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A Uniform Civil Code
Necessary Step Towards

NATIONAL INTEGRATION

Arif Mohammad Khan

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Edited by
Vinay Kumar Gupta
and
Jaganniwas Iyer

INTRODUCTION

The recent Supreme Court ruling on adoption of children, extending the right of adoption to adherents of faiths other than Hinduism is seen as an important landmark and also a much-needed step in the direction of a Uniform Civil Code, which is enshrined in the Directive Principles of State Policy of the Constitution of India. The right to adopt a child - till now restricted to Hindus, Buddhists and Jains - now extends to Muslims, Christians, Jews, Parsis and all other communities. The landmark Supreme Court judgment rules that any person can adopt under the Juvenile Justice (Care and Protection of Children) Act 2000, irrespective of religion he or she follows, even if the personal laws of the particular religion do not permit it.

Predictably, this landmark Supreme Court judgment has drawn sharp opposition from the sectarian elements of the Muslim community, with the All India Muslim Personal Law Board (AIMPLB) registering its protest against the judgment, dubbing it a covert attempt to slip in a Uniform Civil Code through the backdoor. Against this backdrop, the India Policy Foundation presents the views of Shri Arif Mohammad Khan, one of the most moderate and liberal Muslim voices on the issue. This is part of the IPF's policy intervention to propagate the implementation of the Uniform Civil Code, which is the hallmark of any genuine egalitarian polity.

Prof. Rakesh Sinha is a very good friend of mine and I am indeed grateful to him for his kind words about me as also his generous appraisal of me. It is indeed a matter of gratification to be spoken of highly, but more so by one esteemed and intellectually sound as Prof Rakesh Sinha.

To be honest, I was a bit hesitant to accept Rakesh ji's request to speak on this particular topic, though it was also difficult to skirt the issue altogether. Frankly speaking, I consider the current debate on this issue to be less meaningful, as it has gathered a different traction of its own. In my view, this is an issue which has its roots in an earlier issue over which I resigned from the ministry years ago. I must say that we have not been able to grasp its seriousness.

We are discussing the issue of a Uniform Civil Code. Sadly, the Shah Bano case laid the foundations for a non-uniform civil code and thereby, a divided polity. The decision on the Shah Bano case was not delivered as part of the Civil Code, but rather, as part of the Criminal Procedure Code. We had accepted the principle of personal laws being different but criminal law being the same for all citizens of the country. But we have now laid the foundations for even criminal laws to be separate for the citizenry. For instance, Section 125 of the CRPC is meant to prevent social vagrancy and destitution, and is not a part of personal law, nor criminal law. The summary proceedings are meant to save time and expense of ordinary citizens. Actually, this provision is basically rooted in the concept of social justice.

It is quite obvious that those who face a constant struggle to keep their bodies and souls together cannot be expected to consider legal niceties. This is a fact of life which even religious laws have taken cognizance of. For instance, Islam permits the consumption of forbidden food for any person who has not eaten for three days. Under law too, there is an old provision No. 488, which is actually a law passed by the erstwhile British rulers way back in 1860. This particular provision permits any individual whose maintenance cannot be undertaken by his/her parents, siblings (even minor ones) or progeny to approach the courts for his or her maintenance under Section 488 of the CRPC. As far as memory goes, the amount was revised upwards by Rs.50 (rupees fifty) in 1971, for which a Select Committee had been formed. The Committee reached the conclusion that while the onus of maintenance on parents or siblings was understandable, but abandonment of one's wife in such instances must not be taken as divorce. Let us bear in mind that this is the ruling even when a wife, abandoned by her husband may have absolutely nothing to fall back upon. This is so for everyone, not the followers of any particular religion.

The husband may of course, begin proceedings for divorce, but even here, the Muslim male has things going very smoothly for him. All he has to do is to utter the word "Talaq" thrice and announce in the court on the next convenient date that he has divorced his wife. The date is chosen according to his convenience, as he can always say that the verbal divorce had not come into effect his wife had approached the courts for maintenance. Viewed purely in legal terms, this is nothing but pure mischief. And it is to take care of such mischief that new laws are made.

The Select Committee opined that a Hindu husband had to go through the entire process of divorce. On the other hand, the Muslim male can obtain a divorce through the utterance of the word 'Talaq' thrice. His supposed argument for escaping any responsibility for providing maintenance is that he had not given his wife divorce as sanctioned by his personal laws on the day she had approached the court (for obtaining maintenance), so there is no locus for issuing any maintenance proceedings against him. Therefore, the petition against him must be dismissed. It is to combat this very mischief that the Select Committee wanted the ex-wife to be included in the definition of a wife, which was done. However, the issue of marital rights refused to go away. The provision of including the wife - and along with her the ex-wife - was for destitute women who had no means of subsistence.

Ideally, the responsibility for every destitute individual ought to rest with the administration. Particularly so, this ought to be the prevailing state of affairs in any genuine welfare state. However, constrained as we are by the shortage of resources, we keep looking for alternative means and sources to fulfill even the basic human obligations towards our citizens. When objections based on religion - in this particular instance the Islamic faith — were raised against this particular intervention of the Select Committee, saying that its intervention was against Islam, the Supreme Court referred to passages from the

Quran, which clearly lay down: “Do not expel them (wives) from their homes; neither is it desirable that they should leave their homes. You never know; the Almighty may create ways for both of you to come together again”. In other words, a decision made in the heat of anger should and must be reconsidered. It also lays down that two married partners who decide to separate must continue to live under the same roof and same condition for the next three months. Still, if two persons who know each other bodily and yet keep their distance, it means there are some very serious problems, and they should be allowed to separate. If however, during this period, they have a physical union, the effect of the divorce is taken to have worn off. After the passage of this stipulated period of time, they can marry once again. This process can take place twice in one’s lifetime under Islamic law. Divorce too, can happen twice. However, many apologists claim that they can use the right of triple utterance of the word ‘Talaq’.

I have tried to show in my book that what goes by the name of Islamic law actually violates the original Quranic provisions. I am therefore, worried on two counts. The Uniform Civil Code is as yet nowhere on the horizon. Are we to deny even basic social justice simply because a few bigots raise the slogan of “religion in danger”? Are we now going to have separate criminal laws too? In my view, the gravity of the situation goes far beyond the issue of a Uniform Civil Code. In a country that has such diversity in its traditions and customs, it isn’t really important as to what wedding rituals one follows. One can be allowed to exercise one’s choice in such matters, but the state has an unmistakable right to intervene in matters that affect society as a whole. The Quran mentions that a God-gearing woman has every right to obtain means for her subsistence. This particular point has been iterated by me earlier too, causing much heartburn to Islamic scholars. I do not deny the existence of personal laws or the Personal Law Board, but those verses of the Quran are addressed to the God-conscious individuals rather than ordinary Muslims. They are there in the Quran too, and one cannot deny their existence.

There are seven verses in the Quran that deal with the issue of divorce, not just one or two; in fact, it is an entire chapter in the Quran. Those who believe in the Quran must be told that they can resort to divorce only through these provisions. I would go so far as to say that the Quran provided this mandatory cooling off period 1,400 years ago. The difference is that while modern laws extend this period to 9 or 10 months, the Quran laid down a period of 3 months. I believe that if one adheres to the spirit of this particular injunction, societal relations will be much smoother. Else, it is a Uniform Civil Code that is much needed in the country.

I do not believe that a Uniform Civil Code will be a threat to religious belief. After all, Muslims reside in Europe and America too, where they don’t have the benefit of their personal laws. Forget those places, even a predominantly Muslim country like Turkey repealed Islamic personal laws and replaced them with Swiss laws. Even in the Islamic citadels, i.e., the Arabic countries, personal laws are different in individual Arab countries. What do religious zealots have to say to all this? This, I believe is adequate counter to Kapil Sibal’s quip that Hindus don’t follow a single law. Within Islam itself, there are four different systems of jurisprudence - the Sunni, the Hanafi, Shafai and the Shia. The Shia school itself is further subdivided into the Sulemani and other sub-systems of jurisprudence.

What is often stated to be codification is merely a declaratory law. These matters are supposed to be decided under the law of religion. The British kept away from this and let the members of the faith decide matters among themselves, while retaining the sole right to frame and administer laws. The example of Pakistan is relevant here, as that country too has a criminal code much like ours. However, a committee was set during Ayub Khan’s time, whose recommendations were then implemented. Actually, the supposedly laws in prior to 1947 were not Islamic in nature at all. Laws were mostly those devised by the British, whose basic objectives, whether in constitutional measures or policy measures, was to sharpen community consciousness and accentuate the argument that people in the subcontinent are not a nation, but merely a conglomeration of communities. In fact, the official minutes of the then Secretary of State for Home had declared that if we shape policies that engender peace and foster unity, it would be politically harmful for us (i.e., the British). On the other hand, the British ought to adopt policies that would create disturbances, which could be handled adequately by the local administrations. This line of thinking was perfectly in sync with their constitutional and policy measures.

However, our constitution clearly says: “The state shall endeavour to secure for its citizens a Uniform Civil Code throughout the territory of India. The emphasis here is of course, on the use of the term “endeavour”. The Oxford Dictionary clearly lays down the meaning of the term as “try very hard to do something”, although I personally prefer “earnest and conscious activity intended to do or accomplish something”. I do not wish to dwell much on criticism, but to escape pointing out the essentials out of fear of criticizing would be escaping one’s duty.

What have been our efforts or endeavour in this regard? I recall that when I had argued this point in parliament and reached home, there was a congratulatory letter from the Prime Minister, congratulating me personally. It also said many others were congratulating me too. About a month or so after this, I was in my constituency when I was approached by the District Magistrate who’d come to me in a hurry. He informed me that the Prime Minister’s Office urgently wanted me back in Delhi. The Prime Minister was due to leave for Oman. Pressure from all sides was building up on him; the Personal Law Board was holding a meeting. The Prime Minister wanted me to accompany him to Oman as there were rumours that he was about to change his stand on personal law. The Prime Minister showed me the noting on the file and told me there was no way any concession could be given to the Muslim Personal Law Board. He also told me there had to be a full scale campaign against this. I asked him not to involve me in this but to ask other party members to handle it. Barely twenty days later, the Prime Minister made a U-turn on the issue.

I still maintain that I did what I had to do. I defended the Supreme Court decision, which was being sought to be amended by the government. On moral grounds therefore, I had to do what I subsequently did. Rakesh ji has mentioned the faceoff between Zia-ur-Rehman Ansari and me. This however, is one side of the story. Zia-ur-Rehman, a senior member of the party rarely met Rajiv Gandhi and was in fact, preparing to resign. His biography reveals who was on the other side it was - Najma Heptullah. All meetings were held at her residence. Zia-ur-Rehman Ansari was nowhere in the picture at that stage.

At the Congress Parliamentary Party meeting, Najma Heptullah said that there was no practice of kanyadan (Hindu ritual of giving away the bride in marriage) among Muslims. She reverts back to her family. This drew the ire of Naresh Chaturvedi, who asked her if she even knew what kanyadan meant. It doesn’t mean giving away a bride in charity. I told even Mr. Lal Krishna Advani after his book was released that his reference to Zia-ur-Rehman Ansari as the villain of the drama was faulty, as it was Najma Heptullah who played that role. I admonished Advani saying that political honesty is indispensable in such matters. Simply because someone has joined us does not mean that we ignore their earlier doings or the role they played.

It is necessary to dwell upon the role of the individuals who played crucial roles as mediators in that Shah Bano episode, and in whose praise the chairman of the Muslim Personal Law Board had written an entire page. Zia-ur-Rehman Ansari’s name cropped up because of his argument in the Lok Sabha. He was angry that Rajiv Gandhi had earlier refused to accede to his demand and was in fact, preparing to quit. He was actually stunned at Rajiv’s volte face. The actual role behind the scenes in getting the judicial verdict annulled was played by Najma Heptullah. We have created a system wherein irrespective of who the person in the chair is, the actual rulers are the vested interests; one may call them power brokers or middleman.

What example are we setting? Rajiv Gandhi earlier adopted forthright stance on the Shah Bano issue, and then suddenly did this volte face. The BJP made a huge issue of the Shah Bano affair and then unhesitatingly welcomed the very person (Najma Heptullah) who engineered the then Congress regime’s surrender to obscurantist elements, to their own party. The country does not have a Uniform Civil Code as yet. Today, as we’re discussing the topic of probity and transparency in public life, it is also necessary for us to dwell on the malaise of political dishonesty, which is no less damaging than financial honesty. We’re guilty of saying one thing publicly and doing exactly the opposite. Problems can be overcome, but an utter lack of sensitivity to them is the more disconcerting aspect. Problems of course, are an intrinsic part of human life, but we have to seriously ponder why we’re forced to confront the same problems again and again.

Well known historian Bipin Chandra once called me over to his house, where Dr Mukherji and Mridula Mukherji too were present. A project on the compilation of the history of the freedom movement, based on the oral interviews of leading freedom fighters was in the offing. When we completed the survey of the old Maharashtra state, I was shocked to discover

that not a single Muslim freedom fighter was ever elected to the parliament nor assembly. Bipin Chandra is a great admirer of Tilak, but also holds the belief that Tilak's use of religious symbolism led to the increase of religiosity and thereby communalism. He said that it struck him that the increase in communalism was to the extent that no Muslim could be elected. This of course, is not true; our scrutiny of elected members shows that Muslims have been elected to both the parliament and assembly. But no Muslim freedom fighter ever made it to these legislative bodies.

We conducted a second round of interviews. A thought also occurred to my mind that such freedom fighters might have been of lower status, who did not acquire socio-political acceptability. They suffered jail and were from the Congress as well as the Muslim League but failed to win acceptability. I was also struck by the discovery that a lot of those freedom fighters were leading lawyers and farmers, and were the leading lights of their professions. On the other hand, those elected to legislatures were found to be third-grade people, often good for nothing. How is it that those Muslims who were leading individuals in their respective walks of life and had also suffered jail for the freedom struggle could not be elected, while those who were elected weren't really worthy? The only answer that occurred to us was that those who fought for freedom went to jail, while the Muslim League grew in popularity among the Muslim masses. Leaders like Maulana Azad were derided as "showboy Muslims" by the hardliners among the Muslim leadership.

When Partition happened, the majority of Muslims did not go to Pakistan but opted to stay here. A section of the Muslim leadership then climbed on to the bandwagon of freedom fighters, which had agitated for freedom. After independence, many among them began claiming that they too had undergone jail for the sake of the country's freedom. Many third-grade Muslim Leaguers, who wanted to get themselves elected to the legislature were now conscious of the fact that they had to strive for Muslim votes in an atmosphere in which ordinary Muslims felt insecure after the event of Partition. Separate electorates were a thing of the past. The political leadership, which was eager to garner the votes of the community, came in touch with this obscurantist Muslim leadership, which forced it to sideline moderate and secular voices if it wanted the bloc Muslim vote. Far from being made a part of the political process, moderate Muslim voices were deliberately kept away from even poll campaigns. Little wonder there was no place for people like Arif Mohammad Khan.

The word 'Atma' means the Self, but we have reduced it to pure selfishness. We are ever ready to compromise when it comes to our self interest. We lack sensitivity and a higher consciousness. However, I still believe that a higher duty awaits us. We have to make earnest and conscious efforts. I believe that education is the first conscious effort towards a Uniform Civil Code, in order to put an end to the exploitation of women, especially deprived and destitute ones. In the absence of a common civil code, women will be coerced into accepting that Islam is in danger if they don't agree to a verbal divorce. The more educated members of the community queue up at American embassies and consulates for somehow getting a visa. They are least concerned that the US does not allow their personal laws or the luxury of a verbal divorce by uttering 'talaq' thrice, nor allow them to marry more than one woman. The sense of security and integration come next. Integration needs a conscious effort, and the marginalized must not be made to feel that they are not part of the mainstream. It is to the credit of the India Policy Foundation and Prof Rakesh Sinha that this issue has been brought to the fore once again for intense and constructive debate, so that we may all apply our minds to it to come up with both ideas and solutions to an issue that has been bedeviling us for long.



D-51, First Floor, Hauz Khas, New Delhi - 110016
Tel.: 91+11-26524018
Fax: 91+11-46089365
E-mail: indiapolicy@gmail.com
Website: indiapolicyfoundation.org

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