



**UNIFORM CIVIL CODE :
PURPOSE, PROCESS
AND PROSPECTS**

**NJA Occasional
Paper Series No. 7**

**JUSTICE
M.N. VENKATACHALIAH**

**National
Judicial Academy
Bhopal, India**

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INTRODUCTION

Occasional Papers are significant views expressed on topics of contemporary relevance and delivered by judges, jurists and lawyers in the Academy or outside. By publishing them, the National Judicial Academy endeavours to disseminate relevant knowledge among the 14,000 strong judicial fraternity spread throughout the length and breadth of our vast Republic. The present monograph is the seventh in the Occasional Paper Series.

The subject of Uniform Civil Code arouses mixed reactions among the diverse population of India knit together by different religion based laws and customs. That is why despite it being a "Directive" of State Policy under the Constitution, no one is in a hurry to enact the law on the subject. Mr. Justice M.N. Venkatachaliah, former Chief Justice of India and a renowned jurist of the country dealt with the subject with great dexterity and sensitivity in the Sri S.V. Gupte memorial lecture recently. The National Judicial Academy sought his permission to let us reprint an edited version of the lecture for circulation under the NJA Occasional Paper Series. We are thankful to him and the organizers of S.V. Gupte Lecture for this gesture.

The learned author in his inimitable style exhorts his countrymen at the end of the lecture. "...A uniform civil code will indeed be the celebration of the idea of India and its spirit of fraternity and its faith in liberal institutions."

BHOPAL

15th February 2006

N.R. Madhava Menon

Director, NJA

The Context :

Any debate on the Uniform Civil Code for India cannot put out of consideration the need for such a debate at all. Concealed behind the debate, or manifest in it, is the real issue as to who prescribes what and for whom? Personal laws are outside the sweep of the equality clause. When the Uniform Civil Code is discussed what is really debated is how the religious minorities perceive it. Any denial of this makes the debate sterile and glib. The origin and sources of plural societies and the values of a liberal democracy are an essential background to the debate.

What then are the sources of pluralism and diversity?

“The priceless object of evolutionary heritage containing the blue print of human destiny” said a neuro scientist “does not lie in the farthest reaches of outer space or in the inky blackness of deep seas. It lies rather inside our skull and is, of course, the human brain.” Man’s ecological liberation and the establishment of his superiority over other living creatures lead him to contemplations on the quality of his own life. But equally, the structure of the human brain is itself the source of the ‘split mindedness which seem to be inherent in man’s condition and been testimony to his tortured history’.

As to this interesting neurological explanation of the potential for pluralism, the scientist says:

“What the record indicates is that in the major disasters in our history, individual aggressiveness for selfish motives played an almost negligible part compared to unselfish

loyalty and devotion to tribe, nation, religion or political ideology. Tribal wars, national wars, civil wars, religious wars, world wars, are waged in the purported interest of the community, not of the individual, to decide issues that are far-removed from personal self-interest of the combatants.”

It would then seem that the basic problem with man has been his extreme loyalty rather than aggressiveness; and it is his fanatical loyalty as a motive force that has led him to the point of self sacrifice, to the king and country, leader or group. The author observes:

“It may be suggested that the self assertive tendencies in the emotional life of man are less harmful to the species than his self-transcending or integrative tendencies. One can recall from history that the victims of individual crimes are far too less and rather insignificant as compared to the masses cheerfully sacrificed in blind devotion to religion, dynasty or political system. It is a curious fact that man, when alone, behaves in a different manner seeking self-interest, than when he is in a group. The group loyalties, with which he identifies himself, take precedence over his **individual** expressions. The clues for this ambivalence in his nature are perhaps best provided in the peculiarity of the human to sustain affect-based systems that are incompatible with its reasoning faculties but nevertheless co-exist with them”.

The other factor equally basic to the human predicament is the emergence of language as an exclusive behaviour. I quote again:

“Language not only promotes communication but it also accentuates the differences in tradition and beliefs and thus tends to erect barriers between tribes, nations, regions and social classes. Everyone acknowledges the power of language in influencing our way of life. From the primitive use of vocabularies to the organized development of languages, man has made a remarkable progress as are documented in the ever-inspiring pieces of poetry and literature.”

Neurologists say that the human brain is an hierarchical system essentially consisting of three brains representing the reptilian, the paleo-mammalian and the neo-mammalian stages in its phylogenic development. ‘The reptilian brain corresponds to the greater part of the brain stem and contains much of the so-called reticular system, the mid-brain, and the basal ganglia. This is the oldest of the three brains and is faithful in doing what its ancestors say, but it is not a very good brain for facing up to new situations. It seems to be a slave to the precedent and performs stereotyped responses thus playing a primary role in instinctively determined functions. The evolution of the lower mammalian brain which nature has built on top of the reptilian brain plays a fundamental role in emotional behaviour’.

Tendencies towards Pluralism and plural societies are quite often man’s choice-less inheritance and cannot easily be subordinated to purely rational analyses or logical arguments.

Law in Pluralist Societies

The purpose of law in plural societies is therefore not the progressive assimilation of the minorities in the majoritarian milieu. What then is laws' function? In the words of Lord Scarman:

“...the purpose of the law must be not to extinguish the groups which make the society but to devise political, social and legal means of preventing them from falling apart and so destroying the plural society of which they are members”

The function of law and choice of legal policies in pluralist societies are by far the most fascinating challenges to our civilization. Large land masses of the globe are inhabited by plural societies of one kind or the other. The challenges are staggering by their sheer scale and variety. The challenges are pervasive and assail the basic assumptions of Justice, Democracy, Rule of Law, Morality of political authority, Systems of Government, the role of the judiciary etc. – some of them hitherto held fundamental or even axiomatic. Their challenges raise appeal to the immutable values of a higher social and civilizational order. Man's capacity for human law and human justice are put to its ultimate test. The ultimate question is whether civilizations on earth have the moral maturity to accept the human person as the unit and a measure of all things.

The question “what is Justice” in the maze of irreconcilabilities of interest in pluralist societies “is an invitation to the most abstract sort of philosophical speculation” of its meta-physical elements. What ready answers can be given to questions of our times such as “what makes a government legitimate?” What is justice to the poor people living virtually next to people who have more money than they could ever possibly spend? Is it fair that hard-working people of considerable talent go unrewarded, while others, smiled-

upon by fortune and raised with wealth and power, are constantly "rewarded" in return for no work and no contribution to society whatsoever? Do people whose ancestors were treated unfairly deserve compensation for what their grandfathers suffered? Can a legal system impose upon an individual the burden of personal sacrifice so as to ensure opportunity to others? What then should be done to equalize the condition of those with inherited disadvantages?

Lord Scarman asks much the same questions and says:

"...It is a platitude that society must be just. But what in the context of a plural society do we mean by justice? Are we seeking justice as between groups? Or do we remain true to our western philosophy that what ultimately matters is the right and duty of the individual human being and that justice implies for each one of us 'equal justice under the law' ... to quote the inscription over the portico of the U.S. Supreme Court building. Clearly we desire both justice as between groups and equal justice under the law for every one of us. The dilemma of the plural society is that it is not always possible to achieve both. How, then, does one regulate justly, the clash of interest between the group and the individual."

These are the in-built dilemmas of all human organizations. 'Plural societies are the product of irreversible movements of mankind. Short of genocide or mass transportation, most of them are here to stay. Pluralism is not a mere transient vestige of a historical condition but a permanent feature of the public culture of modern democracies.'

Architecture of an Inclusive Society and Liberal Democracies

The great gifts of democracy have now become cherished global goals. The Human Development Reports say that in the last twenty years alone 81 more countries of the world have moved towards democratic practices; some 33 of them had had their earlier military regimes replaced by civil governments. 62% of the world's population today enjoys the benefit of a free press. In the last decade alone the number of countries ratifying international covenants on Civil and Political Rights and the one on Social, Economic and Cultural Rights has increased from 60 to 150. There are some 37000 registered international NGOs the world over. In the developing countries alone circulation of newspapers has increased from 29 per thousand population to 60. Television has increased fourteen fold. This great global thrust towards democracy and open societies is the most significant feature of the last quarter century.

Now civil rights and fundamental freedoms are indeed taken for granted. Herman Finer said, "The political, social and economic gifts of democracy endow mankind with vast riches. We are so accustomed to the exercise of our civil rights that we have ceased to realize that they are as vital to our moral life as breathing to our physical, and we take this miracle for granted!"

An inclusive, participatory democracy, not a mere numerical majoritarian democracy, is the single most significant factor in human development. A majoritarian democracy, it is rightly said, is a mere crude statistical interpretation of democracy.

Authoritarian regimes often argue that "they have advantages in building strong states that can make tough decisions in the interests of people". They also argue that democratic processes create disorder and impede efficient management and "that countries must choose between democracy and development,

between extending political freedom and expanding incomes". This trade-off between democracy and development was the favorite theme of Lee Kuan Yew of Singapore. Human Development Report 2002, however, rejecting this thesis, observes;

"...There are good reasons to believe that democracy and growth are compatible. With just two exceptions, all of the world's richest countries – those with per capita income of more than \$20,000 (in 2000 purchasing power parity) – have the world's most democratic regimes. In addition, 42 of the 48 high human development countries are democracies".

Democracies, the Report further argues, are better than authoritarian regimes in managing conflicts and catastrophes. Democracy provides for political space and institutional mechanisms for debate and change, particularly in managing sudden turn downs that threaten human survival. A report says:

:"Consider China, India and Democratic People's Republic of Korea. In India famines were common under colonial rule. For example 2 to 3 million people died in 1943 Bengal famine. But since independence and democratic rule, there has been no recurrence of famine – despite severe crop failures and massive losses of purchasing power for large segments of population as in 1968, 1973, 1979 and 1987. Each time the government acted to avoid famine. Food production fell largely in 1973 during drought in Maharashtra, but famine was averted partly because 5 million people were put to work in public works projects. In contrast

in 1958-61 famines in China killed nearly 30 million people. And one of the worst famines in history continues in the Democratic Republic of Korea, having already killed 1 in 10 citizens.”

From yore, Democracy versus authoritarianism has always engaged men’s mind. Sir John Laws, in his Howard Memorial Lecture 2002 “Homer To Socrates – the Rule of law in Greek Literature” refers to the passage from the Supplicant’s Theban Herald’s speech justifying dictatorship in exactly the way Mussolini must have done:’

“I speak for a state where one man rules,
 Not a rabble. We don’t have loud mouths there,
 Filling our ears and twisting us
 This way, that way,
 Whichever way their own profit lies,
 One day riding high, next scrabbling,
 Slandering, blaming the innocent
 And skipping off scot-free....
 The people! How can a people rule?
 Has a people a single voice, a single brain?
 Has a people experience? Farmworkers,
 Good at what they do, no doubt,
 But who expects them to drop their hoes
 And bend their intelligence them to affairs of state
 They’ve nothing; they’re tongues on legs;
 They talk themselves up
 From the furrow to the stars,
 They sicken their betters”

But Theseus of Athens answers him:

“If a state gives one man absolute power,

Puts itself in one man's hands, it's doomed.
 The rule of law dies first. He makes up for the laws
 To please himself. In an equal state,
 Where all are equal, all are free,
 The law's written down, it's the same for all"

"Rights guaranteed for rich and poor alike,
 Weak stands up to strong, its voice is equal,
 The contest's not in strength, but justice,
 When we gather in Assembly, our heralds ask
 'in Athens' name, for the city's sake,
 Who wants to speak? If you've something to say,
 You say it, it's an honour; if you've not, you don't
 Democracy we call it."

The Grand Inquisitor in Dostoevsky's *Brothers Karamazov* confronted the apparition of Christ on precisely this question: Whether to leave the determination of what is right to the freely questioning masses and risk unrest, turbulence, riot, murder, and war: or to take choice out of the hands of the masses, still their unrest by bread, the circus, a myth, a hierarchy, and the infallibility of a doctrine enforced by imprisoning and torturing the disobedient"

The very need for social organization of man stems from the fact that all human beings incomplete in themselves seek their ordainment and fulfillment of their destiny in the enriching atmosphere of human companionship and political institutions. Democracy provides the richest and the most profound opportunities for this mutual enrichment. It provides the highest opportunity for each member to achieve and bring out the best in him or her. It is such great society that India's Constitution dreams of.

Constitution: Vision of Indian Society

It is this universal vision and the sanctity and validity of religious truths of all religions that the founding fathers of the Indian Constitution envisioned by extolling religious freedom and freedom of conscience for every one to believe what he considers true, and the duty to honour and respect the composite culture of this ancient land where, from time immemorial, great caravans from distant lands arrived and settled down together in a spirit of brotherhood and harmony. Christianity came to India long before it went to Europe. It is a mistake to think that democracy survives only if the composition of society is homogenous. A strong democracy, in the words of Benjamin Barber:

“...rests on the idea of a self-governing community of citizens who are united less by homogenous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic attitudes and participatory institutions rather than their altruism or their good nature. Strong democracy is consonant with – indeed it depends upon – the politics of conflicts, the sociology of pluralism and the separation of private and public realms of action.”

In this land, Hindus, Muslims, Christians, Zorastrians and followers of many other faiths have lived for ages in harmony and peace. Islamic culture has made its own splendid contribution to the enrichment of this composite culture. Justice and Equity are the values on which this liberal culture is sustained.

Dr. Ambedkar, defending the provisions in the draft Constitution for the protection of minorities uttered some memorable words. He said:

“In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of the minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be seen that it will enable the majorities and the minorities to merge some day into one. The solution proposed by the constituent assembly is to be welcomed because it is a solution, which serves this two-fold purpose. To die-hard who have developed a kind of fanaticism against minorities protection, I would like to say two things. One is that the minorities are an explosive force, which, if it erupts, can blow-up the whole fabric of the State. The history of Europe bears ample appealing testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland Redmond said to Carson “ Ask for any safeguard you like for the protestant minority, but let us have a united Ireland”. Carson’s reply was “Damn your safeguards’ we do not want to be ruled by you”. No minority in India has taken this stand. They have loyally accepted the rule of the majority, which is basically a communal majority, not a political majority. It is for the majority to realize its duty not to discriminate

against the minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minorities, they have no ground to exist. They will vanish.”

We are yet to understand the message of these meaningful words.

Personal Laws in Plural Societies: Uniform Civil Code in Context

I have referred, in some detail, to the values of liberal democracy and how pluralism and democracy are inseparable, only to set the proper perspective to the ongoing debate on the Uniform Civil Code. The Constitution of India in its 44th Article enjoins, “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” Both the system of the personal laws of the Hindu and Muslims have their religious and theological origins. Religious texts that prescribe a code of conduct regulating both the religious and temporal affairs of its votaries do present dilemmas in their application to conditions that have vastly changed over time. What amongst those rules represent the eternal and un-changing values and what others are merely intended as solutions to the social issues and problems under the then existing conditions and are, therefore, to be considered merely ephemeral admitting of further interpretation and change in the context of the changing times? These have become instead of logical, emotive issues. When emotions and passions are raised, a clear vision and a rational solution become difficult.

The process of codification of Hindu Law went through a similar phase. At one extreme were the rigidly orthodox persons

who were vehemently opposed to the very idea of change itself. At the other end were persons who wanted one uniform civil code governing all citizens. It is amidst these apparent tugs and pulls that the Government of India, by a resolution dated 20th January 1944, appointed the Hindu Law Committee with a mandate to formulate a code of Hindu Law. The Committee published its report on 21st February 1947 together with a draft code. The Committee in its explanation said:

“It is generally felt that the evils of piecemeal legislation on this subject should be avoided and that an entire Hindu Code acceptable to the general Hindu public should be in operation at an early date”.

“One of the objects of the committee was therefore to evolve a Uniform Civil Code of Hindu Law which would apply to all Hindus ‘by blending the most progressive elements in the various schools of law which prevail in different parts of the country’. The achievement of uniformity necessarily involved the adoption of one view in preference to others on particular matters.”

A revised draft considered by the Select Committee was presented to the Constituent Assembly on 12th August 1948. It had nine parts:

Part I	:	Preliminary
Part II	:	Marriage and Divorce
Part III	:	Adoption
Part IV	:	Minority and Guardianship

Part V	:	Joint Family Property
Part VI	:	Women's Property
Part VII	:	Succession
Part VIII	:	Maintenance
Part IX	:	Miscellaneous

At that time a learned Barrister of Lucknow Hyder Hussein, writing on the proposed codification of Hindu Law said:

"I want to go a step further and have one Indian Code instead of merely a Hindu Code. It may appear to be little startling as it did to the University students, when I laid it before them some time ago but as a matter of fact there is nothing astounding about it. Living under the British rule for about two centuries we have come to consider it only natural for Hindus to be governed by Hindu Law and Muslims by Muslim Law, but it is wholly a medieval idea and has no place in the modern world. In Europe they discarded it long ago. In France they had the code Napoleon which governs the relationship of all those living in France. Similarly, they had the German Civil Code and so on. I make bold to say that every civilized state in the modern world has got territorial laws and not personal laws as exist to some extent in our country. As a matter of fact even in our country the bulk of the laws are common: all the public laws are common and nobody ever takes exception to them. Even a Muslim cannot think of advocating the amputation of the right arm of

the thief and let him go as enjoined by the Muslim Law instead of being sent to jail like his other fellow countrymen.”

The idea of uniform civil code regulating the Marriage, Divorce, Maintenance, Adoption, Inheritance, and Succession etc. has in course of time, acquired highly emotive overtones and has led to an intense debate, sometimes bordering on the acrimonious.

The Supreme Court in several cases – *Javed vs. State of Haryana* (2003) 8 SCC 369; *John Vallamattom and Anr. vs. Union of India* (2003) 6 SCC 611; *Pannalal Bansilal Pitti vs. State of A.P.* (1996) 2 SCC 498; *Lily Thomas and others vs. Union of India* (2000) 6 SCC 224; *Sarla Mudgal vs. Union of India* (1995) 3 SCC 635; *Ahmedabad Women Action Group vs. Union of India* (1997) 3 SCC 573; *Ms. Jorden Diengdeh vs. S.S. Chopra* (1985) 3 SCC 62; *Mohd. Ahmed Khan vs. Shah Bano* (1985) 2 SCC 556 – referred to the mandate of Article 44. In some of them the Court indicated that a uniform civil law would promote national integration.

A learned professor interpreting the judicial observations in the aforesaid cases and particularly in the case of *John Vallatom* sought to impart to those observations the status of declaration of the law under Article 141 of the Constitution. He said “ in the author’s view, since the Supreme Court’s call for a uniform civil code is conceived as a ‘by-product of the administration of justice, it squarely falls within the ambit of Article 141 of the Constitution.”

But H.M. Seervai, writing in the Times of India (New Delhi, 5th July 1995), described as “amazing” the observations of the Supreme Court in *Sarla Mudgal’s* case. The Bench had merely said “we therefore, request the government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and ‘endeavour to secure for the citizens a

uniform civil code throughout the territory of India.” Seervai commented:

“...those who have studied Hindu law and Muslim law will realize that a common code for Hindus and Muslims alike is an impossibility. To speak of Hindu law might suggest that there is one law applicable to all Hindus, but this is not so. Before 1955-56, Hindu law was divided in the first instance between two main schools namely, the Mitakshara and Dayabaha schools”

Referring to the difficulties presented by the different schools of Muslim law he said:

“First the Mohammedans are divided into two sects and sub-sects, the two sects being Sunnis and Shias. Sunnis are divided into four sub-sects namely the Hanafis, the Malikis, the Shafeis and the Hanbalis. The Mohammedan law applicable to each sect is to prevail as to litigants of that sect or sub-sect: it is clear therefore, that ‘Mohammedans law does not uniformly apply to all Mohammedans. Secondly, Mohammedan law does not recognize a joint family as a legal entity and in fact, according to rules of Muslim law heirship does not necessarily go with the membership of the family. There are several males and females who have no interest in the heritage but may be members of the family. On the other hand, there are several heirs who take an interest in the estate but are not part of the family.”

In several pronouncements the Kerala High Court expressed itself strongly on the desirability of a Uniform Civil Code. That great master of phrase, Justice Krishna Iyer in an Article (The Hindu: 23rd August 1995) said; "There is in India a Uniform Civil Code in Goa and Islam has not committed hara-kiri there". But Muslim scholars contest the basic assumption underlying Justice Iyer's reference to the position in Goa. Prof. Tahir Mohammed says: "There is, I regret to clarify, with due respect, no Uniform Civil Code in Goa in respect of family and succession laws; and the reason for this is that at the very beginning the Hindus had refused to allow their religious law to commit hara-kiri under the shackles of the Portuguese colonial Rule".¹

The orthodox Muslim point of view is that the Muslims perceive the imposition of a common code as a violation of Article 25, as Muslim Law is Shariah, which is an integral part of Islam. According to them, Islamic law and religion cannot be separated. Such a code is also seen by some Muslims as an anti-minority measure. The arguments in favour of uniform civil code, summarized are:

- The Constitution provides for it.
- It will strengthen national integration.
- Judicial process will become quicker and smoother.
- We can bring about gender equality in the changed laws.

Contentions against the Change are:

- That Muslims maintain that their Personal Law is part of Shariat Law, which is an integral part of their religion, and imposition of any uniform law from outside violates Article 25.

¹Prof. Tahir Mohammed: *Uniform Civil Code: Fiction and Facts* 1995 Edn. Page 111.

- That we should respect aim of 'integrity in diversity'.
- That there is no need of a change as there has never been a misunderstanding or communal disharmony caused because of differences in personal laws.
- That any changes required can be brought about by modifying the concerned personal law suitably, but after due debate and creating the right environment (against easy divorce and against polygamy) as has been done under the codified Hindu Law.
- That the imposition of common law is only an elitist and not a popular view.

Even from the point of view of the practical difficulties in evolving an uniform code it is pointed out that 'the diversity of laws even among Hindus is so bewildering in different regions and castes that to create a uniform law among for them itself would be a great challenge. In Tamil Nadu and some other parts of south the most preferred form of marriage, it is said is between niece and maternal uncle, while in U.P. such marriages are unthinkable'. How can, it is asked, one reconcile such diverse practice within one uniform law?

There have been extensive debates and expressions of opinion from legal scholars and sociologists. Vasudha Dhagamuar, Justice Ratnaparkhi, Professor Tahir Mohammed and others have presented strong arguments. The real debate is not the desirability of a uniform civil code; but about its practicability and more particularly what are the honest reservations of the minorities to such a measure.

Law and Religion in a Changing World

On the need for a uniform code Nehru said: "Well, I should like a civil code which applies to everybody. But..." Shri More asked

“what hinders?” Nehru said: “wisdom hinders”. But Shri More retorted, “Not wisdom, but reaction hinders”.

Justice Gajendragadkar writing in the Annual number of the Bhavan's Journal (1971) said that the non-implementation of the provisions contained in Article 44 amounted to a 'grave failure of Indian democracy.' He said the questions “whether or not polygamy should be allowed, what should be the line of succession, what should be the shares of different heirs, what should be allowed, what should be the law of divorce, are matters which should be determined not by scriptural injunctions but by rational considerations” and “are outside the legitimate domain of religion as contemplated by Articles 25 and 26 of the Constitution.”

The world is changing at an amazing pace. Science and technology will usher in changes in mind-sets and life-styles, which will be far reaching. Our world picture will change. That will be the testing time for all our beliefs and institutions. This is the experience of humanity during all crossover points in civilizations. These crossover points have coincided with the changes in the energy-sources. Biomass as energy-source sustained evolutionary life. Human labour was the energy source in feudal societies. Then came steam-power, electricity, followed by revolution ushered in by computers and we have today “knowledge” society where knowledge is energy. This knowledge society will progress into one based on, but beyond even knowledge, into existential era.

The results would be amazing indeed. Only the enduring values, and not ephemeral superstitious ones will survive the onslaught of the challenges of this re-assessment.

We have seen in the transformation of Hindu Law a marked feature of the progressive secularization of what was earlier entirely religion based: Some of the notions of joint family, coparcenary,

even of the very purpose of ownership of property and several other beliefs once held fundamental to the basic tenets of Hindu religion have totally been transformed in the course of just a few decades. Centuries of shastraic influences on law have been obliterated by one stroke. Progress of reason brings about great changes. Indeed, in the great demographic debate on causes and cures of population explosion, the view of Condorcet was that 'progress of reason' is the key inhibitor while Malthus was of the view that paucity and regression of resources inhibits growth of population.

A deeper analysis of the connection between law and religion, would indicate that, as J D M Derret points out: "religious jurisprudence has utilized religious doctrines as a means to an end, namely the justifying and systematizing of rules which on purely objective grounds had every reason for being enforced. In relation to the legislation of the personal laws of Hindus, the implications of this view are according to Derret, that legislation on topics of Hindu Law need not fear the charge of being sacrilegious and that Hindu law, is as a system, no less than any system not nominally derived from religious doctrines, fitted for comparative treatment by analytical jurists." Derret further suggests that "the actual relationship between religious doctrines and the rules of substantive law is not that of cause and effect, but rather that of form and substance. The teaching of law and its judicial development cannot indeed dispense with formal theories and 'a-priori' arguments, but it is plain that the law as a living expression of justice can exist, and often does exist, without their aid."

What can the Minorities do to Foster the Composite Culture?

In an atmosphere of competitive communalism a culture of mutual recrimination comes easy. Perhaps, the spirit of mutual

accommodation which alone should inform the attitudes of the majority as well as the minorities has dried up. There should be higher awareness that destiny has bound together inextricably and permanently all of us, Hindus, Muslims, Christians, Parsis and all the rest for better or for worse. None of us can live without the other. None can jump-off the planet. So far as minorities are concerned there should be a more robust and optimistic participation in the political institutions. There must also be a greater willingness to appreciate and voluntarily accommodate the mere reasonable and justifiable susceptibilities and expectations of other groups whether major or minor. The foundations of the strong democracy are not in a homogenous society. It is the conflicts of pluralism that help the growth of institutions of a liberal democracy.

John Stuart Mill in his "Liberty" speaks of how the first immigrant Parsees endeared themselves to the king when they arrived on the Indian coast and "regulated even their food habits"

Mill observes:

"The case of Bombay Parsees is curious instance in point. When this industrious and enterprising tribe, the descendants of the Persian fire-worshippers, flying from their native country before the Caliphs arrived in Western India, they were admitted to toleration by Hindoo sovereigns, on conditions of not eating beef. When those regions afterwards fell under the dominion of Mahomedan conquerors, the Parsees obtained from them a continuance of indulgence, on condition of refraining from pork. Though not required by their religion, the double abstinence has had time to grow into a custom of their tribe: and custom, in the East, is a

religion.”

We must however, ponder over some facts. The average percentage of Muslims' representation in the Lok Sabha since independence has been just 5.8%. In the present Lok Sabha it is 5.6%. At the time of the framing of the Constitution when the idea of reservation of seats for minorities was given up, Jawahar Lal Nehru exhorted that it was an “act of faith above all for the majority community. They will have to show after this that they can behave with others in generous, fair and just way. Let us live up to that faith.” In one of the larger States, not long ago, the legislature did not have even one Muslim member. These inequities need to be removed. That apart, the base of opportunities for modern education for Muslims needs to be greatly expanded.

Historically India has presented the finest opportunity to its inhabitants to demonstrate to the world its capacity for human values. Today, it has on its hands a great, though sometimes perplexing, challenge to the genius and nobility of its people: to raise above pettiness, obscurantism, intolerance and violence, and build a society which will be a model for other plural societies. To those who believe that their own religions can be followed only in a state which stands for that religion, the words of the Prophet himself should be resounding:

“There must be no compulsion exercised
In matters of religion. Unto you
Your faith be welcome; so my faith unto me

Let those who know not God, be led to Him
By those who know, with words of gentleness
And wholesome and wise counsel, in kind ways”

“To every people have we given a law

And a way whereby they may reach to God.
 If God had wished it so, He would have made
 You all one people. He has not done so.
 Wherefore let every people, on the way
 Prescribed for it, press toward to good deeds.
 And let none laugh at any other men
 Perchance they may be better than themselves.”

“Whatever good ye have is all from God;
 Whatever evil is from yourself”

The universal exhortation of the Upanishads is inspiring:

“He who is one who is above all colour distinctions, who dispenses the inherent needs of men of all colours, who comprehends all things from their beginning to the end, let Him unite us to one another with the wisdom, which is the wisdom of goodness”. (*Swetaswetara*: 4:3)

Human welfare is the only object towards which religious enthusiasm has to be directed. With the kind of robust and liberal, though some times chaotic, pluralism this country's history bears testimony to and has cherished, the culmination of this ideal is a greater possibility in this country than elsewhere in the world.

Uniform Civil Code: What prospects?

Should all citizens of India have one uniform law governing their marriage, divorce, maintenance, adoption, inheritance, succession, etc.? Does such uniformity would only be a contrived uniformity that denies cultural pluralism? The answer is that a uniform civil code is desirable, but it should not be seen as an

imposition by the Hindu majority on the Muslim or any other minority. The approach should not be adversarial, contentious, and censorial. There are many areas in which all citizens, irrespective of their religious belonging are governed by uniform law. But there is, as yet, no model draft as to how a uniform code generally acceptable even to the Hindu majority would look like.

The first step, I think, is to codify the Muslim personal laws. The preparatory work is to be undertaken in collaboration with the Muslim Personal Law Board. This legislative process itself would neutralize some of the objections as to the competence of the non-Muslim majority parliament to legislate upon matters perceived as the domain of religion. A body of jurisprudence will develop in due course around such a code by judicial interpretation, which will naturally come under the sway of the great influence of the international Human Rights and Humanitarian-law Regime and in particular the compelling issues of gender justice. After such a body of jurisprudence develops, an integration of the systems may become practicable.

However, the imperatives of the legal and constitutional mechanism for the protection of minorities from the power of numbers can never be underestimated. The long experience of mankind in its experiments with social and political institutions has shown that though the enlightened tolerance of the majority is, in the real and effective safeguard of the interests of the minority however, the assurance of a positive translation of this liberal faith into thoughts and acts of the community by legal norms is a compelling necessity. The Constitution of India has fulfilled that necessity. The debates of the Constituent Assembly bear eloquent testimony to the great concern the founding members had for cherishing the composite culture of a great plural society. The debates transcended the awesome experiences in the wake of the

partition. They realized the values of an inclusive democracy. The preamble and the provisions of the Constitution proclaim this conviction. These provisions were the symbols of unity and hopes for survival.

It is said that the Quran itself exhorts that "To listen to the words of the learned and to instill into others the lessons of science is better than religious exercise". The Prophet himself exhorted that the "ink of a scholar is holier than the blood of the martyr". A scholar counseled, "Muslim elite have, also to keep in mind that their cultural identity is not composed of such fragile ingredients that even justifiable modernizing and valid indigenizing influences will tear apart".

A uniform civil code will indeed be the celebration of the idea of India and its spirit of fraternity and its faith in liberal institutions. In a non-trivial sense time uses us all as the instruments of understanding, peace and progress; only that we must have the good sense to let it do so.

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