



Research Paper

## Personal Law: Multiculturalism and Legal Pluralism

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**ABSTRACT:** *The recent developments on the Muslim personal law - the Supreme Court judgement in August 2017 striking down Triple Talaq as unconstitutional and the passing of the Triple Talaq bill in the parliament in July 2019 that criminalizes the practice – have not only raked up the personal laws versus Uniform Civil Code debate once again but also made the debate persistent and nuanced. Based on the discourse analysis of five popularly read Urdu newspapers published in the city of Hyderabad – Siasat, Rahnuma-e-Deccan, Munsif, Rashtriya Sahara and Etemaad, this paper tracks the debate in the years post-Shah Bano and its nuances in the past few years to reflect on the fears of a minority community about getting dissolved in the majority identity through the aggressive agenda of the Hindu nationalists to bring in a uniform civil code and also on its communitarian urge to live up to the constitutional spirit of multiculturalism and to keep up the religiously sanctioned traditions.*

**KEYWORDS:** *Muslim Personal Law, Uniform Civil Code, Shariah, Constitution, Triple Talaq, Minority Rights*

*Received 23 Jan, 2021; Revised: 04 Feb, 2021; Accepted 07 Feb, 2021 © The author(s) 2021.*

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### I. INTRODUCTION

It is a well-known fact that after the famous Shah Bano case of 1985 the Muslim personal law became the focal point of the debate on the need to continue with personal laws and the prospects of a common civil code. Since this case, the Muslim personal law has time and again come under criticism for its provisions of Triple Talaq, post-divorce alimony and polygamy all of which, particularly the first two, have gravely affected women and have also been questionable on the constitutional grounds of equality before law (Article 14) and social justice. On the other hand, the Muslim clergy through their representation in the All India Muslim Personal Law Board have stood firm in their stand in favour of the personal law notwithstanding its problematic provisions and have strongly resisted any move from the state and any proposal from the civil society for reform.

Werner Menski comments that Uniform Civil Code will always be a distant dream and hence the state in India has been able to only achieve its ‘mirror image’ through reforms in different personal laws that will make them consonant with the Constitution.<sup>1</sup> These reforms and the consequent codifications were strategically planned and implemented with the intent of modernizing the personal laws without bringing them in line with the idea of legal uniformity and thereby preventing the dissolution of the individual identity of these laws. He also cites the minute attempts/changes that made a huge difference to the Muslim personal law. His main point is that the modernist ambition of bringing about legal uniformity in the matters where religion has dominated for a very long time is far from the reality of the system of law in India as the civil matters of marriage, family and inheritance assume a different legal understanding when viewed in the light of the religious scriptures of every prominent community and hence legal pluralism which coincides with religious pluralism in India is a particularity that is rooted in its history and tradition and cannot be overthrown to pave a way for some modern form of uniformity that Uniform Civil Code aims at. This is the same argument that the Urdu discourse has been trying to justify over the last three decades of the personal law versus UCC debate. To all the modernists that stand for legal uniformity under the supremacy of the Constitution, the discourse emphatically claims that the Constitution is very much a framework for sustaining a long-standing tradition of legal pluralism as well.

In fact, if the feminists and the liberal secularists and more recently, the Hindutva ideologues have invoked the Constitution for advocating the principles of gender equality and legal uniformity in their opposition

<sup>1</sup> Werner Menski, “Recent Debates in the Uniform Civil Code Debates in India”, *German Law Journal* 9, no. 3, (March 2008): 1-21.

to the system of personal laws, then the Urdu newspaper discourse has invoked the Constitutional principles of religious freedom, multiculturalism and protection of minority rights in its defence of the Muslim personal law. The discourse is selective in publicly endorsing only those Constitutional values that are significant in fostering an environment in which the religious minorities can live their cultural and legal traditions fearlessly. Constitution is the only ground where the discourse tries to find a legitimate voice for its campaign against either a uniform civil code or externally initiated reforms in the personal law of the community. The Constitutional principles of equality, freedom and justice are acknowledged, but at level of community rather than individual. Hence Articles 25, 29 and 30 are quoted as the basic foundations of the Constitution because they ensure the freedom to practise one's religion and promote and sustain the cultural practices of a community. The discourse indicates that the essence of the Constitutional sense of freedom and equality lies in these communitarian provisions where each community is free to practise its religion and traditions and no community will be discriminated against in this respect and personal law is an essential part of a community's religion and tradition.

## II. FEAR OF MAJORITARIAN DOMINATION

In 1986 a big legislative step was taken by the Indian Parliament towards the welfare of divorced Muslim women in destitution but it was the last of its kind of measure to codify the Muslim personal law.<sup>2</sup> Thereafter, the debate on the reform of Muslim personal law had become too entangled in the politics of identity and majority-minority conflict to widen the scope for any kind of positive change. Scholars who have explained the anti-change attitude of the leaders of the community and the *Ulema* in the matters of personal law have all argued that it is entirely a call for the protection of the rights of the Muslim minority against the cultural domination of the Hindu majority. In fact, the argument stands very well corroborated by several appeals made in the Urdu newspapers for non-interference in the Muslim personal law. Back in 1986 which was a year of political controversy over the Supreme Court judgement in the Shah Bano case and also over the proposal to bring into action the Uniform Civil Code, an article in the editorial column in the *Rehnuma-e-Deccan* alleged that the Shah Bano case was a drama that was deliberately staged to raise the issue of UCC and thereby make all efforts to absorb the Muslim personal law into the Hindu civil code which will subsequently subsume the civil codes of all the minorities.<sup>3</sup>

A vast amount of academic literature on the politics of the Muslim personal law has focused either on what it means to the struggle to achieve gender equality, or the identity conflict between the Hindu majority and the Muslim minority which this paper focuses on. The studies that tried to understand the intricacies of the matter tell us that personal law is more than a system of rules to be followed by Muslims in the matters of marriage, family and property; for them it is a very prominent symbol of their identity in a country where there are many factors that exert the power of the Hindu majority. While making this point, Granville Austin stated that -

*The discrepancy between the two religions regarding the importance of the personal law to their adherents would be of little matter in public affairs were it not for the desire of some militantly Hindu groups to employ it for political purposes – such as for winning elections and discrediting the Muslim community for not being truly “Indian”, indeed for being a foreign substance within the Hindu body that constitutes the “true” India. Under this stimulus, Muslims’ identification of themselves with Islam and the personal law accompanying it has been greatly intensified.*<sup>4</sup>

The Urdu discourse expresses the same concerns about the security of the Muslim identity and minority rights in this debate which were highlighted by the academia as the most pertinent reason for the community to resist change in its personal law and also resist a uniform civil code. On one hand the urge for legal pluralism and the need to respect it as a Constitutional principle resonates with the ideas of multiculturalism. On the other hand the discourse on this debate also remains embroiled in the struggle to define the distinct identity of Muslim minority whose continuity depends on symbols like personal law.

The Urdu newspapers from 1985-87 and the ones from 2016-19 show little discrepancy in citing an anti-minority agenda in the state's policy to either reform the Muslim personal law or establish a common code for the entire nation. When we look into the discourse of the late 1980s, we find that it targets communal forces

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<sup>2</sup> The government of India under the Rajiv Gandhi regime passed the Muslim Women (Protection of Rights on Divorce Act, 1986. Specifying a divorced Muslim woman's right to maintenance from her former husband, Section 3 (1) (a) states that, “a reasonable and fair provision and maintenance to be made and paid to her within the Iddah period by her former husband.”

<sup>3</sup> *Rahnuma-E-Deccan*. 18 July, 1986. 3

<sup>4</sup> Granville Austin, “*Religion, Personal Law and Identity in India*” in *Religion and Personal Law in Secular India: A Call to Judgement*, ed. Gerald James Larson. (Indiana University Press, 2001), 15.

prevalent in those times that influenced the state into anti-minority policies like the uniform civil code. And the contemporary discourse takes a direct dig at the government as it is led by a right-wing party known for its propagation of majoritarian Hindutva ideology. As already mentioned, while spotlighting the anti-minority agenda of some political forces in targeting the Muslim personal law, there is also an assertion of a unique identity and difference that the Muslims possess and that needs to be protected. Making the point about the uniqueness of the Muslim identity in India, *Rahnuma-e-Deccan* states that,

*Muslims are the only minority in the country to have kept their personal law distinct from the personal law of the Hindu community which subsumes in its fold other minorities – Sikhs, Jains and Buddhists.*<sup>5</sup>

*Personal law reflects the soul and character of the Islamic community and to interfere in it is to erase out the community.*<sup>6</sup>

*Why would various parties have so much sympathy for Muslim women regarding their rights in the personal law when no such sympathy was expressed on so many occasions of atrocities on the community since independence? The intention thus is not to improve the lives of Muslim women and stand for their rights but only to reform the personal law of the community.*<sup>7</sup>

Muslims might not look up to the constitution for debating on the individual rights because they see the Quran and the *Hadith* as the only reference points for it but the Constitution becomes the best platform to contend for their collective right to religious and cultural freedom. In the context of their liberty to practice their religious law in the face of the cultural domination of the majoritarian forces, they have constantly invoked the Constitutional provisions that are inclined more towards group rights than individual. The *Siasat* remarks -

*To follow and practice personal law is part of every citizen's fundamental right to religion....The constitution does not demand the enforcement of the uniform civil code on the religious minorities.*<sup>8</sup>

*Article 29 of the Constitution guarantees the fundamental right to protection of culture to the minorities and everyone knows that religion constitutes the most significant part of culture. Muslims are not only a religious minority but also a cultural minority and marriage, divorce, property and related matters which are all governed by personal laws are also part of the culture of a community. Hence each religious and cultural minority has a Constitutional right to the protection of its customs and conventions with regard to these matters that are covered by its personal law.*<sup>9</sup>

The above stated texts have been quoted from the Urdu newspapers in the years after the Shah Bano case, i.e. 1985, 1986 and 1987. Since those were the years of the Congress rule, the anti-saffron cries in the matter of Muslim personal law with great concerns about the vulnerability of the Muslim minority to the dangers of the Hindutva agenda were not as rampant in the discourse as they are in the contemporary years. The texts quoted below point to the Muslim distrust of the state-directed policy of justice through either the reform of the personal law or the enforcement of the uniform civil code because of the fear of forced assimilation in the saffron culture –

*The current government along with the RSS, through its interference in the Shari'ah wants to create a way for a Hindu Rashtra to build up.*<sup>10</sup>

*Presently, the main target of the saffron forces in their mission to create a Hindu Rastra is the Muslim community.... Even before independence these forces tried to ruin the Muslim culture.*<sup>11</sup>

*The groups holding the saffron ideology should not forget that they are not the only people of this country. Throughout its history, the country has had people of different religions, castes and communities living in it.*<sup>12</sup>

*The central government of the BJP led by Prime Minister Modi is now showing a lot of interest in the rights and welfare of Muslim women only to intervene in the community's personal law and impose a uniform civil code on all the communities...If the BJP really cared so much for the Muslim women and was sincere about justice to them, then what was it doing when the rioters in Gujarat in 2002 widowed and killed so many women?*<sup>13</sup>

<sup>5</sup>Syed Moinuddin Qadri, "Yaksaan Civil Code Bill Ki Peshkashi Ka Elaan Aur Muslim Khiyaadat Ki Zimmedariyaan", *Rahnuma-e-Deccan*, August 25, 1986, 3.

<sup>6</sup>"Muslim Personal Law Aur Hamaari Zimmedariyaan", 6. Islamic community in India has been referred to as *Millat Islamiya* which is a term also used to refer to the Islamic community across the world.

<sup>7</sup> *Rahnuma-e-Deccan*.

<sup>8</sup> "Yaksaan Civil Code Ki Tadveen Aur Dasroori Mukhaf", *Siasat Daily*, January 19, 1987.

<sup>9</sup> *Ibid*.

<sup>10</sup>Syed Wahajuddin Hashmi, "Kya Zafraani Hukumat Ko Waqi Musalmaano Ke Masaail Se Hamdardi Hai?" *Munsif Daily*, April 15, 2017.

<sup>11</sup> *Ibid*.

<sup>12</sup> *Ibid*.

<sup>13</sup> "Muslim Khwateen Se Hamdardi", *Siasat Daily*, April 23, 2017, 5.

*The existing BJP government and various non-governmental organizations are trying to turn Muslim women against the Shari'ah in the name of women's rights....The Hindu leaders should first look into the conditions of their own women instead of caring for the rights of Muslim women....The only way the community can protect its personal law against the attempts towards the uniform civil code is by a collective effort.*<sup>14</sup>

The above texts drawn from the articles from chosen Urdu newspapers published in 1985-86 and 2016-17 show very similar overtones of minority insecurity and opposition to the idea of hegemonic integration of religious/cultural differences into a single fold which would implicitly represent the majoritarian culture that they see underlying the policy of reforming the Muslim personal law and establishing a uniform civil code. They also speak of the need of the Muslim community for the state interference in all matters other than religion and culture. It sees deprivations in the areas of employment & educational opportunities, security, social status and dignity. While for the community, its cultural deprivations have been caused by the lack of adequate social recognition of its religious faith and cultural practices, for the critics of the Islamic law on the other hand, religion and culture of the community are the sources of deprivation of the basic human rights that the modern liberal politics stands for.

The current debate in the Urdu print media is more heavily tilted towards the majority/minority conflict and further imbued with the fears of saffron agenda and its threat to the religious/cultural survival of Muslims. Suggestions from the government to bring up a uniform civil code and abandon the "unconstitutional provision" of triple talaq are snubbed as nothing other than the conspiracy to weaken the community and cover up the acts of crime and violence committed against Muslims in earlier decades which the ruling party and its ideological partners are said to have committed. The women's rights' rhetoric is what the discourse believes to be an effective garb in which the BJP and the Sangh parivar most comfortably carry out attacks on the symbols of the religious identity of the Muslim minority.

Quoted below are the relevant texts from the discourse on the Supreme Court judgement on Triple Talaq –

*It is true that in the eyes of law all Indian citizens are the same but every community's personal law is different and the right to rule a personal law or the court's right to interfere in a personal law is not valid.*<sup>15</sup>

*Ever since the BJP came to power, it has been trying to bring up a uniform civil code for the whole country but because it realized that this dream is difficult to achieve due to the internal diversity of the majority community itself, it started to resort to reforms like abolition of Triple Talaq as a way of interfering and tampering with the personal law of the Muslim community.*<sup>16</sup>

*Talaq-e-Biddat is fundamentally a matter of the Islamic law and of Muslims. Only Muslims have a right to decide or not decide on this matter.... The All India Muslim Personal Law Board itself has opposed the practice of Triple Talaq and has suggested a social boycott of all those men who have resorted to it.*<sup>17</sup>

*The traditional practice of Triple Talaq among Muslims is a serious issue and there is scope for discussion on it from a legal as well as religious perspective. But there should be no politics on this issue.*<sup>18</sup>

*If the decision that has come from the Supreme Court on Triple Talaq had been taken within the community, then there would have been no need for the apex court to interfere in the matter....In the light of this decision the communal forces can try to bring up and enforce the uniform civil code....However, the Supreme court has also clarified that there can be no tampering with any community's personal law...This is the significant aspect of our legal system where every community's personal law is guaranteed protection and this is what is the beautiful face of India...The Supreme Court has done what the Ulema could have done. Unfortunately, now the Shari'ah has come under a scanner.....Uniform civil code is not possible because of the massive religious and cultural diversity of India.*<sup>19</sup>

<sup>14</sup> The *Siasat Daily*, Sunday Edition, 16 April 2017. 5.

<sup>15</sup> Abdul Jabbar, "Muslim Personal Law Me Kisi Bhi Qism Ki Mudaakhalat, Nakhaabil Bardaasht (Any Kind of Interference in Muslim Personal Law is Intolerable)", *Munsif Daily*, Nuqoosh, September 17, 2017, 2.

<sup>16</sup> Rashiduddin, "Ya Rab Dil Muslim Ko Who Zinda Tamanna De (O Lord, Give Muslims that Lively Aspiration)", *Siasat Daily*, Sunday Edition, August 27, 2017. 1

<sup>17</sup> Masoom Muradabadi, "Talaq Salaasa Par Siyasi Jang Ka Faateh Kaun (Who is the Winner of the Political Battle on Talaq Salaasa?)", *Etemaad Urdu Daily*. 27 August 2017.

<sup>18</sup> Shakeel Samdani, "Is Zehmat Ko Rehmat Me Badal Sakti Hai Muslim Leadership (This Trouble can be Turned into a Blessing by the Muslim Leadership)", *Roznama Rashtriya Sahara*, August 23, 2017, 9.

<sup>19</sup> Syed Faisal Ali, "Mohtaram Nahi Jaage", *Roznama Rashtriya Sahara*, August 27, 2017, 5.

*The Supreme Court's judgement is welcome because apart from banning Triple Talaq it has also ruled that there can be no tampering with any community's personal law as it is part of each community's religious freedom to follow their personal law and bring about any changes in it.*<sup>20</sup>

Quoted below are the texts from Urdu newspaper editorials regarding the Triple Talaq ordinance that was passed in the Lok Sabha in December 2018 –

*The Supreme Court in August 2017 ruled that Triple Talaq was unconstitutional and also suggested some legislative measure to make this judgement impactful. This was then a hint that the intention of the government was not right and that it wanted to deliberately put Muslim men into jail and thereby fulfil its anti-Muslim agenda...In the name of Muslim women's empowerment, the BJP is only trying to provoke them against the Muslim personal law and destroy Muslim households....If the government genuinely wants to empower Muslim women, then why can't it educate them, provide employment opportunities to them and deliver justice to women who lost their loved ones in riots?*<sup>21</sup>

*The Triple Talaq bill is an intrusion into the Islamic law which is not acceptable to any Muslim man or woman. Any Muslim who accepts it will no longer remain a Muslim.*<sup>22</sup>

*The BJP very cleverly gave its political colour to this issue by standing along with Muslim women affected by Triple Talaq in their fight for justice. With this action, the BJP stepped into the homes of twenty crore Muslims like an uninvited guest and that's how their personal matter became a national issue with the help of the puppet media....Islam and the Shari'ah were being made the targets of criticism. All this happened through a planned conspiracy....Today our identity has become an issue....Today conditions are such that Muslims have to fight the battle of their identity on their own. Ulema should in unity resist all the conspirative attacks on the Shari'ah and familiarize the community with the current political and social conditions.*<sup>23</sup>

All these texts show mixed responses in the discourse to the judgement of the Supreme Court to declare Triple Talaq unconstitutional. They do acknowledge that Triple Talaq is unfair and to curb this practice is the need of the hour. At the same time, while appreciating the Supreme Court's decision which was long expected to come from the traditional leadership of the community, they also express a deep discomfort about how this ruling could exhort the Hindu nationalist BJP regime to take legislative actions that will jeopardise the existence of the Muslim personal law and consequently the identity of Muslims as well.

As long as the Hindu nationalist forces are involved in the program of unifying all religious communities under a common civil code, Muslims would always want to protect themselves and their personal law against what they perceive as cultural homogenization. This is the idea implied in the contemporary discourse which is undoubtedly entangled in the politics of majority/minority conflict where the struggle is to constantly voice the rights of an endangered minority against the hegemony of communal forces.

### III. RIGHT TO CULTURE

Taking the discourse out of the context of the politics of identity, one would find a struggle of another kind – struggle to establish the idea that the life of every community is composed of beliefs, rituals and traditions that carry meanings which are understandable only within the cultural context of the community and not when some abstract principles are invoked to understand them. And thus, this interest in sustaining the personal law is rather 'communitarian' than 'communal' and it need not always be pitted against the communal majoritarian forces. The communitarian appeals are often addressed to the liberals who advocate rights of the individual against the diktats of the state or the community.

The conflict between rights of the individual and interests of the community is overtly articulated in the *Munsif* while discussing the same debate. In this editorial discussion the fundamental rights, particularly the ones that pertain to the liberties of the individual are directly condemned for being used by the media to endorse the campaign of women's rights activists and liberals against the unjust provisions of the *Shari'ah*. It clearly explains its stand that fundamental freedoms like freedom of thought and expression, if not restricted, can go to any extent and take a toll on the religious practices of a community. The text that makes this point is quoted below –

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<sup>20</sup> Israr-Ul-Haq Qasim, "Talaq Par Adaalati Faisla Aur BJP Ki Siasat", *Roznama Rashtriya Sahara*, August 29, 2017, 5.

<sup>21</sup> Zaheer Ansari, "Talaq Salaasa Bill Muslim Khwateen Se Hamdardi Nahi", *Munsif Daily, Nuqoosh*, January 6, 2019, 7.

<sup>22</sup> Mufti Muhammad Mustafa Abdul Khadoos Nadvi, "Teen Talaq Bill Ek Challenge Aur Fitna", *Munsif Daily, Minarenoor*, January 25, 2019, 7.

<sup>23</sup> Miraaq Mirza, "Ilma-e-Deen Aur Muslim Samaaji Kaarkanaan Ke Liye Challenge", *Roznama Rashtriya Sahara*, January 14, 2019, 7.

*They (fundamental rights/Buniyaadi Huqooq)) are very vaguely defined. For instance, freedom of thought could mean freedom to express one's views. But what are its limits? Without limits, it will turn into freedom to express as one wills.... Today some Muslim women are opposing Talaq Salasa for violating their fundamental rights. Tomorrow someone from the community can go to court and complain that five times prayer adversely affects his business and hence it is a violation of his economic rights. One can dismiss Roza on the grounds that it violates the right to food and health.*<sup>24</sup>

This text is a very apt illustration of how a religious community is mocked and disrupted when the abstract liberal ideas of individual rights and freedom are applied to the understanding of its traditions and rituals. The article also says that such a tendency to use fundamental rights to argue against whichever religious commands that do not suit one's interests would weaken the individual's conformity and connectivity with his/her religion. The other major point that the article makes is that the rituals and traditions of a community, especially those that are derived from definite religious scriptures are not always compatible with the liberal rights of the individual and where there is a conflict between the two, it would be naive to expect that they can be taken together with justice to both. Religion inherently consists of rules and principles that demand immense restraint on one's behaviour in every walk of life including private intimate spheres. The pursuit of any one of them requires that the other be forgone or compromised. However, as the text quoted below also suggests, religion accommodates restricted freedom which will enrich an individual's life but fundamental rights that thrive on the liberal idea of freedom can do no such justice to religion and thus to the individual's life as well -

*If you have chosen religious law and knowledge as the path to live your life, then it is obvious that freedom or fundamental rights have little meaning when faced with religious law and knowledge...In religion there is no unlimited freedom. If you have chosen the path of religion that imposes several rules of behaviour, then you have to let go of freedom that is given by fundamental rights because unrestrained freedom and rules can never go together....Those who want to walk the path of fundamental rights should give up on religion...Those who have accepted religion will also accept as much freedom as is permitted to them within the religion.*<sup>25</sup>

Raising questions about the bias and insensitivity of the courts in dealing with the cases of Muslim personal law, the article makes the following statement -

*When the courts ignore the unfair and unjust practices/rituals of other communities that don't even have a religious basis or validity and cite their age-old existence and religious sentiments attached with them as reasons for doing so, then why can't they respect the religious sentiments of the second largest majority of the country attached with their personal law? The courts never say that the Shari'ah is fourteen hundred years old and that they cannot turn a blind eye to this reality. In this regard, they don't even invoke Articles 25 and 26 of the constitution that entitle every citizen to practise and propagate their religion.*<sup>26</sup>

It is thus apparent that the discourse perceives personal law as every community's inherited tradition, not different from the other rituals and traditions of the community which the Constitution seeks to protect as an individual's right and a group's right to religion. And the identity of a community constituted by various religious/cultural factors including personal law is considered to be far larger than the identity of the individual. The unfair rituals mentioned in the text are references to the practice of *Jalikattu* which recently fell into a controversy with the animal rights activists in the Supreme Court; and also a practice in the Jain community to fast incessantly for days together. The question raised here is why Muslim personal law cannot be treated on equal terms with these other practices which the state tries to understand and respect as socially and religiously established traditions regardless of their negative implications for the fundamental rights of the individuals and other creatures. This is not just a question of a minority community whose religious/cultural rights are getting neglected. It is also a communitarian question that could be raised by any community when any of its cultural practices is first criticized and later curbed for impeding the exercise of basic individual liberties.

For the ones who see either of the two policies, i.e., uniform civil code and reform of personal laws as a modern-liberal solution to the problem of injustices inherent in the personal laws, the other answer that the discourse offers is that there is no modernity or progress in erasing out the separate identities of the minorities. It warns of the subversion of the Indian secular and democratic state at the hands of communal (*firkha parasth*) forces and reminds the liberals that modernity is also about tolerating differences and welcoming diversity; that without protecting and respecting the identities of the minorities, the country's secular and democratic ideals are

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<sup>24</sup> Maulana Khalid Saifullah Rahmani, "Muslim Personal Law Aur Khwateen Ke Haqooq", *The Munsif Daily*, November 25, 2016.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

far from realization. An article in the *Rahnuma-e-Deccan* declares that an essential characteristic of any democracy is the religious freedom that every religious community is entitled to and another integral feature of a democracy (*jamooriyat*) is the policy of promoting welfare of its religious minorities.

*“Democracy stands on the faith and trust of its religious minorities.”<sup>27</sup>*

Multiculturalism, cultural pluralism and legal pluralism are oft-repeated theories in the academic discourses on personal law/uniform civil code debate and the same theories have been reverberating in the Urdu newspaper discourse through its persistent demand that personal law of any community be treated as a personal matter of the community where any outside intervention is equal to an impediment to the community’s freedom and autonomy. They have also reverberated in the idea that in a religiously and culturally diverse country where differences of beliefs and rituals exist not only between the communities but also within the communities, a uniform civil code as a substitute for multiple customary laws is unviable and to make it happen is to cripple the constitutionally established multicultural democracy with the cultural hegemony of the dominant forces.

The discourse of the newspapers in this debate rejects the vision of a society having a uniform legal system that actually contains all the potential to exert the values of the dominant community depicting them as the values of the nation and instead asks for a society where each community can celebrate its culture without any insecurity. Its distrust of the uniform civil code becomes all the more intense in the present political situation as highlighted in the discourse. Considering the ruling BJP as the flag bearer and the face of Hindu nationalism, Muslims, as the discourse suggests, now see any external move to reform their personal law as deliberately orchestrated by the saffron forces who are out to ‘Hinduize’ the nation. Thus one of the insights that can be drawn from the discourse is that the communitarian concerns, despite being equally important to all the communities cherishing their distinct culture and desiring to keep it always alive can anytime merge into a conflict of majority and minority interests due to the politically volatile inter-communal relations.

It is also interesting to note that in its minority-centric response to the liberal advocates of legal uniformity, the discourse takes a selective view of the constitutional provisions covering religious and cultural liberties. To justify its demand for the continuity of personal laws it chooses to not only invoke Art. 29 which pertains to cultural rights of distinct groups, but also use Art. 25 which in no way refers to community rights and rather stresses on the individual’s right to his/her belief and conscience and practise the same. The Constitution is depicted as the supreme law promising cultural autonomy to communities and protection to minorities. And the liberal demands of the Constitution for the freedom, autonomy and equality of the individual citizens are completely out of the view. In fact, the conditions in which the bill on triple talaq was finally passed into an act in 2019 have further marginalized the liberal concerns of liberty and equality of individual citizens and the feminist concerns of gender equality and justice and brought exclusively to the core of the discourse, the identity conflict between the Muslim minority and the Hindu majority. The second time victory of the Hindu majoritarian party in the 2019 general elections after a good amount of communal campaigning, quite a few incidents of mob lynching of Muslim men during the months after this victory, quick passage of the triple talaq bill by the Parliament and scrapping of Article 370 immediately after the triple talaq act are some factors that make women’s rights perspective and liberal critique almost irrelevant to the current Urdu newspaper discourse on personal law and uniform civil code and the minority rights perspective the only one to drive it. Though the discourse on the triple talaq law appeals a little to the issues of women’s rights, it does not give enormous attention to it as it has given to the issues concerning the survival of Muslim minority in a new India that is rapidly falling into the ideological fold of the BJP regime. Discussions about the triple talaq law in the discourse talk about a range of issues that explain the difficulties of being a minority that is the sole target of the hate campaign of the majoritarian forces in state power. The discourse in question that now perceives every step from the government for reform in the community as a political conspiracy against a long antagonized minority is highlighted below –

*This bill could not have been passed by Modi on his own initiative. It happened at the behest of the RSS....The plan of the RSS is to dissolve their (Muslims) religious identity and prevent them from following Islam by intruding into their Shariat. Their interference in the Shariat will not be confined to triple talaq, it will extend to all other provisions one after another till the entire law is absorbed.... This bill is not only unjust to women but is also a conspiracy to ruin Muslim families.<sup>28</sup>*

*What makes this law difficult for many, particularly Muslims, to accept is the fact that it has come from the BJP...This will no doubt be used for creating further animosity between Hindus and Muslims....It is a known fact that the government is eager to bring in a uniform civil code after which all the different communities will lose their personal laws.<sup>29</sup>*

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<sup>27</sup> Majeed Bedaar, *Rahnuma-e-Deccan Daily*, October 24, 2016.

<sup>28</sup> Talaq Salaasa Bill Ki Manzoori: Musalmaan Kya Karein?” *Siasat Daily*, August 4, 2019, 5.

<sup>29</sup> Muhammad Akram Nadvi, “Teen Talaq Ke Bill Ki Manzoori Aur Musalmaan”, *Siasat Daily*, August 6, 2019, 5.

The BJP and saffron groups have no sympathy for Muslim women nor do they intend to do justice to them. Their main target is the Islamic faith and law.... They feed on the idea that every person born in India is a Hindu and thus everyone should adopt the Hindu culture and Hindutva. Right since their inception, their only objective has been to somehow gain political power and thereby spread the saffron (Zaafraani) ideas across the country and put an end to the secular character of the Indian Constitution.<sup>30</sup>

Taking advantage of the majority that they enjoy presently in the parliament, they want to use Talaq Salasa to dissolve Muslim personal law and establish a uniform civil code. They aim to abrogate Article 370 and in the name of women's freedom and equality, abolish purdah; turn Muslim women against the Shariat by raising the slogans in favour of their free entry into mosques; stop the tradition of Azaan; conquer the historical mosques by giving them different names; curtail the freedom of running religious institutions that the Constitution guarantees; end the Islamic identity by taking away religious freedom; stop the promotion of religion and thus render the coming generation irreligious. In the same way through their new education policy they want the new generation to imbibe saffron ideas. Through mob lynching in the name of Gau-Rakhsa, they want to convey the message to Muslims that if they want to live in India, they have to live as Hindus only...The issue is not about how Muslims can live here; it is about whether they can live here as Muslims or not.<sup>31</sup>

To divert attention from other more significant issues, the issue of triple talaq is being magnified, using the media in such a way that it is becoming apparent that triple talaq is just a way to impose a uniform civil code in the country.<sup>32</sup>

The fundamental reason for bringing up the triple talaq bill was to intrude into Islam and gain the support of Muslim women in passing the bill so that divorce becomes difficult and women are forced to live at the mercy of their husbands and marriage which is a contract in Islam ceases to remain so. In this way the family life as prescribed by Islam will be drastically affected and Muslim culture will be besieged.<sup>33</sup>

Ever since the BJP came to power, the minorities have been living in fear....Instead of caring for real issues like unemployment, it has been using the issues of cow protection, mandir/masjid and triple talaq for dividing Hindus and Muslims and consolidating the Hindu vote....This bill will be disruptive to the Muslim society because the purpose with which it was introduced and passed will not be confined to triple talaq but rather in the name of women's rights, control on the birth of children and number of marriages one can have could also be insisted upon....Before this act is misused for political reasons, precautions need to be taken. It is the responsibility of the people running mosques to send out a clear message to the community that pronouncing talaq thrice in one instance is not allowed in Islam.<sup>34</sup>

The intention behind the propaganda of the government and the media against triple talaq is not to protect Muslim women's rights but to target Muslims and the Islamic law so that their homes are destroyed and the non-Muslim women who are taking interest in Islam and trying to know it are stopped from doing so.<sup>35</sup>

It is evident from the latest discourse on the law on triple talaq as mentioned above that today personal law for a minority community like Muslims is hardly a matter of debating women's rights. It is a matter of guarding a community's religious faith and sacred law but most importantly of desperately ensuring the survival of its identity vis-a-vis the government that represents and promotes a majoritarian vision. The hate campaign of the government against Muslims that the discourse underscores in this particular legislative measure and links with other issues like Article 370, UCC and beef ban has made every question that is often raised with regard to personal law irrelevant except for the fears of the minority about its rights and survival of its identity.

The problem is that in defending and promoting a community's culture, the individual is the victim who is denied the right to choice. Choice is free for the community but hardly available for the individual. Bhikhu Parekh and Gurpreet Mahajan have at large dealt with this problem of tussle between Multiculturalism that stands for cultural diversity and liberalism whose focal point is individual liberty.<sup>36</sup> They have pointed out that multiculturalism in India and elsewhere has given public recognition to cultural and religious minorities through special community rights and such a recognition is justified because it protects them against cultural

<sup>30</sup> Muhammad Naseer-ud-Din, "Talaq Salaasa Bill Ki Manzoori, Naye Challenges Ka Nukhta Aaghaaz", *Siasat Daily*, August 11, 2019, 7.

<sup>31</sup> Ibid.

<sup>32</sup> "Teen Talaq Toh Bahaana Hai", *Rahnuma-e-Deccan Daily*, August 7, 2019, 3.

<sup>33</sup> Iqbal Ahmed Engineer, "Kya Ye Khamoshi Ki Zabaan Khalb Ko Bilaakhir Tashkeer Karlegi?", *Munsif Daily, Nuqoosh*, August 4, 2019, 2.

<sup>34</sup> Muhammad Najeeb Qasmi, "Teen Talaq Bill, BJP Ka Siyaasi Hathkanda", *Munsif Daily, Minarenoor*, August 2, 2019, 4.

<sup>35</sup> Ahmed, "Personal Law Board Aur Opposition", *Munsif Daily, Nuqoosh*, August 11, 2019, 2.

<sup>36</sup> Gurpreet Mahajan, *The Multicultural Path: Issues of Diversity and Discrimination in Democracy* (New Delhi: Sage, 2002).



homogenization by the majority and guarantees every individual a rightful access to his/her culture but on the other hand it has also led to the validation of some illiberal practices that impinge hard on the basic liberties of the individual. Gurpreet Mahajan also specifies that special community rights tend to freeze the identities of the individuals and allow the communities to impose every cultural practice on their members. She thus suggests what she calls a ‘non-conformist membership’ of the communities that gives each individual the option of following their culture in the presence of other cultures and also lets them abstain from some practices without getting ostracized.<sup>37</sup> To quote her –

*All identities are subject to construction and reconfiguration. Effectively this means cultures and communities are, in a manner of speaking, under-determined, for the practices and institutions that constitute them are themselves changing. Consequently, special rights have to be structured in a way that takes cognisance of this under-determined nature of cultures. Instead of conceiving them as measures that enable communities to protect their culture, they must, instead, be designed to give individuals the choice of carrying on with a given way of life, if they so desire. What needs to be promoted and valued through them is, what I have called, a non-conformist membership.*<sup>38</sup>

These options that sustain the individual’s freedom of choice are in no way suggested by the discourse analysed in this paper. The discourse calls upon the Muslims in the country to be united in the struggle against homogenization but at the same time also forbids them from looking any other way than Islam in building their conception of good life. As the question of women’s rights has been most prominent in the national debates on the Muslim personal law, the discourse constrains women’s freedom of choice to move out of the community for seeking the privileges of the secular law.

#### IV. CONCLUSION

It is clear from the discussion that Muslims of India have been represented in the Urdu newspaper discourse as a community inextricably attached to their personal law notwithstanding external criticism and internal acknowledgement of the injustices that some practices like Triple Talaq have been causing to women. The discourse since the Shah Bano case has consistently demonstrated an anti-change attitude which is based on different ideas and arguments. The resultant picture of the discourse is that of a perception in which community rights stand above the individual rights and gender justice and women’s freedom in the domestic sphere are matters to be viewed in the light of the sacred law of the community rather than the secular law of the state. The minoritarian fears about cultural homogenization of the community under a uniform civil code have undermined the significance of the existing, though hazy, qualms about the lack of interpretive flexibility regarding the sacred canons and the need to bolster robust dialogues within the community on some controversial practices.

The case that the discourse makes for multiculturalism while defending the Muslim Personal Law is propelled more by the need of the community being a minority to survive the cultural tyranny of the majority than by the liberal principles of toleration and individual freedom of choice to practice one’s religion and culture. The much-needed social structure of multiculturalism or cultural pluralism to recognize the distinctive identities of minority groups and the historical injustices done to them was purposefully created by the Constitution which the Urdu newspaper discourse highlights as its fundamental feature. But when some cultural practices like those legitimated by personal law are condemned for violating individual rights, rights that are equally guaranteed and valued by the Constitution, then despite presenting a bold defence of Islam’s liberal spirit as an answer to the liberal critics, the discourse has been more inclined to invoke the minority rights narrative against the Hindu right-wing critics because their threat currently looms larger.

The question of possibility of exercising individual freedom of choice while also sustaining the culture of a community and thus balancing between community and individual rights is losing its significance as a debatable topic in a social set up where a community’s identity is rigidly defined not only by its cultural practices but also by its status as a dominant majority or oppressed minority in relation to the ‘other’. Therefore, in the intense and never-ending battle to keep up the religious traditions of the community and the deepening majority/minority identity conflict, the liberals standing for the constitutional right to equality and freedom will find it hard to find a place for themselves in the debate.

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<sup>37</sup> Ibid, 215.

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