Hyperglobalization’s casualty: the numerical small.

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This paper consists of three parts. First, it outlines some theoretical problematics in re-thinking the standard accounts of globalization in the light of criticisms stemming from postcolonial theory, especially as these impact on the relation between transnationalism and ideology, particularly in respect of the re-emergence of religion as a national force. Part II draws on two of Arjun Appadurai’s works on some of the issues raised in Part I to engage more centrally the thesis of ‘delocalised postnation’ and the disjunctures this is said to create within hitherto innocuous patterns of globalization. While in his earlier work, Modernity at Large (1996), Appadurai exuded a celebratory tone on the prospects of globalization, in his more recent short work, Fear of Small Numbers (2006), he has advanced a more critical reading and analysis of the malaise of what I refer to as hyperglobalization, particularly in the context of a modernizing South Asia. In the third part, I put to test this carefully crafted argument in the context of the positioning of Muslims in India (and elsewhere in the subcontinent); but more particularly in the Hindu Right’s (Hindutva) response to the persistence of the hitherto uncodified Muslim Personal Law (a subset of specialized body of law based on Islamic fiq, Shari’at and Anglo-Mohammedan law devised during the British Raj) which governs Muslim family and civil life (marriage, divorce, maintenance, inheritance, property succession, adoption, etc.).

Part I: Globalization, Postcoloniality and Religion

One of the radical interventions in thinking on the already marked tension within the discourse of globalization/localization, universalism/particularism is that of postcolonialism. Postcolonialism takes as its starting point the parallel equation, homogenization and heterogenization in its concreteness and the several disjunctures, differentiations – more than mere fluidity, invariance and admitted inconstancy – which it wants to bring to the fore by working through colonial history from as it were the erased space of the indigenist, the native consciousness of its own condition. Its criticism is directed at both the euphoria surrounding ‘globalization’ (or globality – doesn’t matter what kind of modernity is at large, Western or Eastern or ‘general’), and at the earlier Wallersteinian-Albrowian convergence framework. The homogenized, world-making transformation of Gemeinschaft ‘community’ to Gesellschaft, ‘world systemicity’1 by way of the gradual internationalization of economic instrumentalities and social-political institutions under the imperative of capitalism, and increasingly the

communication/transportation revolution, to give rise to the spatial metonym of ‘whole world’ (world-as-a-whole-system). It argues that neither process sufficiently accounts for the cultural, social and psychological conditions and consequences of what is too often seen as a unidirectional movement, of one dominant global social reality, usually Western, spreading to civilize or encompass non-Western cultures.

To be sure, more recent theories in sociology, such as by Robertson\(^2\), Piertese and others, have acknowledged that the either/or debate about global homogenization versus heterogenization is too limited and should be transcended, for “both of these tendencies have become features of life across much of the late-twentieth-century world”\(^3\), that is to say, the dialectic – in which the local is a ‘micro’ manifestation of the global - is now part of world history, a reality from which we can but hardly walk backward. ‘Where... is home in the late-twentieth century?’ Robertson asks rhetorically, observing that cultures are no longer as organically binding and sharply bounded as once thought to be, nor that the West alone is in the business of globalizing its culture: there are newer global cultures being formed that are poised to compete, if not come into sharp confrontation or ‘clash’ (*a la* Huntington) with the Euro-American world modernities. One could talk of ‘multiple modernities’ and the civilization of *clashes*.\(^4\)

Postcolonial writers on the other hand are less sanguine about the need to ‘transcend’ this binary than to deepen it and problematize it in ways that would continue to question (1) the apparent political neutrality of the thematics of the ‘global-local’ alongside the much-touted distributive benefits of goods resulting from economic globalization with dispensable or cheaper labour traversing across nation-state boundaries or even local nationalisms. And (2) the essentialization of history and ‘general modernity’ as givens that undergird much of the preoccupation with globalization as globality - in Giddens’ sense of the structuration as the compression of time-space distanciation, or the interweaving of social realities that are “at [a] distance” *with* local contextualities,\(^5\) and as the inexorable *status* toward - however unstable – ‘world society’, in common parlance, ‘global village’, or, if you will, *global totality*. Giddens is more optimistic about this new phenomenon and does not agree with the ‘sceptics’ who see

\(^{2}\) Robertson, 1994, 53-57.
\(^{3}\) Piertese, 1995: 27.
\(^{4}\) See *Daedalus* Winter 2000, vol 129 No 1, issue on ‘Multiple Modernities’ in references. ‘Civilization of clashes’ is from Appadurai, *Small Numbers*, pp 18.
\(^{5}\) Giddens, 1991:22, in Robertson, 1997:27. also Featherstone
globalization as fundamentally a continuation of patterns of capitalist exploitation begun in the last two centuries, albeit on a global and glocal scale.⁶

A second problem concerns the difference between ‘transnationalism’ and ‘globalization’. Often these two processes are run together. I want to underscore a distinction by pointing to two distinct developments. (1) Transnationalism as the three interwoven “flows”⁷ of people (transnational migration, mostly to fulfil labour needs); institutions (systems, structures and information germane to modernity); and capital (trade and investment), which has as a longer history enabling during colonial times the creation of semi-autonomous bounded states (if not the ideology itself of nation-state and nationalism) which the imperial powers could control and administer; (2) Globalization on the other hand, has a more recent history (as noted earlier), specifically aimed at addressing excessive protectionism and trouble inside nation-states that hinder or obstruct transnational and multinational flow of capital and institutions.

One of the threats that this globality is apprehensive of, apart from organized unionism arguing for uniform labour standards is the escalation of ethnonationalism and ethnic conflicts, increasingly sweeping nation-states, and exacerbated by transnational (voluntary and refugee) immigrants and with their long-distance political interventionist activities. So-called pluralist (mostly Western) societies attempted to incorporate migrants variously through policies of, what Tambiah has described as, ‘assimilation, exclusion, and integration’, with the addition of ‘multiculturalism’.⁸ But this has led to the intensification of the ‘politics of identity, difference, and recognition’⁹ which the stronger communities utilize in maintaining their social and religious distinctiveness. The current trend, as a response to the apparent ‘ethno-ghettoization’ it involves or entails, has been to iron out these policies toward a more inclusive neo-liberal civil society model that tolerates difference and diversity; but as with all homogenizing ideologies it demands subservience and common uniform allegiance to the symbol of the (be-token) state, where the state itself is now one particular (player) in a larger universal (the language-game).

⁷ Stanley Tambiah speaks of the “flows” of people, capital, and information (in Daedalus Winter 2000: 163). I have modified the description somewhat.
⁸ Tambiah 2000:167
In other words once directed against the forces of imperialism, nationalism, ‘as the project of a people’s right to self-rule, has become the legitimising creed of modern state’s claims to authority’.\textsuperscript{10} And the state can also travel, or move across cultural and religious borders to impose its brand of modernity in a supposed good-Samaritan act, but the underlying motivation is invariably economic. The potential of globalization, as a form of universalism (the impersonal emperor) to as it were swallow up and flatten the particularities of transnational and the related internally-motivated pluralization process, or ‘multiculturalism’ (which too is eventually expropriated as a policy within the homogenizing equation). This, of course, is one perspective, which Giddens would characterize as stemming from the ‘sceptic’ camp. Were the whole world coming closer to being a ‘global village’ then we would not need be concerned about Baudreillard’s caricature of the Disneyesque simulation or feigning of a Hollywoodish Universal City with only a touch of the local displaced theatre or particularity of the diaspora influx. Think of the disassociated Gucci-sporting collective and diasporic imaginary of the well-heeled cadets in the Call Centres and IT enclaves in cities such as Bangalore, Hyderabad, and Delhi, working night hours which are virtual day-hours in North America or Europe.

Women bear the larger burden of the rage for globalization. In India, as in many developing countries, women have remained the marginalized section of the society and suffered from countless inequities. With the burgeoning economy they face increasing competition from their male counterparts. While it is true that more women are entering the middle range educational and employment sectors and gained exposure to the global network, the vast majority remain disadvantaged and locked into the depraved agricultural sector which has traditionally offered them informal or casual work.\textsuperscript{11} Furthermore, as Bharati Ray observes, ‘the economy, strained to the utmost under the challenges of globalisation, is unable to bear the burden of necessary health-care and educational expenses. The weaker sections, especially women, are thus denied basic physical care they deserve’.\textsuperscript{12}

\textsuperscript{10} Rudolf Heredia, ‘Many nations, many religions Religion has a crucial role in creating a national Identity’, ‘The Hindu’, (Magazine), Monday December 3, 2006, p 1.
\textsuperscript{11} Ray, 2003: 3.
\textsuperscript{12} Ibid, 4.
PART II (a)

There are, however, other scholars, like Arjun Appadurai, who believe (or rather believed with some qualifications) that transnationalism and globalisation, especially with the rapid growth of instant communication and long-distance information exchange and travel technologies, go hand in hand. Furthermore, that these twin-processes actually work together to the advantage of social transformation and newer formations, by creating the necessary conditions for the emergence of replacement local cultures, hybrid identities, and borderland political groupings, extraterritorial loyalties, etc., all of which erode away at modernity’s ideology of the nation-state with its narrow, defensive boundary or territorial mentalité. The porousness of the boundaries both permits transnational migration and allows diaspora communities to transplant fragments of the dissipating or dispersed ‘home countries’ (real or imagined) in their new or adopted vestibule of the ‘melting-pot’ (i.e. communities as ethnoscapes). As Tambiah notes, “[S]ome theorists even go so far as to assert that diaspora communities find themselves in a “deterritorialized” situation and state of mind.’

In fact under this most recent trend of globalization even transnationalism begins to take on different nuances: as when we speak of transnational corporates (TNCs), (Monsantos, News Media, MacDonalds), TNT (transnational transport) (Meryl Lynch, Federal Express, British Airways, Uniliver, Coco-Cola, Wal-Mart, Kmart, Procter and Gamble, Colgate, Pepsi, Nestles), transnational institutions (IBM, Microsoft, IT giants, and western universities) and transnational treaties (WTO, GATT, GATS, etc.). These do not constitute trading companies or economic arrangements between just two or three adjacent or contiguous nations in a region but are deemed to be sweeping and binding across the globe, or in non-contiguous locations, otherwise the resistant nation is made to suffer certain other consequences in terms of trade, economic and social aid programs, etc. While developing ‘world society’ enforces its norms and the MOU on world trade are taken to be binding, the same rules do not apply to international labour solidarity to help protect rights of workers or to improvise on the rights of natives, women, and children affected in the process in particular regions. Capitalism that is tied to transnational movement has, in the words of Lisa Lowe and David Lloyd, “reconfigured the mode of production in ways that are parasitic on the nation-state and its institutions, but rely on a disempowered citizenry; it

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continues to exploit labour, but redefines and differentiates who that labour is in terms of gender, race and nation, and thus seeks to preclude the formation of a univocal international proletarian subject. It seeks to extend universal commodification, but by conditions that so impoverish the mass of the global workforce that unrestricted access to those commodities is limited to a few elites within a few nations”.  

The forms of oppression at the price of globalisation extend from economic to social, cultural and political arenas by the sheer power of the technological and market-driven intentionality can be multi-dimensional. The ethical valencies of globalization, then, apart from its threat to democracy and the state, which is still the primary focus of concern for common welfare, get a short-shrift in the Giddens-Turner doctrinaire of globality.

### Part II (b) Religion and Globality

A third problem which has escaped even the best theoreticians of globalization concerns the relation between religion and transnationalism, along with the phenomenon of hybridity and other ambiguities, in the broad sweep of globalization – both in theory and concrete modalities. Where this is noticed as a problem it is quickly subsumed under the analytic of culture, cultural formations and productions or reproductions as processual localities, ethnic and migrant identities refashioned, or resistant indigenous sensibilities concerned about the loss of tradition, and so forth, all of which in the longer trajectory make for a tasteful melange of a kind of chaotic implosion of ‘ex-colony’, ‘de-compressed’, ‘detrationalized’, ‘delocalized trans/postnation’ and ‘post-colony communities’ bound together by a loose collective of inchoate ‘ethnoscapes, mediascapes, linguoscapes...’ thereby contributing to the hybrid-heterogeneity of world culture, whose representative metaphor is the infusion of world-music -- regge-bangra, multicultural-bharatnatyam, Bombay-Duck and Hindi films/songs, and so on.

Peter Beyer has correctly observed, religious systems are not able to claim for themselves an autonomous authoritative space or ‘real assets’ and are for that reason less coherent and less powerful than comparable political systems. Nevertheless, being part of the particular cultures that are relativised in the wake of globalization, religions do not disappear.

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17 Jordon, 2000:5
nor do their identities become reductively assimilated into the secularized, de-sacralized civil space of the ‘melting-pot’ or the national culture.\textsuperscript{19} Rather religions also undergo transformation and are reproduced in differentiated formations and local identities that, with some groups at least, also manifest global pretensions; that is, they seek to break out of the ‘windowless monadic’ seclusion. In the case of migrated religions, or religions in the diaspora, the identity reformation may well be overtly or covertly tied to territory, more likely positioned elsewhere (the imaginary of the ‘home-land’ or Anderson’s ‘imaginary community’ echoes here strongly), and its organizational forays will likely utilize all the available instrumentations of institutionalized authority, erecting of elegant edifices, media and other transmissive communications, training programs for the youth, missionary activities, even evangelical show-casing and, most importantly for its survivable and influence, forging alliances with powerful political systems (No longer priestly knowledge but technical ‘know-how’ is deemed to be power).

Religion is not necessarily swallowed up in the torrents of globalization but itself becomes either a platform for resistance to the liberalizing ethos of modernity (one way of usurping power), or verily a simulation or simulacrum of the globalizing process itself with its own ambiguities, local differentiations, as well as presenting itself as the focus of universalist aspirations (eager to provide the template or ideal archetype of the ‘world order’ to be, the super-power: e.g. Hinduism as the ‘universal science of religion and humanity’). But on the other hand, one has to be careful about the kind of conception and theory on which religion is based in this equation. While the systems theory approach (based on belief systems and Luhmannian communication account) works in one respect, namely, at the ‘macro’ level, it also glosses over the more opaque dimensions of ritual and practice at the ‘micro’ level, and, shall we say, within marginalized indigenous sensibilities. Liberal systems work with a very differently nuanced notion of religion, one that would fit better its secular, civil systems – or would be close to becoming a ‘civil religion’ (an ideology in which globalization has also a vested interest).\textsuperscript{20}

The topic of religion in the globalization debate is increasingly politicised into ‘ideology’ and becomes ‘a critical identity marker, the entanglement of religious traditions in

\textsuperscript{20} Padgett, 1999; Jordon, 2000: 8; Maddox, 1997.
other social and political institutions become explosive'. Conversely, as Rudolf Heredia notes, ‘an ideology that is sacralised into a ‘religion’ becomes a basis on which to construct an exclusivist collective destiny, with all the anomalies of an ethnocentric political chauvinism that divides and even fragments the very society it means to strengthen’. Jihadism might be one such instance of the radical politicization of religion in the ambience of globalization.

Faisal Devji and Appadurai together have articulated a compelling theoretical insight into the genesis of ‘jihadism’. Devji points out that the jihadi worldview has a complex history – this movement is an outcome more from the peripheries of the Islamic world than from its core region. However Devji argues that the violent vision of the radical jihadis is nevertheless better seen as an alternative ethical universalism rather than a strictly anti-Western tirade. In other words, the political geography that best describes the contours of the jihadis is not one bound by the specifics of a national ideology or a religion, but rather one circumscribed by a moral response to their own internal angst: to whit, in Appadurai’s words, anger of the numerically and amorphously small pitted against the majoritarian genuflections of an indiscriminate globalization power in the age of modernity. Appadurai advances an interesting distinction between what he describes as ‘vertebrate’ vis-à-vis ‘cellular’ systems. The ‘vertebrate’ descriptor captures the kind of hyperglobalization I have described in Part I where world economy is integrated with ideologies of marketization worldview, especially after 1998. That is, global forms and processes of economy and modes of governance (the endemic security) to safeguard these interests are accommodated or integrated within national (nation-state) settings through a series of staged protocols, institutions, treaties, and agreement ‘that seek to ensure that all nations operate on symmetrical principles in relation to their conduct with one another…’

Arguably, the U.S., whose economy is nothing if it not global, followed by Europe, is the main driver of this ‘vertebrate’ (‘have-all’) system, driving as it does the unfettered forces of high-velocity capitalism, media control, information, technological know-how, and the ideologies of open market economy, trade monopoly, long-distant credit, intellectual property

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21 Heredia, ‘Many nations, many religions Religion has a crucial role in creating a national Identity', 'The Hindu', (Magazine), Monday December 3, 2006, p 1.
22 Ibid
rights, and multilateral sanctions, and so on. But this process unleashes uncertainty, unpredictability, nausea and a sense of incompleteness, as a result of the instability and disruptions rippling through the established modes of practices, forms of life, the semiotics of communication and mutual recognitions, between nation-states or smaller clusters of economic cultures. And this describes the ‘cellular’ system (from tiny cells or micros that can turn predatory as in forms of cancer). Under such conditions – of what Appadurai calls ‘the anxiety of incompleteness and uncertainty’ – ‘cellular’ identities (the “have nots”) that are fractured with economic disenfranchisement, national disintegration, and racial extinction, or ‘ethnic cleansing’, often turn predatory.26

Appadurai argues that ‘predatory narcissism’ of ‘minor differences’ which translates into ‘small numbers’ is ‘now vastly more dangerous than in the past because of the new economy of slippage and morphing which characterizes the relationship between the majority and minority identities and powers’.27 They respond with terror, which they justify on some alternative moral framework, but which blurs the boundaries of nation and space, war and peace, self-sacrifice and violence, emergency and everyday-life, humanism and torture. Add to this, as Mahmood Mamdani, has demonstrated, the CIA’s direct role back in the 1980s of forging a stronger link between Islam and the fledgling jihadi mentalité in Central Asia, thereby abetting a radical Islamist ideology of holy war with transnational ambitions and reach.28 Al Qaeda and, to an extent the Taliban and the Hezbollah (embroiled in a war with Israel in Lebanon with its support extending from Palestine to Iran), are such cellular organisations whose loci is more global and politically diffused than it is regional and culturally visible. And this ‘surplus of rage’ and urge to retaliate spills across into Jammu-Kashmir across the dense borders. The world of long-distance terror is in a reciprocal, albeit asymmetrical relation, with the world of long-distance democratization. But not all ‘small numbers’ go that extent of possess either the wherewithal or the will to; some have terror inflicted upon them by the majority even as they go about their business as constitutional citizens of the nation-state. Globlization through its intimate connection with post-industrial and liberal corporate status is seen to abet the process.

27 Ibid, 10.
28 Mahmood Mamdani, Good Muslim, Bad Muslim Islam, the USA, and the Global War Against Terror, Delhi: Permanent Black (distributed by Orient Longman), 2005, pp. 163, 169; see also pp. 150-1, and 199.
The argument put forward demonstrates the current dynamics of hyperglobalization has a sinister side to it, to wit: the production of greater inequality between nations, classes, peoples, and regions; and an ‘anxiety of incompleteness’ created in the space of the negative reciprocity between numerical majorities and ‘small numbers’ or minorities, that over a short period of time even within democratic and secular nation-states produces potential collision between a racialized nationalism and its marginalized other.29 Let me develop this argument in Part III, as I shift now to focus on the Muslims and the question of Personal (i.e community-religious) laws in India.

Part III: Secularization and its Discontents
Following on with the idea of the ‘anxiety of incompleteness’ created in the space between ‘majorities’ and ‘minorities’, on all levels, and the foregoing discussion of the topic of religion in the modern world, it could be argued that the continuing presence of the Muslim in India, in spite of the partition, is a symbol of the ‘failure’ of the Indian nation-state. That presence is a sign of a lingering disease, a psychotic split to be precise, in the discourse of Indian nationalism between the “secular” and the “properly Hindu”. This sense of failure is what Partha Chatterjee calls an unresolved contradiction between the (post)colonial nation’s (European) enlightenment project and its nativist consciousness of difference.30 That difference is inscribed in the discourse of communalism which was introduced during the Raj and used by the colonial state, then by the Muslim League; and the major Indian nationalist factions carried it into independent India to put limits, if not brakes, on the dominance of secularism. The paradox is that there have been at least two senses of secularism operative within the Indian nationalist discourses: and both have been seen as the cause célèbre or the failure of the Indian nation, while both claim to represent the ‘true nation’. More pertinent though, it is the hermeneutics, including an intervention in moral governance and juridical processes, that puts the respective claims into practice in real politik. And this is my concern here.

Nationalism, or the ferment built around the desire for a nation-state that breaks away from the chaotic patterns of traditional governance or domination by outside forces, is a modern creation;

as is communalism, that divides people into monolithic religious communities - ‘Hindu’, ‘Muslim’; ‘majority’, ‘minority’ -- both owe their emergence in India to orientalism and colonialism. 31 Nationalism of any kind is usually desirous of a homogenous nation, reclaims nativism, chants to the demands of its populace or manipulates its desires, seeks to empower different segments of society (usually the youth), demands loyalty and allegiance to a single cause, and condemns those at the margins of difference as basically irrational and immoral. A fledgling Hindu nationalism, apprehensive of its own marginalization under both the colonial state and, later, the secular nationalist’s stigma of Hindu communalism, would place itself in the interstices of the variant political nuances, claiming that both have reached their limits and are therefore ‘pseudo’ (banawati), meaning, ‘pretend only’, and hence hide a failure.

Put it another way, Hindu nationalism turns the coat or dhoti of secularism inside out, and points to the obfuscation over the precise interpretation of what this entails in the Indian context – and this is nowhere more apparent than in the pervasive polemic of ‘pseudo-secularism’ that Sangh Parivar have all too readily utilized in criticizing the nation’s serious lapse in not being able to deal with its ‘other’. 32 But this polemic is made possible to a large extent by the inherent ambiguity in the very concept of ‘secularism’ and, more significantly, its apparent failure in the Indian context. This claim is not original to the Hindu right or the ideologues of a strident Hindutva.

The version of secularism that has failed is one that seeks to distance religion and collective religious aspirations from the political structuration and legal processes of a society in a multicultural and pluralist environment. 33 This was an impossible project for India. As Mushiral Hasan observes ‘Delinking of state and religion remains a distant dream; secularization of state and society an ideal.’ 34 But secularism, in the nuances taken on board by the Constitution makers and markers, adverts to a healthy diversity and harmony of all religions, ceteris paribus. What the term ‘pseudo-secularism’ under girds then is a convoluted attack on both nuances; and to an extent rightly so. The former nuance – a legacy of the Enlightenment – is being seriously undermined in world politics; and it was never true of pre-British India and much of the Christian and Islamic principles of governance. The Indian society is basically religious, historically and continuing into

31 van der Veer, p. 19. The British did not invent the communities, rather their classification – on a par with the discourse of caste following the census of 1872 – and use in political representation. Secularism, in the Enlightenment sense of the separation of religion and state is another of modernity’s exports.
32 In particular Bharatiya Janata Party leadership.
33 Cf Ashis Nandy, T N Madan, Mushirul Hasan, and Pratap Banu Mehta have all argued this.
the vanishing present.\textsuperscript{35} The latter nuance is shown to be rather weak in the face of real challenges, short-changing of religious rights, etc., in the state’s agenda for tighter political control and an uneven economic liberalization. In the climate of communalization, any group in control or through certain manipulative machination could engender a situation of insufferable compromises to the religious freedom, rites and rights of another group, while at the same time placing the onus of the Constitutionally-nuanced project of secularization on the doormat of the weak-kneed state which for its part abrogates the executive responsibility of reining in harmony and culture of toleration. As I will demonstrate, this is precisely the argument used in the show of force with which the charge of ‘pseudo-secularization’ is meted out by the ideologues of Hindutva. They are the ones on the loosing end, the slippery slope of the secularizing promise; it’s their religious freedom that has been severely compromised, and so on. Appeasing the minority communities is communalism abetted by Nehruvian ‘pseudo-secularism’.

The idea of secularism that prescribes a complete separation of church/religion and state had much appeal in the elite fragments of the nationalist freedom movement, for which Nehru has been accorded most credit. The Constituent Assembly on the other hand was all too cognizant of the diversity of the highly politicized religious communities, and so its recommended draft Constitution reflected a series of accommodations and compromises on the design of the secular state and the normative order. It reasoned that a state can in principle be secular but its disposition towards the society made up of divergent religious community could be one of (principle #1) toleration, regulatory neutrality and reformatory justice (principle 2).\textsuperscript{36} And a corollary to this would be a careful calibration of an active rather than a passive principle (#3) of ‘religious freedom’ which covers a range of liberties, including the right to beliefs, rituals, religious institutions, and non-discrimination on grounds of religion, race, and gender. Nevertheless, on substantive issues, such as the extant and manner of religious reform, social welfare, caste justice, gender issues, education, the Constitution chose to remain silent or ‘neutral’ and at best relegated these to either the perfunctory articles under the Fundamental Rights or to the unenforceable Directive Principles. Still, with Indira Gandhi’s addition to the Preamble, ironically, of the very hitherto absent place-marker (with the term) ‘secular’, there could be no argument, in principle, that the nation was ready to make a firm

\textsuperscript{36} Cf Dhavan, p 311.
commitment to an inclusive and mutually tolerable co-existence of different faith-traditions, thereby affording respect to the Articles in the Adhikarapatra that enshrine and protect the right of each religious community to profess, propagate it own faith and, by being free to establish places of worship, educational institutions and self-sufficient procedural means, realize its own values and aspirations.

It is here that the Hindutva Parivar and political cohorts have focused their attention in isolating a single group as the cause of this failure, and are grieved that even as the majority populace its own religious rites/rights, representation, preferences and needs are not being honoured by the secular state, nor respected by the minority community (or that there is some kind of collusion between the two, as in the heydays of the Congress rule, the Communist interlude, hybrids in the South, and so on). The infamous Chief Minister of Gujarat, Narendra Modi (also in the BJP camp), has insinuated this anxiety of the rising tide of minoritarianism in defense of the state’s response to the Godhra event. Just as Islamism is on the rise in the rest of the world as a reaction to Western capitalist hegemony and its globalization and militarization intentionalities, etc., it is on the rise in India too, partly as a reaction to Hindu chauvinism and the government’s bungling approach. Often this occurs in complicity with the mostly Hindu police contingents supposedly sent to arrest the frequent communal riots and mayhem that break out in the urban centres.\(^{37}\) And Hindutva India, thanks to the globalized networks, collects its largest funding from the diaspora Hindu sympathisers in North America, UK, and Australia.

Even more than the political shifts, or stagnation, or back-firing, one platform on the national scenario that is likely to sustain and feed the continuance and re-growth of the Hindutva ideology is the silent symptom in the nation’s alleged pseudo-secularism, namely, Uniform Civil Code, or its absence. The question of common civil law covering all citizens doubtless occupies centre-stage in any discussion of community identity or gender justice\(^{38}\), but it takes a more saffron shade under the diya (lamp) of Hindu nationalism.

Hence you had Anglo-Muhammadan Law and Anglo-Hindu Law; and Christian and Parsis retained their own Personal Laws. The genealogy of Personal Law [PL] in India constitutes a legacy


\(^{38}\) Zoya Hasan and Ritu Menon (2005), p 7
from the British Raj (since Warren Hastings actually) when a hybrid system of Law based on an egregious bifurcation of extant mores, customs and textual into the ‘public’ and ‘private’ was instituted. Public codes governed fairly uniformly the criminal and certain civil codes, in commerce, public safety and security and services and welfare, and so on. Along with the Penal Codes of the precious two centuries this system has survived with some modifications into the twentieth and twenty-first centuries and it has been a source of much anguish, strife, and debate in post-independent India. Personal Law of Hindus has been largely codified, i.e. traditional laws are reconfigured in the light of secular humanitarian standards via the so-called Hindu Code Bill (1955-57). While the Hindu Code eased the pressures on divorce and marital difficulties, property rights and inheritance among Hindus, it created other barriers and difficulties for it did not override the proclivities of caste, patriarchy and race under Mitakshara law. Hindu Code Bill may be seen a step in the right direction, but codification, and specially under a universalist strain – that is, locating a common denominator in terms of justice and equity, across all religious communities,-- may simply be consolidatory rather than reformative “on the ground”. 39 Gary Larson has brought together some of the quiddities, quandaries and challenges that any intelligent observer should be aware of in an anthology on Religion and Personal Law in Secular India. 40

The Hindutva claim that PL of Muslims and Christians and Parsee is a system alien to the majoritarian ethos and the larger trajectory of nation-building: a unified nation with a common code. And why should the Hindus alone have to bare the burden of the regulatory and reformative agenda under the watchful eyes of the secular state, bent on secularization every aspect of Hindu faith and life, while the Muslim is exempted and is a willing claimant to the Constitutional license to continue with their own religiously sanctioned social practices, customs, and laws? This ambivalence can be found in Hindutva discourse where the kinds of attitude that prevailed and were fostered seeded and festered, that demonstrates a long-standing proclivity that in some ways has informed and directed the debate over distinctive Personal Laws in India by the political voice ‘The Sangh’. 41 There is no reference to Muslims in the early literature of Sangh and Samiti. 42 From its inception the

39 Dhavan , 2001 p.317
40 Gerald James Larson, 2001
42 Apart from Sarvakar’s decisive exclusion of Muslims for their supposed lack of allegiance to the pitrabhumi, (fatherland), is also their way of erasing of the Muslim identity, since it has no right to be right ascendants or heirs (i.e. the future carriers of the genes of the Hindu race -- which smacks of Nazi Aryanism).
infiltrative, and in some ways both volatile and clandestine, the Sangh Parivar has maintained – as if it has the mandate to speak for all Hindus - that Hindu men and Hindu women, their rights and dignities, their families and their space, have to be protected. Protected from whom? (Amongst the others are mainly Muslim women and Muslim men respectively, and the state). One solution to this delinquent presence is to absorb (some say, re-absorb) the Muslim into the ‘naturally universal’ Hindu ethnicity, or one among the varna-vyavastha, caste orders: Allah is merely one God among the myriad pantheon of Hindu gods. This inclusiveness may be sanguine and genuine, but it de-historicizes the Muslim, and denies difference. What comes to mark Hindu nationalism, particularly post-independent, is not the concept of ‘difference’ but of the designated Other; without the other there may not be much to build Hindu nationalism upon. Much of the contemporary discourse then on the construction of Hindu male and female identity, and of Hindu dharma and Hindutva ideology at large, is bricked on the antithesis of the “muslimness’ “musalmani”, “miyan” [Modhi’s favoured trope] i.e. the essentialised and disturbing Muslim embodiment, rhizome.

The Sangh’s most explicit and vociferous stance on Muslim P L that propelled a campaign for UCC surfaced in light of the famous 1985 Shah Bano case. Here a 75 year Muslim woman's petition for increasing the amount of maintenance from her ex-husband was upheld and judged in her favor under the Section 125 of the Criminal Procedure Code (Cr Pr.C) - that prevents vagrancy due to destitution, desertion or divorce. The Hindu nationalists were incensed at the retrogressive intervention by the state on what was a judicial pronouncement to circumvent MPL. As Baccetta notes: ‘Although they took the same position as progressives and feminists their underlying motives differ(ed) sharply. The progressives and feminists sought to defend women’s rights, and they favoured the enactment of a secular uniform civil code. The RSS’s motive was to divide Muslims along gender lines and to use Muslim women to denigrate Muslim men’. And so they played the card of majority-minority relations and identity politics.

It has been the MPLB’s reaction that any form of interference in the PL would undermine ‘a separate Islamic identity’ that more than any other signs of an inter-community dialogic progress provides fuel, masala, for the political spectrum of the Hindutva to grease their palms for another

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43 The presumption is that the Hindu family is an intact unit, governed by moral norms, dharma (and as a Unified Hindu Family they can have dual tax accounts and exemptions); while the Muslim family is a loose entity, where women’s honour is not respected and men practice polygamy, talaq (unilateral divorce), prostitution, sex slave trade, and they attempt to lure Hindu women into their havelis or harams as well Kelkar 1988, chp 1. The masjid stands as a symbol of Muslim male sexual aggression. The Muslim women are also promiscuous and they desire Hindu men; or they are inversions of Hindu women (ibid p 29).
44 Baccetta p 123
public onslaught. Hindu leaders of all shades remain oblivious to declarations such as these coming out of “Muslim Intelligentsia Meet”; initiated by Imtiaz Ahmad that the millat can retain links to the cherished religio-cultural traditions without spurning ideas of change, progress and social transformation.\footnote{Imtiaz Ahmad is professor of sociology from JNU:} Islam is not, after all, “necessarily anti-feminist, a religion of harsh punishments, militancy or jihad. It is up to Muslims to interpret Islam anew and put it within Indian framework”\footnote{Hasan, p 38}. And it is not a matter that needs to be overstated, but noted that Indian Muslim stands apart in many ways from Islam, Islamic culture and politics elsewhere. In the past it has demonstrated much more progressive elements within the Islamic scholasticism and social reform movement than elsewhere, with its close links also to Sufi and Chistii and Jamia Islamia schools. According to Sona Khan, the woman advocate who represented Shah Bano, and who is called out to mediate in difficult cases concerning Islamic law in distant parts of the globe (e.g. the prescribed stoning of the Nigerian woman alleged offender), and in drafting the Constitution of Afghanistan, if only the mullas stop falling into the hands of Hindu nationalists, old-fashioned secularist, neo-traditionalists, and the state apparatchiks, with the help of their Hindu friends, secular modernists and others with a stake in genuine nation-building (even along Gandhian lines). Indian Muslims can and must move forward to set a decent standard, an example of a balanced society, between tradition and modernity, and between the ideals of secularism and multiculturalism. But who listens to such a sane, rational and at once Muslim voice from within?

Of course, in this regard education or literacy has been the sacred plank that is endorsed by all sides of the spectrum - secularists, nationalists, Gandhians, Christian NGOs, the orthodoxy, progressive Muslims, and the alike. Even though the decline of “Urdu” and the rescinded support for its continuation and expansion in regional areas goes unnoticed at the national level. Similarly, today, Narendra Modhi has schemes for teaching Muslim women family planning, while his campaign speeches are studded with anti-Muslim sentiments and hundreds of Hindus (youths that BJP and Kar Sevaks empower or arm with trisul and lathi and kerosene bombs) who committed such violent atrocities against Gujarati Muslims, raped their women and children and set them on fire, have not been bought to account for their legal crimes. His state-wide seva jatra that won him the election despite the post-Godhra atrocities, underscored in rather loud terms this one single message: ‘Yeh saale Miyan, mane Musalman behtar kabi nahi badelsake; yadi wo Pakstan chale
In the 1990s the political wing of the Sangh, the BJP, took up the enactment of UCC, along with Ayodhya and Article 370, as one of the three agendas for the national cause: indeed the “ideological mascot” of Hindutva in achieving Ram Rajya, as recent as 2004 the BJP remains committed to the enactment of a uniform civil code but it has slightly altered its rationale: it views it "primarily as an instrument to promote gender justice". But "social and political consensus has to be evolved before its enactment". Overall, there is absolutely no change in the BJP's stand on the minorities, claims the *Frontline*. But the further anomaly that has gone unquestioned in the Parivar stance, and especially the mechanizations of BJP politics, is the precise template for and contents of the prescribed UCC, the manner in and means by which it is to be promulgated (if not imposed *ab extra*), and their position on the rights of religious communities: balanced against rights and equality of citizens, equal respect and religious liberty of all religious communities, and civic equality of minorities, protected under the more compelling Fundamental Rights in the Constitution, Articles 14, 15, 29-30 respectively.

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

My claim here is that keeping the issue in these obscure terms and juxtaposing it to the polemics of pseudo-secularism, is a deliberate strategy to gain support of the majority community and to forge alliances with conservative parties, especially in the North and the South. While ameliorating its stance on a range of social and economic issues, but holding steadfast to the deafening call for UCC – even though when in power, the BJP did little or nothing to reform Personal Laws or enact legislations towards UCC. Meanwhile, the judiciary largely in its own

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47 I have cobbled these together from comments recorded in ‘Final Solution’ that is applicable here.
wisdom since the Shah Bano judgment remains opposed to any such move, in the interest of preserving democratic liberties. In their own way, judgment after judgment across the country the Muslim Women’s Act is interpreted in give wider meaning and in more liberal terms than might have been the original intend, without disregarding, indeed informed by the Cr Pr Code and other civil liberties that are afforded to the disadvantaged in the Articles of the Fundamental Rights in the Constitution. This has been so in cases brought by divorced Muslim women to High Courts in Kerala, Bombay, and Calcutta. Thus, as Rajeev Dhavan notes, 'if personal laws are discriminatory to women, they would have to be tested against the doctrine of equality, and then struck down if found to be discriminatory and unreasonable'.

In terms of the three principles of secularism I began with both the state and society have to develop a consensus for social change; it may cautiously empower the society to do so; neither is there scope for unlimited religious freedom, nor should the state exceed its neutrality in matters of religion, or discriminate against a religion, or favour one over another. The principles of secularism (the 'third' especially of regulatory reform), 'was certainly not devised to arm political Hindu fundamentalists to chastise Muslims for not making their law "gender just", or vice versa.' If, again as Dhavan notes, the "uniform civil code" was once a serious constitutional objective, it has now been trivialized into becoming a tragic farce. Politics has taken over. Hindu politicians, who are not really concerned about personal law reform, use the idea of the uniform civil code to chastise Muslims for not emulating the Hindu example.

Globalization and the modernization of South Asia see negative reciprocity between the numerical majorities and the ‘small numbers’ within most delocalized ‘post-nation’ states. Appadurai’s ‘anxiety of incompleteness’ applies to Muslims in India and the particular examples given in part III, demonstrate that the uncodified MPL has been persistent. This persistence when paralleled to the ideas brought forward in part II (b) Religion and globality; confirm that the Muslims in India have likewise undergone a transformation, which has in turn reproduced different formations tied to the idea of territory and utilizing institutional authority in order to progress their identity. The Hindutva response in light of this is to also preserve, wanting to subsume small numbers under the guise of nation building. A small consolation from both sides by way of a sacred plank is the acknowledged need for education and literacy.

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48 Dhavan p. 316
49 Ibid
50 Dhavan p 317
A post-Hindutva yuga would only arrive when the Muslim ceases to be the symbol of the failure of the Indian nation, and the pseudo-secularization that underpins the call for UCC is set aside; not the secular project as such, which awaits integration in the nation’s agenda, but with the inclusive voice of Indian minorities qua Indian Muslims, Sikhs, Christians, Jains and Parsee – as indeed of women and other marginalized, minority, and disadvantaged groups or communities. Jai Hind aur Salaam ale’iukam!
References

   (Minneapolis/London: University of Michigan Press) (Incorporates papers referred to as Appadurai
   (1990), and (1993) a chapters therein).
   Unlimited
   __________, (1998), ‘The City and Beyond as Dialogue” Negotiating Religious Authenticity in Global
   2: 141-156.
Chatterjee, P, (1989), ‘The Nationalist Resolution of the Women’s Question’, in Kumkum Sangari and
Devji, F, (1992), ‘Hindu/Muslim/India’ (Public Culture, 1992, 5, 1)
Daedalus (see under Tambiah).
Dhavan, R, (2001), 'The Road to Xanadu: India's quest for Secularism' in Larson, Gerald James (ed.),
   Religion and Personal Law in Secular India. Bloomington and Indianapolis: Indiana University Press,
   (Australia)
Golwalker. M, (1939), We, Our Nationhood Define,
   26.
   University Press.
   __________, (eds) In a Minority Essays on Muslim Women in India. Delhi: Oxford, 2005:


Larson, G. J, (2001), India’s Agony over Religion, Albany: SUNY Press, 1195


Mamdani, M, (2005), Good *Muslim, Bad Muslim Islam, the USA, and the Global War against Terror*, Delhi: Permanent Black (distributed by Orient Longman)


Ray, B, ‘Gloablisation and Women in India: A Women’s Studies Perspective’,
www.toda.org/conferences/sydney/papers/ray.html, 22/10/2003


Legal sources


Criminal Procedure Code (Enacted) 1873

Constitution of India, January 1950 with Amendments

Annual Reports of Minorities Commission


Vrinda Narain. Gender And Community: Muslim Women’s Rights In India, Toronto: University of Toronto Press, 2001
‘14 years old but married to 3 shiekhs’, Deccan Chronicle (Hyderabad) June 29, 1997.
U. Baxi, "People’s Law in India," in Asian Indigenous Law in Interaction with Received Law, Chiba, ed.
London, 1986;
Diwan & Diwan, Women and Legal Protection, New Delhi, 1995; Engineer, The Shah Bano Controversy,
Hyderabad, 1987;
Anderson, "Islamic Law and the Colonial Encounter in British India,"
P. Menski "The Reform of Family Law and a Uniform Civil Code for India," in Islamic Family Law,
Mallat & Connors, eds. London, 1990; Mahmood, "India" in Statutes of Personal Law in Islamic Countries,
2nd ed., New Delhi, 1995;
Journal Section, vol. 42 (1990): 34-40;
Shari’at and Ambiguity in South Asian Islam. ed. Katherine P. Ewing. Berkeley (CA): University of
California Press.
Zarina Bhatti, Husna Subhani, Syed Shahabuddin, Maulana Asad Madani, Prof Imtiaz Ahmed, Tahir
Mahommed et al, ‘Triple talaq’ divorce, and Allahabad High Court’, Times of India’ 19-4-94; 21-4-94).
See Appendix of news article clippings.

Relevant works by author
Bilimoria, Purushottama (1988), Hinduism in Australia Mandala for the Gods (Melbourne: Spectrum with
Deakin University Press)
_______________ (1996) The Hindus and Sikhs in Australia A religious community Profile (Canberra:


