

V. R. Krishna Iyer
Retd. Justice Supreme Court, India

Strategy Towards a Uniform Civil Code*

I realize the importance of the theme which is being discussed today : a uniform civil code in a multi-religious society. The discussion of a subject which is merely abstract may be carried on in an intellectual atmosphere. But when the subject becomes emotional and the parties involved or affected get into paroxysm, I wonder whether intellectual clarity or even political sanity can be preserved. Unfortunately this subject has already kindled feelings and emotions among various sections of the people : the Hindus who constitute a preponderant majority in this country, the Muslims, the most substantial minority, the Christians, the Jains and the Buddhists, the Zoroastrians or the Parsees, each important, however small numerically the minority may be. And the Sikhs whose number gives no indication of their capabilities.

We are therefore involved in a national issue which has to be handled delicately, with statesmanship, wisdom and we shall not allow ourselves to be swept away by passions which it is easy to generate. Just imagine, how unfortunate it is that some young men, wrote posters in a city in Kerala that India will be liberated through Islam. There was another group waiting for this kind of a poster and immediately they wrote underneath : 'Islam's graveyard in India'. Neither is going to happen. All that has happened is generation of bad blood which is injurious to the health of both. We know what is happening and what happened in Punjab. We know what happened in Delhi. Are we reading the lessons of history ? If we do, we must realize that religion affects the being of an individual and of a group deeply and

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we must respect it. It is no use saying that all religions preach the same truth. They do. How can any Hindu object to the world brotherhood that Islam stands for? How can any Hindu object to the Christian teaching: 'Love thy neighbour as you love yourself'? I am a Muslim, I am a Christian because I am a Hindu. I cannot think of *advaita* with out the universal love that Jesus Christ preached. I cannot understand a fragment of Hindu philosophy if I cannot accept Islam and its great tenets of fellowship and brotherhood. Practical brotherhood if ever practised in any religion, it is in Islam. But it doesn't help if we are blinded by fury and passion.

So it becomes important for us to understand that platitudes will not be enough. Accept certain great realities when we discuss any issue of this type. One of these realities is that a group holds dear its religious faith. Any discussion which affects religion must therefore be handled with great care. And the topic here is — 'a uniform civil code in a multi-religious society'. I would therefore appeal to the participants of this seminar and to the nation at large to discuss this issue calmly and carefully, taking note of the fact that the Hindu and the Muslim, the Christian and the Jain, the Sikh and Parsee, holds his religion so dear to his heart, to his very being, that we cannot brush him aside and do something merely by legislation. I am not of the view that legislation can make a man vicious or virtuous. It can make him vicious, but not virtuous. So it is important that we do not pin all our faith in mere matters of religion, we should not seek all our ends in legislative baskets. We are here to think much deeper. Here is statesmanship which is summoned especially because of the pathological environment. The environment is undoubtedly pathological. Do remember that any seminar, anywhere cannot solve this problem unless we are able to involve the millions upon millions of common people and bring a new vital camaraderie among them. It is not scholarship in the Koran, nor delving into the Vedas, nor quoting the Bible that is going to solve the problem, it is in telling everyman, "please remember that you are an Indian; if India dies, everyone dies and if India lives, all of us will live. Long years ago, Churchill, in England, during World War II said: Who lives if England dies? Who dies if England lives." And that in constitutional terms has been put and expressed as the unity and integrity of India.

So the paramount concern for all of us, of all religious faiths is to remember this nation, its survival, its unity and its integrity.

II

And I would like to say two things : (1) There are factors and forces which would be interested in seeing that India and Indians are destabilised and disrupted so that the nation is weakened. It is a reality which you feel in your blood that there are forces which may be within or without, from without to exploit what happens within and from within to take advantage of sympathies from outside. Which are these forces we need not go into because that means we are playing Judas to ourselves. Indians, whether they be Hindu, Muslim, Christian, Jain or other, shall move together; let us stand together. I should like to say this because if we play with communal passion, there will be neither Hindu, nor Muslim, nor Sikh. That is why I referred to what happened in Delhi: Hindu killing Sikh, Sikh killing Hindu and man, woman and children are being butchered and murdered in the most brutal fashion. Suddenly we become beasts, savages and there is no reason thereafter.

(2) 'Instantanism' is not the way to settle problems. And we are oblivious to it to a large extent. When there is some kind of pressure, you say this should be done; when there is some other pressure, you say the other should be done: it doesn't take you any where. For instance, if there is pressure from some members of Parliament (M.Ps.) you may say you will amend the bill or produce a white paper; when there is pressure from yet other side, you may say that you will produce a blue paper. Papers, whatever be their colour, or even bills or legislation, will not be an answer. Suppose the section 125 (of the Criminal Procedure Code) is amended and some communities in the name of religion are excluded from it by the Parliament or the Supreme Court strikes it down under article 14. Neither the Supreme Court verdict nor the Parliament legislation will solve the problem. The problem can be settled only by 700 million people in India. That is the most important point to realize. A decision of the Supreme Court lives in the short run. A Parliamentary legislation of today, may perhaps be changed tomorrow.

One another point I would like to mention is the potential communal conflagration. There are certain forces which are waiting for a wrong step and once that wrong step is taken, to take advantage of it. Infuriated men do not think in terms of any political principle. Therefore we must have a subconscious feeling or a sense of what is involved. A group majority can achieve nothing. A determined minority can disrupt the whole show. That is why it becomes important to the whole community to be coherent. A new harmony must be brought in. The issue is not Koran, or Veda, or Upaniṣad, or Zoroastrian principle, so much as the new harmony we must weave among the people of India, multi-religious as they are.

Mahatma Gandhi did say: all religions are one and his prayer meetings are examples of that. But today we are put to the test: How secular are we? How respectful are we of other people's religion? A man like Vivekanand once asked the Hindus: 'Where is your God? Is He in the cooking pots? In the kitchen? You say 'Touch me not, touch me not, I am too holy to be touched'. Of course you are an untouchable because you are a leper of religion. The point is that reform of many practising religions may be very much of a task. All these things can be performed only if we have great mutual respect for each religion.

III

Now, let me come to the issue — a uniform civil code, in an inter-religious or multi-religious society. There is no doubt that we have a plurality of religions in our country. One cannot make all these 700 million people of India Muslims with all the 'gulf-money'. Nor can the Hindus in all ferocity achieve the wiping out of all the Muslims from India. These are hard realities. You can't wipe out the Parsee, or Jains or the bitter conflict in the Punjab. Sikhs are not able to wipe out the extremist Sikhs. Let us drop the idea of wiping out conflicting elements and focus the entire discussion on the life of the country and believe deeply in the universality of the principles each religion preaches and wants us to practise.

And now let us come to the constitution and the law concerning a common civil code. One reality which we must take note of is

that Indian constitution in its preamble enshrines certain fundamental human rights. These human rights are social justice, the dignity of the individual, equality of opportunity etc. This has meaning and relevance to a common civil code. When we speak in terms of uniform or common civil code it is not the commonness of the uniformity that matters. It is the progressive respect of the human rights for dignity of personality, for the divinity that is in each one of us; for that is the kernel of a unified civil code. If it is stated that all men, Hindu, Muslim or Christian above 40, shall not marry the question of taking three or four wives may not arise frequently because you could not marry after 40 according to the common civil code. So what is required is not the 'commonness' but a progressive civil code which respects human rights. International instruments from the United Nations and elsewhere proclaim equality and a hundred other human rights. These are all very important and they cannot be interfered with or by any religion.

Suppose that you have a religious rule by which if a husband dies, the widow will also be thrown into the funeral pyre so that she may be consumed and her *atma* become one with that of the husband, we all will say 'no', because it interferes with life. So the question of religious autonomy will have certain limitations. This is taken note of in the Indian Constitution, art. 25 in particular, which gives you freedom of religion, freedom of conscience, when it says 'subject to public order, health and morality'. These are slippery expressions in a way, for what is public order or security of nation, or law and order is not defined anywhere. Broadly speaking, all of us have some understanding about what is public order. Suppose the public order is being threatened; unquestionably, religion stops where public disorder begins. For example, if the Hindu religion says that no doctor shall go any where near a person with small pox because goddess has punished him and therefore he must perish, we will not tolerate it. If that is religion, that religion will be interfered with, because human right to survive and to have public health is higher and therefore your freedom to practise religion under art. 25 will stand truncated. It is the same with regard to morality also. Suppose that there is some religious doctrine by which the only way a woman can practise morality is that she makes herself available to every man', then it interferes with modern notions of morality. Therefore we say 'no', because article 25

says specifically that you shall not do anything that will disturb public order, morality and health. The Constitution says that you shall not adopt practises which are derogatory to the dignity of women. I consider this as a question of human rights. Therefore when we want to have a common civil code, I would say, 'please preserve the rights of women'. There religion shall not come in the way because art. 51(e) makes it a fundamental duty of us. 'Equality before law', which art. 14 guarantees, is an imperative of Indian Constitution. In fact, in one of the judgements, the Indian Supreme Court has held that it was a part of the basic structure of the Constitution. So whatever happens, if this constitution prevails, its civilized notions of equality will also prevail and the egalitarian imperatives will compel us to adopt certain norms of equality between men and women, whatever the personal law here or there may say.

Then one another point I would like to mention is that the common civil code must be a progressive one and not a regressive one. The heavens will not fall by having a common civil code as we have it in Goa. For hundred years the Republic of Goa had a codified civil code. Today in Goa, a Hindu marriage is valid not by performing '*saptapati*' — the seven sacred steps by which the marriage is completed, but by complying with the common civil code of Portugal. Today it is applicable to the Goan Muslims also and they have to follow monogamy. This takes me to another step. Each religion shall try, however to improve progressively, and interpretatively from within the various norms or relationships prescribed there in. When the Indian Constitution was drafted, Dr. Ambedkar was very insistent that we must have a common Hindu code because his community had suffered under Hindu oppression. When the common Hindu code was drafted, Pandit Jawaharlal Nehru agreed to support it. But when it was introduced in the parliament there was furious opposition. Even such an enlightened patriot like President Rajendraprasad was against this measure. The opinion of certain Hindus was so vigorous that the Government had to splinter the legislation in the line of common civil code into a number of piecemeal enactments. The approach of the Government to this in the past was same with the Muslims also. So it is not as if these things had never been done, or something which cannot be done.

IV

The whole thrust must be on the best strategy to achieve the wisdom-destination. And that strategy according to me is; take each religion or each personal law under the umbrella of one religion. Reform it as much as possible and make it from within a very progressive Hindu code or Muslim or Christian law. These then will reach, more or less on the same level.

Now the Hindu has got some kind of a code. Similarly in Islamic law there are great treasures hardly understood by the main mass of people of India including Muslims. For instance, Suppose there is the case of an irretrievable breakdown of marriage. Now, is that a ground for divorce? No Hindu or Christian law will provide for it. But Muslim law will provide for it. The great and holy prophet has said so. He was far ahead of his time. It is only now, in England, when the Archbishop of Cantebury established a committee to study about it, they gave the report that when a marriage is actually broken, then there is no meaning in keeping it up in law as a fiction. Irretrievable breakdown became a ground for divorce only in the 20th century in England, whereas long centuries back, the prophet had sanctioned it. I can give you a series of teachings of Prophet in matters of law. I don't consider these as matters of religion, whether you have three or four wives. These are matters of social circumstances, social milieu and democratic situation. When the Prophet permitted divorce, there was a background for it; nobody understood it; and there is no meaning in simply parodying and caricaturing it. If you go into the root of the matter, you will see that some of the most progressive things which could have been done only by a daring radical was done by the great prophet. Consolidate them and if the fundamentalists are against it change it saying that these are new interpretations or these are there already. That is how various countries have changed.

So, what I want to say is, let our Muslim scholars, with authentic concern for human rights, change the law through interpretations, interpretations which have been sanctioned, persuasive, possible and in today's circumstances permitted. Sometime, the Great Prophet asked a judge, "What would you do in this case?" "I will follow the Koran"

the judge replied. "But if you don't have the original of the subject under Koran, what will you do?" "Then the Habit" the judge answered. "Supposing that you don't have both these what will you do?" Then he said many other things and ultimately he said he would act according to his conscience and intelligence. The Prophet said: you are the right judge. It is a lesson to other judges in our country. So my point is that the strategy of vitalizing each personal law under each religion is by adopting various methods of interpretations and codifications. Once we have this, then we are much nearer to the goal of a common civil Code.

Finally I would like to say that Sect. 125 of the Criminal Procedure Code merely laid down that certain persons shall be maintained by certain other persons. In the wisdom of the Parliament it also said that a divorcee shall be maintained by persons who have certain kinds of relationship with her. We don't have to invoke the Manu or Koran in this matter. This is a criminal procedure to be decided by the Courts. Statistics show that in Kerala there are now about 3,000 divorce-cases pending under section 125, of which a good number are cases of Muslim women divorced. They applied not because they find a pleasure in finding maintenance ways but because they were unable to maintain themselves. Parliament has also provided some alternatives. If these are done, there is no need of ordinance or decree for maintenance. These are matters to be taken note of. The plea to remove Hindus or Muslims or Jains from any clause of the constitution will not save the situation because if you exclude one, there would be the demand to exclude the others also. Hence we must look at the problem constructively. There must be a catalyzing agent in each religion.

Another strategy can be a facultative legislation. Persuade people to register their marriage under this special marriage act. There would be special provisions regarding inheritance, guardianship, maintenance in that act. Propagate it and persuade more Hindus, more Muslims, more Christians to register marriage under special marriage act. Instead of huddling themselves in Guruvayoor temple or any other Church people must go to the office of the registrar of marriages, and if there are facultative or optional provisions, they could be governed by that. Why can't we take this course?

The third strategy that I would suggest is to go to the masses and give propaganda, on the need of uniform Civil Code. That is what I found in Trivandrum. Women's organizations alone organize seminars. The importance of this is that women saying: 'Women arise, We want womenhood to be protected first and last. So please change your law'. That way women were doing propaganda on themselves. So these are methods that we must adopt. But always remember that human societies have never progressed under the lash of the whip of the state; that human societies have always been raised only through higher consciousness, that human societies can survive only through integration and harmony. There is no use of threatening people with legislation here and there. The state has not taken any step to educate the people. What has been done in this country, except some non-official agencies holding seminars? Has the state done anything to catalyse the thinking?

For a uniform civil code, a progressive one in fact, precious little has been done. We must work on those lines, and make the state to initiate steps so that there can be change in this entire atmosphere, a higher conscious approach to the problems that afflict all of us together. What is required is to find the way to reach it. That is why the founding fathers have said, "We shall endeavour". It is not a rigid law in which you suddenly pop in. "We shall endeavour"; it means there is a flexibility. But the goal is there. The Lone Star that summons you is one citizenship, one family law. But that is a lone star. You have to move towards it. We can compare the state to a ship. All of us are passengers; all of us are crew. So 700 million crew are navigating the ship of state called India. Wisdom alone can take you firm hand towards a common civil code, a more progressive civil code, so that we can achieve more brotherhood, more intimacy.