

CHAPTER 5

The Role of the Government, the Politicians, the Press and the Minority Organisations

If the academics have failed to study the question of Uniform Civil Code in depth, the Government has also failed to communicate with the masses on the Uniform Civil Code. In the last thirty-six years since the Constitution was adopted, the Government has done little to lead the nation to the Uniform Civil Code. As Prof. Tahir Mahmood rightly pointed out, Directive Principles which direct the state to work towards a particular goal, put a heavier burden on the executive organ of the state than on the legislature.⁸⁸ The Government has not done anything to discharge this burden. No steps have been taken to explain the contents and significance of Art. 44. No measures have been adopted to fight the obscurantists who opposed the Uniform Civil Code. Prof. Mahmood very properly lays the vehement opposition to a Uniform Civil Code and even family law reform by Muslim masses,⁸⁹ at the door of this failure of the Government. He also warns that the government has been giving undue weightage to the views of conservative sections of the Muslim society "and this can only be for political motivation".⁹⁰

Congress Party office-bearers, ministers and government spokesmen have time and again "reassured" the Muslims that the government had no intention of 'tampering' with their personal law, a promise given as far back as 1938. These reassurances are generally given on the eve of elections and are seen to be well in keeping with secularism, Indian style, viz, equal status to all religions. Opposition parties also cannot be praised for their role. No party has been above political alliances with communal parties or giving membership and prominence to openly communal persons living up to the adage that politics makes strange bed-fellows. During the Muslim Women's Bill controversy, apart from Communist Party of India and Communist Party of India Marxist, no other party took a principled, unequivocal stand against the Bill. Even *their* past history does not bear scrutiny. In the bye-elections that took place in the months that separated the Shah Bano judgment from the Muslim Women's Bill, no party save the two mentioned was able to forget its electoral compulsions.

88. Tahir Mahmood. "Progress in implementing Social Directives of the Constitution - A Critical Appraisal" in Alice Jacob (ed), *Constitutional Developments since Independence*. 559 (1973).

89. As we have indicated above, all the the masses are not with the orthodox or fundamentalist leadership. But this propaganda has been permitted to be made. They are the effective masses.

90. *Supra* note 88 at 560.

None of this behaviour is exactly designed to persuade the Muslims that the Uniform Civil Code is any more than the sword of Damocles hanging over their community's collective head. Indeed they may well ask, as some of their leaders are demanding, that Art. 44 be repealed altogether.

The role of the minority politicians has also been most unfortunate. It is an exercise in brinkmanship of the worst possible kind. While members of avowedly communal parties can be expected to take certain positions -- Mr. Banatwala is even on record for demanding an Islamic Criminal Law-- more sophisticated minority leaders also expressed similar opinions on the Muslim Women's Bill.

The national press for its part has also cut a sorry figure. Admittedly even the national press has to give its readership "good" stories. Disastrous events and outrageous opinions make better copy, "sell" more. But the press has other responsibilities too, not least of which is to state the truth however dull it may be. But the Hamid Dalwais, Asghar Ali Engineers and the Satyashodhak Samaj command very little press. Their meetings are hardly reported and their protests given little space. This was also the experience during the Muslim Women's Bill. Neither the reformers nor the pro-Uniform Civil Code Muslims are able to get publicity for their views. Because their ideas are not publicised by the press they are denied easy dissemination. Those who would follow them within their community and those who would desist from tarring the entire community with one brush if they only knew are deprived of their right to listen to the non-fundamentalist views. Recently a national daily carried a feature in its Sunday magazine.⁹¹ The only minority individuals interviewed were those opposed to the Uniform Civil Code. The persons interviewed in favour of the Code were all Hindus. All interviewed persons were not leaders of their community. For example, one person who was strongly opposed to the idea of a Uniform Civil Code was Dr. Meher Master Moos. A few days after the newspaper published her interview she fought and lost an election to the Bombay Parsi Panchayat, securing very low as well as the lowest votes cast in the election, a fact pointed out to this writer by officer-bearers of the All India Federation of Parsi Anjumans. From this community interviews were obtained from Mr. K.J. Gandhi and the late Mr S.D. Nargolwala, who died tragically soon thereafter.

The other minorities have, by and large, been maintaining a silence on the subject; in part this is because they feel they are too small to matter and in any case as the Muslims will prevent the Uniform Civil Code from becoming a reality, there is hardly any point in wasting energy over it. The one exception to this situation have been the Young Women's Christian Association and the Joint Women's Programme. Ms Jyotsna Chatterjee of J.W.P. and Ms Radha Kumari and Ms Sadhana Ganguly of Y.W.C.A. were interviewed by this author.

91. *Indian Express*. 29 June 1986.

These two bodies have taken considerable trouble to organise debates and discussions on this topic both within the Christian community and with the non-Christian members of the Y.W.C.A. They have passed several resolutions demanding reform of personal law as well as a Uniform Civil Code. I was told that at the national convention of the Y.W.C.A. held in 1982 and 1986 a resolution in favour of the Uniform Civil Code was passed, and that at the regional monthly meetings of Y.W.C.A. the idea is frequently debated. These respondents said that was why regional Y.W.C.As supported Christian women who challenged iniquitous propositions in their personal law.⁹² Thus Ms Mary Roy⁹³ had support from the Kerala Regional Y.W.C.A. when she challenged the Succession Act applicable to Syrian Christians.

The J.W.P. had been holding meetings and conventions with regard to the Uniform Civil Code since 1976. In 1982, after the communal riots against Christian Fishermen in Kanyakumari and against Harijan converts to Islam in Meeanakshipuram, the J.W.P. began to think about the causality of communal riots. They arrived at the conclusion that communal riots take place because different communities do not have the same status in law and the Uniform Civil Code will go a long way towards "disciplining the personal lives of all people and reduce communal tension." A national meeting on "Need for a Uniform Civil Code" was held in 1983. Its resolution in favour of Uniform Civil Code was sent to the Prime Minister.

J.W.P.'s spokeswomen said they had organised meetings with Protestant Church leaders. At these meetings reform in Christian Personal Law was suggested and in the last meeting it was resolved to work toward a Uniform Civil Code.

The Catholics have reservations about divorce but divorce is already legally permitted to all Christians including Catholics under Indian Divorce Act. A good or devout Christian will not take recourse to this law, whether it is under the personal law or the Uniform Civil Code.

But these Christian organisations are the exception to the rule. Even the Young Men's Christian Association (YMCA) has not thought over the subject of a Uniform Civil Code.

Most minorities have not expressed any views in the matter, not even when Muslims claim to be speaking on their behalf, thus allowing the subject to be seen as one of battle of wills between the Hindus, all of whom want it

92. For example, Indian Divorce Act S.10 allows a man to demand divorce on the ground of a simple adultery. The wife, however, must prove adultery with an aggravating fact, like incest.

93. See *Mary Roy v. State of Kerala* AIR 1986 SC 1011 where the Supreme Court held that by the enactment of Part B States (Laws) Act 1951, the Travancore & Cochin Succession Act 1092 was repealed and the Indian Succession Act automatically became applicable to Christians from Travancore and Cochin.

and the Muslims, all of whom do not. Both projections of the two major communities, as we have seen, are incorrect.

Apprehensions of the Muslims

There are two principal reasons for which the effective Muslim majority say they fear the Uniform Civil Code, viz:

- (i) Interference with their personal law which they perceive as divine in origin, and
- (ii) Loss of their cultural identity.

The laws of all communities started out with the sanction of being divine. This is as true of Hindus as of Christians, Parsis, and Jews. Those of us who have succeeded in separating religion from law have a genuine problem in seeing the other viewpoint. It becomes even more difficult when the rights involved are in regard to maintenance to a divorced and destitute wife and the same is not paid by the husband despite having the capacity to do so; or the right to pronounce talaq-ul-bida (instant talaq) or to practice polygamy. Still more puzzling is the fact that it is at the same time asserted that kindness to the divorced wife is recommended and talaq and polygamy are disapproved by the Quran. The last straw is the claim that there are, in fact, few talaqs, little polygamy and hardly any destitute divorcees so that the show of strength organised against the Muslim Women's Bill seems such a waste of energy. To make matters worse, now the argument seems to be that in Islam in its true form, these evils did not exist. We are told that Islam does not leave a woman unprotected for even a day. We are even told that in a true Islamic society a husband will not divorce his wife if he was not sure she could remarry. These interpretations of law give rise to deep concern. What these writers advocate is not clear. Seeing its implications, one only hopes that these are not clear to the writers either. If the pure Islamic society had existed in India, Muslim women would clearly not be claiming redress from the courts. Since they do, what are the courts supposed to tell the women? Is a return to the pristine Islamic society of a distant uncertain past being advocated? As this society certainly did not exist in India even during the Muslim period of our history, to which countries are we to look for a model? Is any of this supposed to accord with the ideal of national unity, mentioned in the Constituent Assembly Debates as an objective of the Uniform Civil Code? Or with the ideas of Justice and Equality, or Secularism, the last of which was specially inserted in the Preamble in 1976? We do not recognise a society in which a woman will be compulsorily re-married three months after divorce as an ideal society. We are trying to create one in which women have equality including equality of opportunity. None of the above arguments accords with the long struggle of Indian women for their rights. None of it, one may emphasise, will lead

towards a Uniform Civil Code, even at a distant date. What is particularly and deeply alarming is the fact that the very individuals who had argued the case of reform of the Muslim personal Law are now talking in terms of the pure state of Islam.⁹⁴ Thus, Prof. Tahir Mahmood, a very distinguished scholar of Muslim personal law, has been one of those who used to lament the fact that Muslim leaders were not prepared to think of reform. Now he is prepared to attack the judgment in the *Shah Bano* case on the principle that it abuses real Islamic society.

The second reason being advocated against the Uniform Civil Code is that it arouses fears of loss of cultural identity, especially as the Muslims are in a minority. It is also argued that other smaller minorities do not feel insecure *because* they are small, an argument the logic of which is difficult to appreciate.

The identity of a human being is a complex and complicated entity. It consists of the many roles the person plays in public and private life. The cultural identity, as much as any other identity, does not derive from any one factor. Language, food, clothes, even climate and geography have a part to play in it. This is precisely why the partition of India did not persuade two-thirds of Indian Muslims to move to Pakistan. On the other hand, religion and personal law are not uniform or monolithic even within the same faith--each one of them is riddled with sects, members of which sometimes prefer a rank outsider to a follower of another sect.

Nevertheless the position does remain that many Muslims do see a relationship of insecurity with the Uniform Civil Code and it cannot be wished away. The Government's failure to conduct a low key but sustained campaign explaining the nature and advantages of the Uniform Civil Code has hardened both the above mentioned apprehensions into strong fears. In this situation, we have to ask whether we need a Uniform Civil Code. Do we need it now? and why?

94. See Tahir Mahmood, *supra* note 74.