by bringing amendments in the Waqf bill, the government will be authorised to make interference in waqf lands which are mostly dedicated to Sufi shrines and madrasas. It will give them opportunities to encroach upon the truth system of the Muslim community.

It also unveils the fact that advocacy for the Uniform Civil Code by its proponents is not inherently a pursuit of uniformity or an outcome of animosity towards the Muslim community or other factions of the Indian society or result of outright rejection of justice and fairness. It is a concerted effort by the supporters of the UCC to actualize the distinctiveness of their respective truth systems.

It also unpacks the dynamics underlying the highly intricate nature of the matter of the civil law in India. India, marked by a profound adherence to religiosity coexisting with the entrenchment of modern secular influences, is fundamentally characterised by the simultaneous presence of diverse truth systems. This state of affairs triggers the occurrence of frequent corrective, defensive or rehabilitative enterprises in the sphere of the truth systems turning the issue of the UCC into an perennially intricate phenomenon. Its intractability is further exacerbated by the fact that religious communities are fundamentally characterised by the ultra-faith adherence to their respective truth systems.

Conclusion

This revisiting of the intricate nature of the UCC debate unveils compelling insights and uncovers dynamics that have largely been overlooked. This study has sought to explore why the Muslim community in India is specifically averse to the UCC, which is claimed to ensure justice, equality and fairness in the sphere of civil law. It concludes that it is the interaction between various truth systems that has shaped the response of diverse factions of Indian society towards the UCC. The Muslim opposition to the UCC is governed by the desire to protect or promote their truth systems.

Even the opposition and then support of the UCC by the Hindu Right is shaped by the same concern, i.e. a defecation to protect their truth system. The UCC was criticised by them until the late 1960s. This criticism emanated from their perception that UCC would undermine Hindu religion and culture. When they opposed the passage of Hindu Code Bill in 1950s, their opposition also stemmed from their understanding that it compromises with actual Hindu norms and values.

Then the Hindu Right eventually shifted to support the UCC. It was also caused by the same concern of the preservation of their truth system. They came to recognise that the support for the UCC and its implementation could better serve their goal of preservation of their truth system. Rather, it would also pave the way to the establishment of Hindu Rashtra which is the ultimate vision of the Hindu Right in India.

In essential terms, it is not that the Muslim community is averse to justice and equality or the UCC itself in the first place. Rather, it is concerned about the protection of its own truth system which makes it appear as averse to the UCC. Indian policy framework is required to take into consideration these dimensions carefully, if substantive harmony in Indian society is a desired goal.

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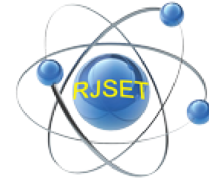

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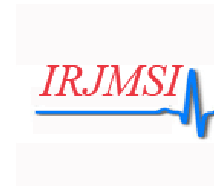

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