

ISSUE OF UNIFORM CIVIL CODE IN INDIA AND THE OPINION OF THE KOLKATA MUSLIMS

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EXECUTIVE SUMMARY

The existing/growing inconsistencies within the personal laws of different religious communities have all along been a subject of academic debate having serious practical implications. The social unrest turned out after pronouncement of the judgment in the Shah Bano case, the non-proper functioning of the Hindu Code Bill of 1955, the Indian Census Report of 1961 which made known that the percentage of Hindus having more than one wife was more than many of the other religious communities specially of the Muslims, the recent judgment of the Darul Qaza (Shariat court) on Imrana case which is considered as in conflict with or parallel to the Indian judicial system¹ - all these happenings continuously remind us of the Uniform Civil Code, whether it is necessary or not in India.

This paper desires to discuss theoretically- the development of the issue of uniform civil code in India and also the knowledge- practically gained in the Kolkata Muslim society to make out its opinion related to the above mentioned issue in addition to the existing Muslim personal law in India.

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SUPREME COURTS RECOMMENDATIONS FOR UNIFORM CIVIL CODE (UCC)

The issue of uniform civil code in India is an aspect which is always surrounded by controversy. It took a high momentum in 1995 which had arisen not due to the agenda of any political party or any community demand, but because of the Supreme Court judgment in the Sarla Mudgal vs. Government of India Case. Justice Kuldeep Singh and Justice R. Sahay, the two Judges of the Division Bench for that case, raised the question of necessity of the Uniform Civil Code on the ground that the absence of such a code resulted in some Hindus adopting or converting themselves to Islam so that they could marry one/more women regardless of the fact that their wives were alive and had not been divorced, for the reason that the Muslim Personal Law permitted a Muslim man to marry four women or can keep four wives at a time. The Division Bench of this case made the following pronouncement: "We, therefore, request the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution and endeavour to secure for the citizens a uniform civil code throughout the territory of India".²

The other Judge of that Division Bench, Justice Sahay remarked, "but religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity".³

The Supreme Court had also given instructions to the Indian government to carry out the principles as enshrined in the Constitution under Article 44. This article under Directive Principles of State Policy directs the government to ensure uniform civil code through all parts of the country. Based on this article, the court opined that the second marriage of a Hindu male after conversion to Islam should lawfully make him prosecute for bigamy – the criminal offence of marrying one person which still legally married to another. This type of marriage would be treated as non-existent and a void marriage in terms of Section 494 of the Indian Penal Code which deals with bigamy. In such a case, even though the husband has adopted Islam, the marriage would be treated under the Hindu marriage act.

Earlier, in April 1985, the Supreme Court of India gave an exceptional judicial decision- the grant of maintenance right to Shah Bano, a divorced Muslim woman. The judgment had a considerable contemporary social significance. It formulated and issued a decree that Shah Bano, divorced by her husband after 43 years of marriage, was entitled or has a legal claim to maintenance from her husband. Addressing itself to this maintenance issue whether the Muslim personal law laying an obligation up to the husband, the court further ruled that a Muslim woman, unable to maintain herself, was entitled to apply under section 125 of the Criminal Procedure Code which applied to all communities irrespective of their separate personal laws. In case of clash between some provisions of the criminal procedure code and the Muslim personal law the former would prevail.

The Supreme Court also questioned what steps the government was taking for adopting a uniform civil code as stipulated in Article 44 of the Indian constitution.

In a recent judgment⁴, the Supreme Court has instructed the Indian government for a uniform civil code in India as enshrined in Indian constitution under Article 44. This judgment was given in a case related to discrepancies in the Christian Inheritance Act. Section 118 of Indian Inheritance Act restricts a Christian from donating his/her property for charitable or religious purposes. Chief Justice Khare, Justice S.B Sinha and Justice A.R.Laxman - the three Judges of the Division Bench for that case cancelled the Section 118 as according to them this section is 'unconstitutional' and 'discriminating to the Christians'. They reminded that this section does not protect the assurance of 'Equality of Law' (Article 14) of Indian Constitution.

ORIGIN AND DEVELOPMENT OF THE IDEA OF UCC IN INDIA

The National Planning committee which was constituted by the National Congress introduced the notion of uniform civil code in the political arena of the forties of twentieth century when it made a demand for the code. At that time, when the Constituent Assembly Debates were going on, Minoo Masani, Rajkumari Amrit Kaur, Hansa Mehta voted in favour of a clause on a uniform civil code, but many of the members of the sub-committee voted against it on the reason that it was outside the scope of fundamental rights.

Here it is necessary to discuss the earlier developments regarding the unified civil laws of India. During the days of struggle for independence, some sections of Muslim society were very much anxious about their personal laws' constitutional status in the forthcoming independence era. They organized themselves to bring efforts to get constitutional protection of the Muslim personal law. But the Government of India Act, 1935 did not consider either the ultimate ambitions of the Muslim organizations or the concessions granted upon by the National Congress⁵ in respect of Muslim personal law. In opposition to what was expected, the Act authorized the federal as well as the Provincial legislatures to formulate laws relating to "marriages and divorce; infants and minors; adoption and wills."⁶ The Government of India Act, 1935 made those Muslims unhappy who had been contending for long to secure constitutional protection of their personal law. The Muslim personal law (Shariat) Application Act and the Dissolution of Muslim Marriages Act were enacted in between 1937 and 1939 which made the Muslims more anxious as some provisions of these Acts were against the proposals of the Muslim organizations.⁷ Hence, the leaders of these organizations became more vociferous about a constitutional protection for Muslim personal law. For this purpose, Pocker Saheb in his speech on the report on minority rights in August 1947, demanded separate electorates for the Muslims to elect candidates of their choices in the Central and Provincial legislatures⁸ but his demand was ruled out by the Constituent Assembly.⁹

In November, 1948, Dr.Ambedkar presented the draft constitution to the Constituent Assembly for discussion. At the time of discussion, he observed that

the Draft Constitution has adopted to secure “uniformity in fundamental laws, civil and criminal”¹⁰, which are essential “to maintain the unity of the country”.¹¹ Accordingly, Article 35 (The present Article 44) of the Draft Constitution provided that “The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India”. The objective of the article is to eliminate the conflicting practices of various communities in the field of civil laws comprising marriage, divorce, inheritance and succession etc. with the enactment of such a code.

There was a heated discussion when Article 35 was debated in the Constituent Assembly. Some members wanted amendments to that article so as to exclude the personal laws from the domain of the common civil code. Mohammad Ismail, Naziruddin Ahmed, Mahboob Ali Baig, Pocker Bahadur Saheb and Hussain Imam were in favour of such amendments. On the other hand, Alladi Krishnaswamy Ayyar, K.M. Munshi, Dr. Ambedkar opposed such desired amendments and emphasized on the adoption of Article 35 by the Assembly without any exemption of personal laws from the domain of the potential civil code.

K.M. Munshi, one of the members of the Constituent Assembly commented on the importance of this subject in the Assembly, “We are going to consolidate and unify our personal laws in such a way that the way of the whole country may, in course of time, be unified and secular.”¹² In this respect Alladi Krishnaswamy Ayyar also observed—“The idea is that differential systems of inheritance and other matters are some of the factors which contribute to differences among the different peoples of India. What it aims at is to try to arrive at a measure of agreement in regard to these matters”¹³

However there was a contrary opinion also as some of the Muslim members of the Constituent Assembly tried to exempt the Muslim personal law from any type of state control.

Mohammad Ismail stated that a secular state should not interfere with the personal laws of a people. The right of every community to follow its personal law is apart of the fundamental right to religious freedom. He also opined that to secure ‘harmony through unity’, it is not necessary to ‘regiment’ the civil law of the people.”¹⁴

Whereas Hussain Imam¹⁵ wondered whether there could be uniformity of civil laws in a multiform country like India. He questioned the possibility and desirability of having uniformity on subjects like marriage, divorce, succession, inheritance, etc. which are based on the necessities of different communities. He also mentioned that for bringing uniformity in civil law, we should wait till the time when people became advanced; their economic conditions improved and mass illiteracy should be removed.

Naziruddin Ahmed wished for a security that the personal law of any community would not be altered without the “previous approval of that community”. He also said that the provision of Article 35 failed to agree with the

fundamental right to religious freedom, which had already been adopted by the Assembly; it would permit the state to violate that guarantee as the laws related to the validity of marriages and divorces were regulated by religion. He also mentioned that time was not 'ripe for effecting uniformity in civil laws; the power given to the state to make the civil code uniform was in advance of time'. The enactment of that Code should be done gradually and with the consent of the people concerned.¹⁶

At the same time, Pocker Sahib Bahadur put forward some objections in the constituent assembly against the making of uniform civil code throughout India: firstly, it would violate the fundamental right of freedom of religion as mentioned in Article 25 and secondly, it would be a tyranny to minority.¹⁷

But Munshi and Alladi dismissed the rationale and substance of these objections.¹⁸ The first objection was dismissed as the Directive included in Article 35 (present Article 44) in no way violates the freedom of religion guaranteed by Article 25 Clause (2) of Article 25 specifically saves the secular activities associated with religious practices from the guarantee of religious freedom included in clause (1).

The second disagreement was also invalidated by K.M. Munshi by remarking that when the Shariat Act, 1937 was passed; the Khojas and Cutchi Memons were highly dissatisfied as that time they followed certain Hindu customs for generations since they became converts and so they did not want to conform to the Shariat. Then certain Muslim members who felt that the Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where the rights of minorities then....It were is not, therefore, correct to say that such an act is tyranny of the majority."

According to the framers of the constitution, the proposed formation on of uniform civil code would be more tyrannous to the majority than the minority. K. M. Munshi while reaching to this point remarked in the Constituent Assembly – "I know there are many among Hindus who don't like a uniform civil code.... they felt that the personal law of inheritance, succession etc., is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a fundamental right to that effect and you have an article which lies down that there should be no discrimination against sex. Look at Hindu law, you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, apart from matters which strictly belong to religion, the rest of life must be regulated, unified and modified."¹⁹

Dr. B.R.Ambedkar emphasized that in a secular state, religion should not be allowed to govern all human activities and that personal laws should be divorced from religion. He rejected the proposals for amendments to article 35

and said that if India could have uniform laws of crimes, contract, property, trade and commerce it could have uniform laws of marriage and succession as well. He also gave an assurance that the future parliament might enact uniform civil code but would apply it only to those who voluntarily submit to its provisions.²⁰

Finally the Constituent Assembly refused all the amendments²¹ and adopted Article 35 (present Article 44). In spite of that (rejection of the amendments), the Assembly agreed to include the stipulation within the Directive Principles to relieve Muslim anxiety or fear. The Directive Principles of State Policy aimed, as laid down in the Constitution under Article 44 (the Constitution was adopted on 26 January 1950), to have a uniform civil code for all the Indians. The Article states: "The State endeavours to secure for the citizens a uniform civil code throughout the territory of India". As Article 44 is a part of Directive Principles of State Policy (Part IV), it shall not be enforceable by any court. It shall be the duty of the State to apply these principles in making laws.

POST INDEPENDENCE DEBATE (RECENT GENERAL TENDENCY)

After India's independence and adoption of a new constitution, the Indian government continued with the systematization and improvement of the Hindu personal law. When the opponents of this reform reminded the government of the constitutional directive to enact a uniform civil code, the government said in a session of the Lok Sabha that the reform in the Hindu Code was the first step towards the enactment of a uniform civil code in India.

However after the enactment of the Hindu reform laws in 1956, there had been no notable movement on the part of the government to introduce the process of formulating a uniform civil code up to the time of the Shah Bano dispute. In these days, when uniform civil code is endeavoured to be formulated, there are resistances. The resistance has come from woman groups also. The erudite persons of constitutional subjects are also in a different mood towards the formulation of the proposed common civil code.

Prof. Paras Dewan²² remarked: "It is simply a question of equal facility of law to all sections of our people. The question is simply this that all people of India, in all matters- except the matters coming under protective discrimination- should be governed by the same set of laws". Regarding the anomalies in the different personal laws of different communities, he states: "Should a male or female belonging to one community have more than one spouse? Does it lay in our mouth to say that guardianship or custody of a child should be differently determined just because the child belongs to one or the other religion?"²³

Prof. Mahendra Pal Singh, Dean, Faculty of Law, Delhi University mentions that this social situation is not perfect for 'imposing' uniform civil code all over India. According to him, there 'can' be different laws for different people. No community would like to be governed by other community's laws- the community may be Hindu or Muslim or other any. A Hindu would not like to be governed by

a law of Shariat. The same case would happen to a Muslim who would not like to be governed by a Hindu law. He also supports Mr. H.L.A. Hart's opinion on this issue. According to Hart, any law must have the quality that any individual feels an obligation to obey it. But a UCC which is forced upon another or others would not serve the goal. Prof. Singh says that gradual achievement of UCC must come from the demands of the very sections who are opposing it.²⁴

Eminent constitutional scholar H.M. Seervai attacked the very 'request' of the Supreme Court to the Indian government to implement the provision of article 44. According to him it is the executive not judiciary, which can consider what law should be submitted to the Parliament. And the parliament alone can decide whether or not to enact the proposed law. He argued- "Those who have studied Hindu law and Mohammedan law will realize that a UCC for Hindus and Muslims alike is an impossibility."²⁵

It can be said that the Hindu law is not applicable to all Hindus. In the cases of succession and partition, the customs of different groups are preserved. The devolution of property may be done different under Hindu law in Kerala, Uttar Pradesh, and some other states in India. In the Hindu Marriage Act, there can be two types of marriages-religious or civil marriages.

Some again cite the case of the Muslims who are divided into two sects and many sub-sects. The sects are Shia and Sunnis. Sunnis are divided into four sub-sects- Hanafis, Malivis, Shafies and Hanbalis (Mullah's Mohammedan law). Thus the Muslim law does not apply uniformly to all the Muslims.

Eminent social worker Salauddin Tyabji found a reason behind the demand for uniform civil code as "the imperative need to break as under the unifying force of the Islamic brotherhood which is bound together by the Sharia."²⁶

But, on the other hand, a number of scholars and intellectuals from among the Muslim community itself have pleaded for the reform of their personal law.

Dr. Tahir Mohmood²⁷ has made a powerful plea for framing a uniform civil code for all citizens of India. He says: "In pursuance of the goal of secularism, the state should stop administering religion-based personal laws".

The author has gone to the extent to make an appeal to the Muslim community that instead of wasting their energies in exerting theological and political pressure in order to secure an "immunity" for their traditional personal laws from the state's legislative jurisdiction, the Muslims will do well to begin exploring and demonstrating how the true Islamic laws, purged of their time-worn and anachronistic interpretation, can enrich the common civil code of India.

A.G.Noorani, a famous journalist remarks-"The Muslim law, as in force India, cries for reform."²⁸

Dr. Mohammad Iman²⁹ tells that a great deal of Muslim law as in force in India may reformed by devising procedural or regulatory measures to check or control like exercise of rights and power there under arbitrarily, injuriously or oppressively.

The opinion of Prof. Tahir Mohmood may also be mentioned here as he says—"Existing personal laws of the various religious communities may not be altogether scrapped; through each of them, and more particularly the Muslim personal law, must be purged of all unsatisfactory elements, in a way ensuring the maximum possible social equality"³⁰

Mr. M.C.Chagla, a distinguished Judge, viewed that "Indian Muslims (should) adapt themselves to the conditions of secular India where they enjoyed the same rights as their Hindu fellow citizens".³¹

Along with these viewpoints women from various corners of Indian society have also expressed their opinion for drafting of a common or uniform civil code. The demand of the women's movement is that a woman would have equal rights as a man. They also make a demand that cultural heritage, religious traditions shouldn't give protection to the communities to refuse to grant their present-day demands.

Indira Jaising, the distinguished lawyer, has opined in 'The Lawyers', - "the demand for reform (in personal laws in favour of a common civil code) must be a demand for sexual equality. It would be better to reformulate the demand so as to focus on the sex discrimination which is written into all personal laws. This will have the merit of not only emphasizing the secular nature of the demand but also its rational, namely, the urgent need to make equality for women a reality under a constitution that guarantees equality between sexes."³²

Ansuya Dutt, an eminent lawyer mentioned that there must be a common civil code as it will bring a significant influence on the social status of all Indian women who are prejudiced in several spheres by the present existing laws. According to her, it is due to the different personal laws that the Indian women are divided and thus exploited. She also feels that the Indian women should unite themselves on a common platform and then it would be easy for them to fight for more effectively for changes in their present day position.³³

Ms. Dutt also opined that some provisions of the existing personal laws could be included for drawing up a common civil code which are useful to women. Such provisions are- divorce by mutual consent as available in the Hindu Marriage Act or the Special Marriage Act, the Mehr system of the Muslim personal law should be generalized for all communities in addition to a guarantee of maintenance.

It was not her position that the advancing elements of the present personal laws way just be put together so as to form a new one to meet the present needs. On the other hand, she proposed to include some new provisions such as dissolution of marriage when it is beyond repair as a ground for divorce, right of a divorced woman on her husband's assets not merely as a demand for maintenance, and that both the father and the mother should to be treated as joint natural guardians of children.

Ashgar Ali Engineer the famous Muslim reformist and scholar says that if complete equality between the sexes is the basic implication of a uniformity in

all personal laws, then it does not in any way violate the spirit or the normative feature of the Quran. He says that common civil code or no common civil code, what is fundamental is women's rights and status. Their rights should be as inviolable as those of men. The Quran accepts this position.³⁴

INDIAN GOVERNMENT'S POLICY OR ATTITUDE TOWARDS UCC

The Indian Government's policy during all these years has been to respect the opinion of the Muslim community in India. In this regard, Dr.B.R.Ambedkar, the chief architect of Indian Constitution, says "in our country.....the profession of a particular religion carries with it the personal law of the person. You cannot get away from that position."³⁵

During the period of Jawaharlal Nehru's premiership, the Central Government consistently followed the path of non-interference in regard to Muslim personal law. There were no effects to bring change in the traditional family law of the Muslims. It is also a fact that the Hindu personal law has been systematized in 1955 and 1956 by giving effect to the Hindu Marriage Bill, the Hindu Succession Bill, the Hindu Adoptions and Maintenance Bill. But the Muslim personal law has remained unchanged or untouched. At that time, when the Hindu personal laws were being systematized, some sections of people demanded for reform in the Muslim personal law but this demand was rejected by Jawaharlal Nehru.

So it can be said that the Indian Muslims have been left to themselves to determine the nature, scope and extent to reforms that should take place in their personal law. In this regard, D.E.Smith observes: "the task of codifying Hindu personal law has been completed; but yet the Muslim Shariat has remained untouched by the Indian parliament."³⁶

It means that the assurance which was given by Dr. Ambedkar to the Muslims in the Constituent Assembly regarding the unilateral change of their personal law still holds good. Regarding the significance of Article 44, he mentioned: "There is no obligation upon the state to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive of the fact that if state has the power, the state will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India."³⁷

These assurances which have been given by the framers of the constitution are keeping the government from taking initiation in this direction. At the same time the constitution specifically authorizes the state to make any such legislation or law. Under Article 25, Clause 2: "Nothing in this article shall affect the operation of any existing law or prevent the state from making any law regulating or restricting any economic, political or other secular activity which may be associated with religious practices."

When the Hindu code bill was being codified, the then law minister commented in the parliament: "The State has retained all along in Article 25, the right to interfere in the personal law of any community in this country. There can

be no argument against that... This parliament is absolutely supreme and we deal with any community so far as their personal law is concerned apart from their religion. Let no community be in a state of mind that they are immune from the sovereign authority of this parliament."³⁸

So, it is clear that the state has absolute authority to interfere in the affairs of the personal law of any community. But the Indian Government, despite the fact, has not done so. It has shown regard and respect to the feelings of minority communities, particularly of the Muslims by putting all the reservations and considerations of the Muslims of India. The government has so far maintained the Nehru's policy of perseverance (non-interference) in regard to Muslim personal law. However in 1972, late Prime Minister Indira Gandhi advised Indian Muslims "to start a process considering change in their personal law with an open mind."³⁹

When late Rajiv Gandhi was prime minister of India in 1986, the Indian government showed similar attitude in the Shah Bano Case. In the judgment of that case, the Supreme Court again asked the government to formulate a uniform civil code as per Article 44 of the Indian Constitution but the central government submitted an affidavit to the Supreme Court regarding its inability to enact a uniform civil code in the country at that time. Then the government enacted the Muslim women's Right and Divorce Act, 1986 which was the result of the pressure coming from the Muslim fundamentalists upon the then central government. This law makes the Muslim women divorcee's position insecure.

CONCLUSION AND SUGGESTION

From the above discussion, it can be concluded that uniform civil code always has remained a controversial issue in India and it may also remain the same in the near future. The protagonists (mostly Hindus particularly Hindu communalists, feminists etc.) emphasize that the UCC should be enacted. The antagonists among whom Muslims (fundamentalists and communalist Muslims, common Muslims) who are too much sensitive to their minority identity are most vocal. They are of the opinion that the democratic arrangement of India ensured to them the independence and privilege to follow closely their personal laws and so are in opposition to the enactment of UCC. The position of the secularists in this issue is indefinite and is situated on two poles as one group (mostly Muslims) is against of it and the other group (mostly Hindus) is a position to support the enactment of UCC or at least they want some reformation in the Muslim personal law.

The antagonists- majority of them are Muslims regard Islamic laws of marriage, divorce and successions as a part of their religion. They consider that their personal law has originated from the Quran and Sunna and so it is immutable. At the same time, a common Muslim has faith in the belief that it will be a great sin to follow the principles of marriage, divorce and succession other than those dictated in the Quran and Sunna. They also consider their personal law as a symbol of their cultural identity in India. At the same time, they are also facing the majoritarian communalism in the fields of education (teaching of Hindu

mythology in schools and colleges), in social and cultural ceremonies (governmental or public inauguration ceremonies). These incidents have made them too much precautious in maintaining their cultural identity and so they refuse to give up any of their distinguishing cultural traits. The Indian Muslims also think that to follow the UCC means may be to follow the Hindu jurisprudence which will be unIslamic for them. So they are reluctant to go against the UCC as they think it will create a situation which will go against Islam in India.

The enactment of a UCC is faced with a number of other problems also. Even though there is a constitutional directive, there is little lucidity regarding the shape of UCC and consequently it is not clear as to which subject matters will be included in it. It is noteworthy that the legal diversities existing in this country are so broad and varied that the enactment of a UCC will brings bitterness and conflict among the different communities including many tribal communities such as the Nagas, Mizos, Santhal, Munda etc.

Women in India in general have demanded a uniform civil code through movement from the days of pre-independence. The primary aim of their movement has been to bring equality between the two sexes. This movement is essentially secular and the main principle in this struggle is to realize equality by taking away the barriers erected to the name of religion, caste, creed, custom or tradition. They cannot be parted from the concepts of 'democracy', 'equality', 'secularism', and 'modernity' and all these concepts must be entertained to them along with the males of this country.

So it can be said from the above discussion that the concept of uniform civil code has two angles: uniformity among communities (Hindus, Muslims, Sikhs, Christians, and Buddhists etc. all being governed by one law) as well as uniformity within communities (between men and women). Uniform civil code must include gender-just code from each angle otherwise it would be a code for the uniformity of male privilege. At present, supporters of uniform civil code are claiming that since the Hindu laws have been coded and reformed, there is already uniformity and equality within the community. So their target of a uniform civil code is with the personal laws of minority communities. But it cannot be denied that till today, Hindu women are worst victims of unequal laws regarding marriage, inheritance, guardianship and adoption (regarding guardianship of child, now the mother also will be the natural guardian as the father of the child according to the judgment of the Supreme Court on 17 February 1999).⁴⁰

Now the supporters of the common code have proposed that UCC will be based on the "best of all laws" of the different communities' personal laws. Such a type of code, it is argued will bring uniformity between communities. But actually, it will not bring uniformity within communities. As far as women's issues and rights are concerned, the argument is misleading as the existing laws are not the "best laws". Some laws may be relatively better but these are not also free from being unjust to women or are unacceptable from the standpoint of equality between men and women. And so they cannot form the genuine base for the enactment of uniform civil code.

Muslim women have better privileges related to the laws of inheritance in comparison to Hindu women but when they are compared to Muslim men, they are still far behind. Bigamy is illegal but the present law has so many loopholes that in spite of an increase in the cases of bigamous marriages, it is very difficult to prove men guilty of such a practice. The issues of maintenance and custody of children which are related to the divorce cases are extremely weak. Adultery is a ground of divorce for men although it is not for women. Thus every law has made the women's positions weak. Then the 'best' laws of all existing laws will be a ghastly law for women irrespective of their different communal or religious identities.

Again there are tensions between certain provisions of the personal laws of the different communities and the laws of the constitution. In this regard, the argument of the antagonists of common code is that within a secular democratic framework communities must have the right to follow their personal laws without any type of restrictions or interference. But such standards of democratic principles should not be allowed to degenerate into a license to deny to one section of their members the rights guaranteed by the constitution. From another standpoint, it can be argued that the democratic principle that communities should enjoy the benefit of having their personal laws but these should not be used by them to exercise dominance over the weaker groups or sections within the communities. A member of any community who feels oppressed or exploited would be free to make complain in the court that her/his fundamental right is being violated and it cannot be allowed merely because the community has got an autonomous space as an assurance to practice its personal laws.

In the face of such great difficulties which are faced in the enactment of a common civil code in India, the communities themselves should take the appropriate path to rationalize their personal laws. Those aspects of their personal laws which have a conflicting tendency with the constitutional laws should be reformed through entirely internal initiative. The initiative for rationalization and reform in the laws as well as the formation of suitable institutional structures for developing a majority view over such rationalization or reform have to come within the different cultural / religious communities. Such initiative and the development of a majority view (consensus) may vary among the different communities as these communities are at varying stages of social development. Irrespective of this varying stages or degrees of social and economic development, a beginning has to make by concerned sections in the different communities. Among these communities, the Muslims of India must think about their personal law. It is a common belief of the Muslims that the Muslim personal law is based on the Shariat. And as the Shariat is divine and immutable so MPL is also divine and immutable. No human authority can change the injunctions and divine commands of the Shariat (MPL).

In this respect, it can be mentioned here that the MPL which is prevailed in India are made up of four sources-(a) Shariat or fiqh; (b) laws made by legislatures; (c) previous judgments; and (d) customs.⁴¹ So it is partly divine in

as much as it is based on the Holy Quran and partly human in as much as it is based on human opinion.

It also can be mentioned here that the Corpus Juris of Islam is made up of four recognized sources (1) the Holy Quran (2) Sunna (the Prophet's sayings and practices) (3) Qiyas (analogy) and (4) Ijma (consensus). The first two sources are divine and so these may be sacrosanct, the last two sources are human, so these are mutable. The last two sources made the existence of many schools of jurisprudence among the Muslims such as Hanafi, Hanabali, Maliki, Shafi (among Sunnis); and Ithna Ashari, Fatimi etc. (among Shia).⁴²

So it can be concluded that human made laws of MPL can be changed or reformed according to the present day's necessities. The reform should be taken on a priority basis in those aspects of the personal law which are in a position of contradiction with the constitutional law and which also go against the democratic principles of gender-based equality and justice.

In this respect Muslim jurists, advocates, ulema, social scientists and also some distinguished figures of Muslim society can play an important role to find out the rationalized versions of the existing laws. It is needful to mention here that two Judges of the Dacca High Court have delivered a Judgment on January 9, 1995 which allowed maintenance for life to a Muslim divorcee by interpreting the Quranic verse 2:241.⁴³ In this way, if such a codification is achieved, the foundation for codification of the Muslim personal law will also be set.

The Indian Muslims must also think about their contemporary social situation which is not at all free from social problems. All the spheres of social life of the Muslims are influenced by religious practices, beliefs. But when these practices become contrary to the religious norms (due to some members' ignorance, misbelief, illiteracy etc.), these practices create many social problems. Some of such problems are relative e.g. lack of emancipation of women, comparatively higher rates of birth in the poorer section of the community which cause malnutrition, illiteracy, deviant behavior among the children and it is resulted due to their lack of knowledge about Quranic injunctions of family planning. Islam does not forbid family planning.⁴⁴ Islam prohibits abortions and sterilizations but these are also permitted on health grounds. Unilateral divorces (triple talaq) create problems for the divorcee (women) and her children (if any). These incidents caused many associated problems and evils in the larger society. Drawing away attention from these problematic situations will not help the Indian Muslims to develop their society in accordance with the modern era. In this respect, the Muslim Shariat should be given more contemporary expression in accordance with its own spirit than law books which were compiled in an entirely different environment. This would not mean to turn away from the path of the Shariat. Rather, it would be an authentic return to the Shariat, which has been the ultimate desire of the Muslims. It is too difficult to make prediction about the Indian Muslims' return to Shariat. But one should remember the Quranic Verse: "God does not change the condition of a people unless they change it

themselves.”

SURVEY WORK

The present survey work intends to study the attitude of the Kolkata Muslims regarding the enactment of UCC in India. This study also aims to find out their opinion about Muslim women’s position in the Muslim personal law in comparison to Muslim men and in this regard their opinion about the reformation in the Muslim personal law prevailed in India.

SOME FACTS ABOUT KOLKATA MUSLIMS

Kolkata Muslim population reflects all India or at least predominantly the north Indian character as Muslims of different regions of India with different occupational, cultural and even historical background are found in this metropolitan city. Linguistically, Urdu speaking Muslims constitute 70 percent of the entire Muslim population of the city. The next is of Bengali Muslims followed by Rajasthani, Gujarati and Malayali.⁴⁵ The two sects of Islam—the Sunni and Shiites are found in different parts of the city but Shiites are minority and their proportion in total Muslim population is too small. Mostly of them are Gujarati and Uttar Pradeshi and their concentration is around Metiaburuz, Barabazar and some particular areas of Khidirpur. The other sect-Sunnis are found in Barabazar, Mechauabazaar, and Rajabazar in north Kolkata, Park circus, Narkeldanga and Ultadanga in the east and in the port area of Khidirpur, Gardenreach and Metiaburuz. Most of them are bustee dwellers and economically not sound as majority of them are engaged in unorganized types of employment and even today in a metropolitan urban situation (culture) they represent various traditional occupational groups.

Above discussion has contended the Muslim community of this city has a relatively complex structure. Besides the linguistic and sectarian divisions, they are further sub-divided into several sub-segments of the basis of caste and occupation.⁴⁶

UNIVERSE OF THE STUDY

The present survey for the study was done in two Muslim localities—Khidirpur and Rajabazar (including Narkeldanga). Rajabazar is one of the oldest Muslim localities situated in north-east Kolkata where they have been living before independence and majority of them are bustee dwellers. Where as Khidirpur is a port area located in south Kolkata and here Muslims are provided with various types of economic pursuits. Many of them have migrated from different regions of India and presently they are permanent inhabitants of this locality. One can find Muslims of different classes residing in Khidirpur.

SAMPLING AND COLLECTION OF DATA

Different areas of these two localities and total 289 respondents were selected

from these areas on the basis of random sampling of which the number of male and female respondents were 244 and 45 respectively. Interview schedule has been used for the collection of needed information from the respondents. The age of the sampled respondents' was 25+ years and their marital status was married or/ divorcee/ widower/ widow. Among these respondents the number of Urdu, Bengali and other language speaking Muslims was 220, 65 and 04 respectively.

The researcher asked three questions to the respondents:-

- (i) Do you want the enactment of UCC in India?
- (ii) Do you think that the Muslim personal law gives equal status to Muslim female in comparison to Muslim male?
- (iii) Do you think that MPL should be reformed or it should be retained the same?

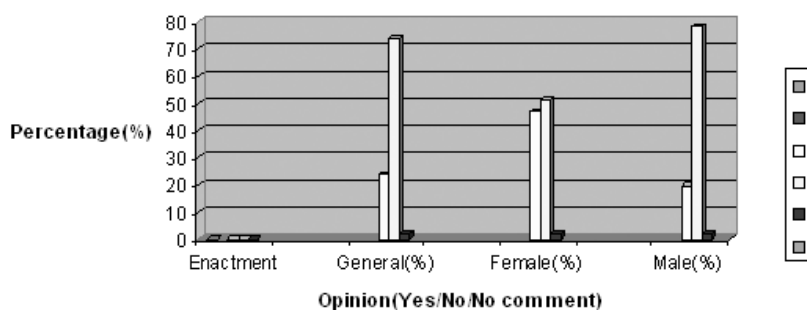
The respondents' opinions related to the above mentioned questions have shown in the following tables:-

Table 1
Opinion of the respondents for enactment of UCC:

<i>Enactment of UCC</i>	<i>General (%)</i>	<i>Female (%)</i>	<i>Male (%)</i>
Yes	23.9	46.7	19.7
No	74.0	51.1	78.3
No comment	2.1	2.2	2.0
Total (%)	100.0	100.0	100.0

Graphical Representation of the above Statistical Data

Opinion for enactment of UCC



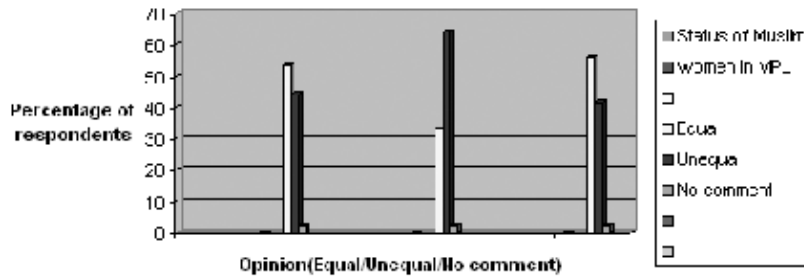
The data in the above table are showing that majority of the Muslims (74%) does not want the enactment of the uniform civil code in India. It is also showing that Muslim men (78.3%) are most vocal against the formation of the UCC whereas it is quite surprising that near about fifty percent (46.7%) of the female respondents want its enactment.

Table 2
Muslim Women's Status in Comparison to Muslim Men in Muslim Personal Law (MPL)

<i>Status of Muslim women in (%) MPL</i>	<i>General</i>	<i>Female (%)</i>	<i>Male (%)</i>
Equal	53.6	33.3	56.2
Unequal	44.3	64.5	41.8
No comment	2.1	2.2	2.0
Total (%)	100.0	100.0	100.0

Graphical Representation of the above Mentioned Statistical Data

Status of Muslim women in MPL in comparison to Muslim men



The data in the above table indicate that more than fifty percent (53.6) of the general respondents think that MPL provides equal status to Muslim women in comparison to Muslim men. If the data are analyzed on gender basis then a good majority of female respondents (64.5%) finds MPL as providing them unequal status in comparison to their counterpart who (56.2%) think that MPL provides the Muslim females an equal status as to them.

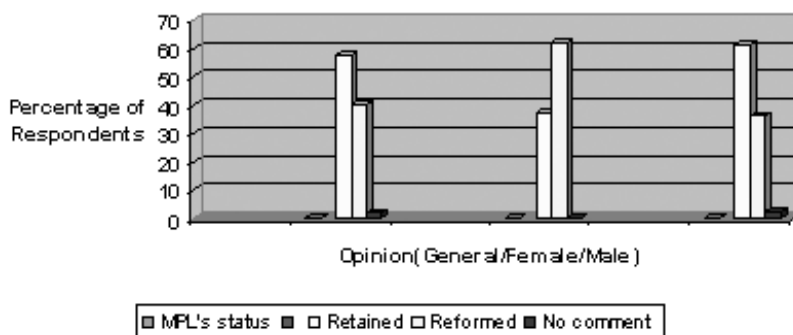
More than fifty percent (57.8) general Muslims are in a mood to retain the existing form of the MPL but if it is discussed in a gender line then it is clear that majority of the male respondents (61.5%) are in favour of the retention/preservation of the existing MPL while it is quite interesting to mention here that about same percentage of the female respondents (62.2%) want reformation in the MPL. The data in the below mentioned table 3 and its graphical representation show all these happenings.

Table 3
Opinion Related to Muslim Personal Law's reformation

<i>MPL's reformation</i>	<i>General (%)</i>	<i>Female (%)</i>	<i>Male (%)</i>
Retained	57.8	37.8	61.5
Reformed	40.1	62.2	36.1
No comment	2.1	—	2.4
Total (%)	100.0	100.0	100.0

Graphical Representation of the Above Mentioned Statistical Data

Opinion related to Muslim Personal Law's status



CONCLUSION OF THE SURVEY WORK

It is well known fact that Indian Muslims are excessively rigid in practicing their Islamic traditions and long established customs and any effort to bring alteration in these traditions and customs is strongly resist by them as they think that these are the fundamental part of their religious conviction or their religion inquires them to follow these traditions.

While the present survey has found out some changes in this respect in the attitude of Muslims of Kolkata but till today majority of them does not want the enactment of the UCC in India. Although in the present Kolkata Muslim community there is awareness about social upliftment and equality of rights in both sexes and presently a group in the society is emerging who are trying to interpret the Islamic ideas more correctly and opposing the irrational old traditions and customs prevalent in the society but there are still some members both from males and females who consider that MPL is not representative on gender basis but do not want reformation in it as it(MPL) is divinely ordained. But it is also noteworthy that now there is a consciousness among Muslim women to raise their voice about the equal rights as majority of them find MPL unfavourable to them against the Muslim males especially in the cases of polygamy and divorce as this study shows that a good portion of Muslim women are seekers of the formation of the UCC in India. But as they are doubtful about its formation in the near future so they want at least some reformations in their personal laws so that it could be equally representative to them as it is for the Muslim men.

It has been mentioned earlier that Kolkata Muslim society has an all India character (particularly a north Indian character) as Muslims from different regions of India are found here as they are residing in this metropolitan city. And it is well known fact that north Indian Muslims are more conservative than others due to several reasons such as poverty, illiteracy etc. So when a good portion of them

want reformation in the existing MPL then it can be consider as the opinion of the rest of the Muslims of this country as favouring the reformation to some extent in the MPL. So in this respect it can be concluded that the human made laws of MPL can be changed or reformed according to the present day's necessities. And regarding the reform in their personal law it should be taken on a priority basis in those aspects of the personal law which are in a position of contradiction with the constitutional law and which also go against the democratic principles of gender-based equality and justice.

In this respect Muslim jurists, ulema, Muslim social reformers and also some distinguished personalities of Muslim society can play an important role to find out the rationalized versions of the existing unreasonable laws. It is needful to mention here that common Indian Muslims have a strong faith in the doings and sayings of their religious leaders in religious matters and so if the religious leaders consider some reformations in the personal law according to the present day necessities, then the common Muslims may accept the changes without any hesitation.

NOTES

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17. *Ibid*, pp. 544-546.
18. *Ibid*, pp. 543, 547-48.
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35. PD, Vol. VIII (1951), 2949, Quoted by V.P. Luthera, the Concept of the Secular State and India, (Calcutta OUP, 1964). p. 96.
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40. Ananda Bazaar Patrika, 13 November, 1999, p. 2.
41. Prof. Asaf Fyzee, Muslim Personal Law (Urdu), (Delhi, n.d.), p. 11 [Also mentioned in A.A. Engineer (ed) Shah Bano Controversy, (Hyderabad, Orient Longman, 1987). Introduction, p. 3.
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