Chapter - 10

Role of Muslim Thinkers,
Minority Organisations, Successive Governments, Political Parties and Press
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If the Academics have failed to study the question of Uniform Civil Code in depth, the governments have also failed to communicate with the masses on the Uniform Civil Code. In the last fifty one years since the Constitution was adopted, the government has done little to lead the nation to the Uniform Civil Code. The government has not done much to discharge the burden of Article 44 of the Constitution of India. No steps have been taken to explain the contents and significance of Article 44. No measures have been adopted to a fight obscurantists who opposed the Uniform Civil Code. It is alleged that the government has been giving undue advantage to opponents of the Uniform Civil Code by giving weightage to the conservative elements to the Muslims Society and this attitude of the Government is only for the political games.

If we go into the history of the congress party the Indian National Congress since the pre-partitions days is assuring the Muslims that the government had no intention of tampering with their personal laws. This is evident from the resolutions passed by the Indian National Congress at its various sessions held
during the freedom struggle. These assurances continued even after the independence of the country. These assurances 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 can not be praised for their role. No party have 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 bedfellows. 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 judgement from the Muslim Women’s Bills, no party save the two mentioned was able to forget its electoral compulsions.¹

None of this behaviour is exactly designed to persuade the Muslims that the Uniform Civil Code is any more than the sword of Damocles having over their community’s collective head. Indeed they may well ask, as some of their leaders are demanding, that Article 44 be repealed altogether.²

It is very unfortunate that when five decades have passed after the commencement of the Constitution we have nothing like
Uniform Civil Code which was considered by our constitution makers as a golden letter for the unity and the integrity of the country.

Thus, at this point it is very important to know the opinion of various religious communities and the persons who have some recognition and identity on behalf of religious sects. The purpose to study the public response, is that whether it is the opposition from the side of the general public or a small portion of a total population for the country which is opposing this directive.

A. Views of Muslim Thinkers and Minority Organisations

(i) Arguments against Uniform Civil Code

There is no denying to the fact that Muslim is first largest minority group in India, therefore, it is some what natural to know the attitude of the Muslims towards Uniform Civil Code. The Advocates of Muslims personal laws argue that their personal law is comprehensive and complete code of life. It has its origin in Divine Revelation and is, therefore, immutable. Muslim law relating to marriage, divorce, and inheritance, it is claimed by the critics of a Common Civil Code, has been handed down by the Prophet (SAW) and are, in this sense, divine and must, therefore, be unquestionably obeyed. This is not a new thing that some Muslims are opposing Uniform Civil Code. If we go through the
history of the incorporation of Uniform Civil Code during the debate in the Constituent Assembly we find that it was strongly opposed by the Muslim members of the Constituent Assembly. They argued that the right of a group or a community or the people to follow and adhere to own its personal law is part of the way of life of those people who are following such laws; it is their religion and part of their culture. If anything is done affecting these personal laws it will considered as an interference in their age old laws which they are following from generation to generation. Thus secular state which we are dreaming to create should not do any thing to interfere with the way of life and the religion of the people.

The minorities represented in the Constituent Assembly were Muslim, Christian, Parsi and Sikhs (on members). There were also Schedule Caste and Scheduled Tribe members. The Anglo-Indians have given a separate representation. The Buddhists and Jains were subsumed under Hindu (general constituency). It is to be noted that with the exception of Muslims all other minorities either acquiesed silently to the notion of a Uniform Civil Code or vigorously supported it. It does not mean that all Muslims were against the Uniform Code just before the commencement of the constitution and after the conclusion of Constituent Assembly debate. Among the Muslims Chaudhri Haider is a glaring example
of that time who had strongly supported the idea of Common Civil Code in the following words:

"I would therefore strongly urge the necessity of having one single Code to be named as the Indian Civil Code applicable to everybody living within the territory of Indian union irrespective of cast, creed or religious persuations. This is the just solution of communal problem. It appears to be solution in the interest of the unification of the country for building up one single nation with one single set of laws in the country."

Let us discuss some statements of Muslim politicians and others who are opposed to the implementation of Uniform Civil Code in India. Mr. Bukhari of Muslim League stated on the floor of the Maharashtra Legislative Assembly in July 1972 that Indian Muslims would never concede to Parliament, or any State legislature, the power to legislate on matters relating to Islam. Mr. Bukhari teared that if attempts were made to infringe Muslim Personal law through legislation, it might endangers peace. Ibrahim Sulaiman Sait, MP and the President of Indian Muslim League has been in the forefront of the protest by Muslim fundamentalists in Shah Bano case. He was also a leading light in the subsequent efforts by the orthodox to have the law changed.
Ibrahim Sulaiman Sait remanded that Sec. 125 of Cr.P.C. be amended to exclude Muslim and G.M. Banatwala on July 27, 1985 had introduced a private member’s bill for amendment of Sections 125 and 127 of the Cr.P.C. to ensure that no court even again interfered in Muslim Personal Law. Mr. Abdul Samad of the Muslim League was of the views that nothing could be more heinous for a Muslim woman than to look up to her ex-husband for monthly dole. “It is Haram under Islamic Law”.^8

The All India Muslim Personal Law Board has also strongly defended the Muslim Personal Law and opposed the court judgement. The meeting of the Muslim Personal Law Board, held at Hyderabad in April 1973, expressed its determination to resist any change in the Muslim Personal Law. Two retired judges of Patna and Madras High Courts, Mr. Khalil Ahmad and Mr. Bashir Ahmad respectively (both members of the Board) told newsmen that the Board was determined to protect and safeguard the rights of the minority community. They also out lined the Boards future programme which would among other things, include the study and review of the Anglo-Muslim law from time to time to bring it in conformity with the Shariah.^9

Maulana Syed Abul Hasan Ali Nadvi, President of the All India Muslim Personal Law Board, discloses that a Muslim
Personal Law Code with notes on Islamic legal terms and concepts is being compiled by the Board itself. The Maulana is not opposed to the optional Uniform Civil Code proposed by the government. However, he states that the Personal Law Board stands for continued application of Islamic law to Muslims even after the enactment of such a code, since there should be no compulsion in such matters in a democratic country.\textsuperscript{10}

At a press conference in Goa on August 25, 1986, Mr. Shaikh Abdul Sattar, Secretary of All India Muslim Personal Law Board took the stand that Shariah laws should be made applicable to all states and Union territories in the country, including Goa. Strongly disputing the claims that dominant section of the local Muslim community, including a large number of women and youth, favoured retention of the old Portuguese to laws and were opposed to the Shariah laws due to easy availability of divorce and re-marriage under it, Mr. Sattar asserted that overwhelming majority of Muslim in Goa were with them and opposition to Shariah laws, if any, came only from a small section of misguided elements. He added that Shariah laws were based on Divine dictates and should be expected without questions by devout Muslims.\textsuperscript{11} Another Muslim political party that is All India Majlis-e-Ittehadul Muslimin, in its annual conference held at Hyderabad in April 1973, urged that government adopt a
resolution in parliament or publish a white paper, categorically stating that it would not effect any change in the Islamic Shariah and the Muslim Personal Law.¹²

Speaking at a symposium on Common Civil Code organised by the Jamat-e-Islami Hind in Bombay in January, 1986, Maharashtra Jamat-e-Islami President Maulana Rashid Usmani said a Uniform Civil Code would not help the country and that it would be foolish to think that such a code would help curb communal riots and tensions.¹³

The working committee of Jamiat-e-Ulema passed a resolution on Muslim Personal law in April 1970 stating the Muslim considered the Personal Law to be essential part of their religion and stand, therefore, for status quo.¹⁴

The opponents of Uniform Civil Code have been holding the public meetings from time to time in different districts of the country to defend Muslim Personal Law by which they have tried to convince the Muslim masses that a Uniform Civil Code is injurious to their culture and religious freedom. It will be essential and interesting to refer these meetings in brief.

In May, 1972, a Muslim Personal Law Public meeting was held at Meerut in defence of the Muslim Personal Law by the Jamaitul-ulema.¹⁵

In Sept. 1972, at Hyderabad, a discussion was sponsored under the auspices of the Muslim youth association for voicing opposition to any change in Muslim Personal Law.¹⁶
In Dec. 1972, at Bhiwandi in Maharashtra state, a public meeting was convened by the Mohammadia Educational Society.\textsuperscript{17}

In Dec. 1972 a huge All India Muslim Personal Law convention was held in Bombay. The Jamat-e-Islami (Andhra Pradesh), Amarat-e-Sharia, Bihar and Orissa, Awami Tanzeem (Patna), Deeni Taleemi Council (Uttar Pradesh), All India Muslim League, Jamait-ul-Ulema-Hind, Anjumane-Mhdvia Idarah-e-Ainul Hudda Sunni Khoja Jamat, all these organizations voiced their opposition to change in Muslim Personal Law.\textsuperscript{18}

In addition to the above public meetings Muslim women’s Conferences were also held in defence of Muslim Personal Law. About 2,000 Muslim women of Bombay and Thana expressed opposition to any change in the Muslim Personal Law, at a meeting organised by the Jamaat-e-Islami in 1972.\textsuperscript{19}

An all Maharashtra Muslim Personal Law Women’s conference was held in Bombay on April 30 and May 1, 1973. This meeting endorsed the resolution passed by the All India Muslim Personal Law convention held at Bombay in Dec. 1972, viz.:

1. “That the Muslim Personal Law the integral part of the Muslim faith and religion and no Muslim has a right to deviate from the Shariah laws;
2. That the commandments of the *Shariah* are based on divine revelation and, therefore, no parliament has the right to amend or annul Muslim Personal Law;

3. That the introduction of Uniform Civil Code are any legislation which would make Muslim Personal Law ineffective is contrary to the International Charter of Human rights.\(^{20}\)

Maulana Habibur Rehman, in his Article 'Muslim Personal Law or Islamic *Shariah*' says that there is no need of change in Muslim Personal Law. Since it had been framed by taking into consideration all the situations and hence Muslim Personal law has the capacity to deal with all the situations.\(^{21}\)

The well known authority, Mohd. Yunus Saleem, has pointed out as regards Muslim countries where reforms are said to have been introduced that no where is maintenance awarded to a divorcee till she re-marries (except perhaps communist South Yemen). He questioned the Supreme Court’s authority to unnecessarily doing beyond the terms of reference to held that the amount of unpaid dower was not payable to Muslim women on divorce but as a mark of respect, ignoring the fact that *fixation of dower amount was different from its payments*. In India, in a majority of cases the declared dower remains and paid till dissolution of marriage either on account of death or due to

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divorce. Does it mean that a husband who does not pay the deferred dower to his wife during the life time has no respect for his wife?²²

Asghar Ali Engineer, a progressive Muslim scholar says about Common Civil Code²³:

“....As for a Uniform Civil Code, there are several formidable problems, even if it is treated as panacea for women’s problems which it is not. First the minority communities of Muslims, Christians and Parsis are not politically and religiously prepared to accept any such enactment and no government wishing to be re-elected can run such a grave risk. The difficulty in such a enactment is not restricted to the opposition from the minorities alone. The problem becomes much more complex when we realise that the majority community is also far from being homogeneous in respect of its customs, traditions and laws.... ”

Jamat-e-Islami Hindi²⁴ a powerful Muslim organisation passed resolutions on July 5, 1995 on the ruling of Sarla Mudgal case:

“The Central Advisory Council (CAC) of the Jamat-e-Islami Hind takes with concern the way being paved for implementing Uniform Civil Code... and strongly supports the resolution of Muslim Personal Law
Board (calling upon the government to delete Article 44 or introduce an exemption clause to indicate that a Uniform Civil Code would not be imposed upon Muslims and reluctant minorities).... It seriously feels that voice having been raised from time to time to implement Uniform Civil Code in the country is a matter of serious anxiety and torment— and rightly so— for the Indian Muslims .... The CAC also calls upon the Indian Muslims to raise the voice against the Uniform Civil Code in a peaceful, democratic and dignified manner and mould their social life in accordance with the Islamic laws....

All India Muslim Personal Law Board in its 13th session held on 28-30 Oct., 1999 at Mumbai passed the following resolution on Uniform Civil Code:

"The Board feels that inspite of ... non-inclusion of Uniform Civil Code in the agenda of the government, direct or indirect efforts would be made in this direction because the BJP, which ... is the biggest component of the ruling Alliance has not dropped this subject from its agenda and (calls upon) the Muslims to be watchful and be ready to resist any effort to affect changes in the Muslim Personal Law, by indirect or parallel legislation.
(Reiterates its view) to the Government, the political parties and the countrymen in general that the Muslim Personal Law i.e. the Islamic Family Laws are an integral part of the religion of Islam, .... Muslims and other communities have deep attachment to their religion-based family laws, it is in the interest of the country to create confidence in them that there is no threat to ... their distinct identity and therefore.”^26

All India Muslim Personal Law Board also demanded that any uncertainty about the continuance of the personal laws be set to rest by the Government.

(ii) Arguments in Favour of Reform of Muslim Personal Law

We have seen in the preceding paragraphs that a big majority of the Muslims are not in favour of reform in Muslim Personal Law and they are opposed to the enactment fo a Uniform Civil Code in India. Muslims are divided on the question of reform of the personal law. The orthodox Muslims opposed the reform the personal law and the liberals are in its favour. The liberals (or secularists) do not enjoy the confidence and respect as religious scholars are of the community in general. They are often criticised for their malafide attempt to degrade Islam in order to be recognized by the Hindus as ‘liberal’ and ‘progressive’. Late Hamid Dalvai strongly advocates Common Civil Code under which all marriages should be registered. The status of all married
women should be governed by the Common Civil Code. Dalwai wants ‘purdah’ to be legally banned and family planning to be made compulsory. Muslims, who opposed reforms on the ground of religion, according to Hamid Dalwai, should be governed strictly according to *Shariah* law in its entirety. For example, a Muslim caught stealing should have his hands cut off in public. Similarly, a Muslim who speaks a falsehood, should be publicly whipped or a Muslim women found guilty of adultery should be stoned to death in public. Mr. Dalwai further pointed out that the main purpose of the organisers of the All India Muslim Personal Law convention was not so much to discuss the personal law as to hatch some kinds of conspiracy against India. The majority of the organisers he asserted, were anti-national elements who wanted to create a ‘Pakistan’ in India for Muslim under the guise of discussing the *Shariah* laws.

Eminents citizen Dr. Zahir Ahmad Saeed lamented:

"The Muslim women will be pushed back by two centuries while the country is poised to take a leap to the 21st century. Having a accepted sec. 125 all these years, why does the Muslim male wants to shirk the responsibility of maintenance now?"

Ansar Harwani, former M.P., and veteran freedom fighter said on March 3, 1986, that Prime Minister Rajiv Gandhi who claims
have broken many traditions had upheld the Congress tradition of not sacrificing Muslim votes. Commenting on the Bill, he said,

"I have no doubt that Mullah will hail Mrs. Gandhi as a defender of their faith and will give him full support."

Founder Chairperson women India trust, Kamila Tiyyabji says there is no conflict between Personal Law and Civil Laws. The Shariah is a very lose and humane document. The only problem is that for centuries it has been interpreted by male chauvinist to suit their interest. I am amazed that Rajiv Gandhi has accepted its chauvinist interpretation of maintenance and given into the fundamentalist on this issue.³⁰

On March 8, 1986 in New Delhi the Indian Federation of Women Lawyers passed a resolution stating that the Bill will undermine the secular nature of the Republic adopted in the preamble of the constitution by the 42nd Amendment. A Federation press release said the provisions of the bill in so far as they provide for maintenance to be paid by the state exchange in the event of the failure of the other categories mentioned there in is ‘highly discriminatory’. It discriminated between Muslim divorced women and divorced women of other communities.³¹ Najma Heptullah has gone on record saying that only 3% of the Muslim women are divorcee whereas the fact is that one in every four house holds has a divorcee and practically every family is effected. The Bill provides no real protections to these women.
They will be pushed into the hands of the Maulvies. The Wakf Boards and its finances are controlled by the fundamentalist. If the government similarly intends to help divorcees, it should bring these Boards under government control.\textsuperscript{32}

The SAHELI, a relatively new organisation in the field of women welfare in a memorandum submitted to president Gyani Zail Singh, urged him not to give his assent to the Muslim Women's Bill. This is a naive hope, a course, as the president is constitutionally obliged to sign eventually, but it is a measure of SAHELIES' feeling against the Bill.\textsuperscript{33}

The Indian Law Institute, New Delhi, sponsored a seminar on Jan. 1972 at Delhi on "Muslim Personal law in Modern India". The seminar asserted that certain changes in Islamic Personal Law in India were necessary and stated that such changes are possible and derivable within the general framework of Islamic Shariah.

Mr. A.A. Fyzee, a well known authority on Islamic Law said at a public meeting organised by the secularist -

"A secular state must keep the idea of a Common Civil Code before the people. But such a reform calls for voluntary effort. The government would not act until the Muslim community itself acted on it".\textsuperscript{34}

Prof. Fyzee, an enlightened Muslim intellectual is of the view that the proper course for the government is to appoint a
commission to put forward proposals for a Uniform Civil Code, in which representation of the major communities, such as, Hindus, Muslims, Christian, Zoroastrians and Sikhs would be included. Justice M.H. Beg at a symposium in Tellichelli March 1973, spoke in support of prohibiting polygamy by law and favoured judicial intervention in divorce. He wanted separation of religion from strictly social, economic and legal matters. He desired a Common Civil Code to be enacted in which all that was good in Muslim Personal law should be incorporated.  

Mr. Asghar Ali Engineer, Director, Institute of Islamic Studies is of the opinion that the bill is not only a retrograde measure but is totally unIslamic in spirit. He criticised the Indian government for yielding to the pressure of a orthodox Muslims and accepting their 'dictates' on the question of Personal law much against the "Constitutional Principle of Secularism." Engineer finds that the general feeling among Muslims is that a Common Civil Code is synonyms with a Hindu Code, specially when the demands come from communal Hindus.

"Secularist and nationalist have done nothing to allay these fears" he says. Engineers feels that there is no need for a Common Civil code. 'What is important is justice to women. A long as it can be done within the frame work of Muslim Personal law, why abolish it?
he asks. The current controversy (On Shah Bano) is political and not religious."

Speaking at a seminar on Uniform Civil Code held in Cochin on Dec 5, 1985 Miss Sona Khan, Senior lawyer of the Supreme Court, pointed out that whenever there was reform movement within the Muslim community, the fundamentalist had opposed it. The affluent women have always been left untouched by these sections. The poor women are their targets of attack. Miss Sona Khan further said that the Present demand of the Common Civil Code at this juncture had pushed back its enactment by another 20 years. The Uniform Civil Code must be welcomed with open arms, she added.

Former Indian Cricket Team Captain, Mansoor Ali Khan Pataudi has said that the furore against the Supreme Court judgement should be viewed in the background of the ‘insecurity’ felt by India Muslims. He said for various reasons Muslim in India do not have the same opportunity for education, employment and advancement as the other communities have. The Shah Bano judgement was used by many public for furthering this feeling of insecurity. The crisis of the moment is not the Bill or the Shah Bano case but a sense of insecurity among minority community. As for the Bill before Parliament Mr. Pataudi said that it had been hastily drafted and should be considered more carefully.
The fact can not be denied that the Muslim reformists disapprove Muslim Personal Law because of the havoc it has wrought whenever its operates. The law is frowned upon due to the fact that it makes divorce easily available and permits easy remarriage. Unfortunately liberal Muslim opinion lacks a specific forum. Needless to say, the advice and suggestion given by Muslim reforms, academics and intellectuals has left conservatives and those in favour of the status quo unmoved, since the liberal opinion in the community is unfocussed, there being no group, party, and institutions through which sentiments can be effectively expressed.

B. Role of Successive Governments

The controversy over the Uniform Civil Code is not something new. It came into prominence since the inception of the Indian Constitution. Article 44 of the Indian Constitution says that the state shall endeavour to secure for all the citizens of India a Uniform Civil Code. But unfortunately this Article is very often opposed by one section of community or the other. Hence the Government has consistently maintained that the initiative for formulating a Uniform Civil Code must come from the communities themselves and that it will not move in the matter until they are ready to accept a Uniform Civil Code. In this way the state instead of making any serious attempt in this direction
tends to adopt an indifferent attitude ostensibly as a matter of political expediency. In the following section the researcher traces the conduct of state in the legislature with regard to the Uniform Civil Code.

When the Hindu Code Bill was introduced in the Parliament, the question of secularising other personal laws was raised. Views expressed by the Parliamentarians against the Hindu Code Bill are found in the record of Parliamentary debates. They were of the view that Common Civil Code should be introduced instead of secularising the laws of Hindus alone. At the time of introducing the Hindu Code Bill the then Prime Minister, Pandit Jawahar Lal Nehru, took for granted the willingness of the community to change its personal law and as to change the personal law of the Muslim as soon as they too are not willing to accept the change by a process of education. On this Mr. More a member of Parliament reacted by saying that it was not lack of wisdom but reaction which causes the assured unwillingness of the Muslims to accept the change. Pt. Nehru said.

"The honourable member is perfectly entitled to his views on his subject. If he or any body else willing a Civil Code Bill, it will have my extreme sympathy. But I confess I do not think that at the present moment the time is ripe in India for me to try to push it
through. I want to prepare ground first and this kind of thing it one method of preparing the ground."

Although various amendments have been made in the marriage and divorce laws of Hindu till now the Indian government and stewards of the social reform have not been able to prepared the ground as yet to change the personal law of the Muslim. History rather appears to support the view point of Mr. More than of Pt. Nehru whose preparing the ground by passing the Hindu Code Bill is by no means less than an act of legislative discrimination against the Hindus because the other half the promised unfulfilled.

Dr. Upendra Baxi too is sore at such a prospect that had come to pass. He squarely lays the blame on the shoulders of the government for not giving leadership to the cause of secularising Muslim Personal Law in the manner of Hindu Personal Law. And for always sitting idle waiting for the spontaneous response of community. He also attribute the motive of electoral advantage of getting the backing of minority support by a policy of studied inaction in the matter of government.

The response of the government was that the members supporting Hindu Code Bill and asking instead for a Uniform Civil Code, were not making the demand on principle Ambedkar claimed that the opponents of the Hindu Code were damanding a
Uniform Civil Code as a tactics. These people probably thought that it would take a long time to enact a Uniform Civil Code, but he could produce such a bill within two days. However, he gave no further reasons for not introducing a Uniform Civil Code. Instead he countered the objection that a Hindu Code Bill should be made applicable to every one by saying that other communities had not been consulted on the matter and that a secular state did not mean that it could flout the sentiments of the people.45

The government is the Provisional Parliament and subsequently in the first Lok Sabha, continued its stand that the Hindu Code was but the first step towards a Uniform Civil Code. Nevertheless doubt were expressed whether, after the enactment of Hindu Code Bill, the legislature would bother to enact a Uniform Civil Code46; he had articulated the same idea in 1949.47

Following the enactment of Hindu Reforms Acts there was no significant activity on the part of State to initiate the process for the enactment of a Uniform Civil Code.48 Until the Shah Bano controversy brought the issue of religious personal laws and legal equality for wemen into sharp focus. The government decision to introduce the Muslim Womens Bill in the Lok Sabha attracted the charge that the government was succumbing to the pressure of religious fundamentalists of the Muslim Community. It was probably to counter this suggestion that the Prime Minister announced that the government would introduced a Uniform Civil
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But it did not mean that the government did not give any assurance to the Muslim minority regarding non-implementation of Uniform Civil Code or not interfering in their Personal laws. In Oct. 1972, while addressing the Minority cell of the Gujarat Congress Pradesh Committee at Gandhi Nagar, the then Prime Minister of India, Late Mrs. Indira Gandhi, urged Indian Muslims themselves to start the process of considering changes in their personal law. In this context she further advised them to get assimilated in the majority culture in the same way as the Parsis had assimilated themselves with the people of Gujarat. On another occasion Mrs. Indira Gandhi assured a delegation of Muslim leaders led by Sheikh Abdullah, that met her in New Delhi, in August 1973, that there was no proposal before the government to change the Muslim Personal Law and there was no reason at all for Muslim to feel agitated over the issue.

The Congress Central Parliamentary Board in 1973 reiterated that the government had no intention of making any alteration in the Muslim Personal law. The All India Congress Committee General Secretary said that the Board took the opportunity to declare that it would stand by the All India Congress Committee's 1938 resolution in this connection and assured the Muslim minority that there was going to be no change in their personal law against their wishes.
Late Mr. Fakhruddin Ali Ahmad, then President of India in 1972 in an election meeting at Hyderabad, stated that so long as the Congress Party remained in power, the rights of Muslims would be protected at any cost and that there would not be any change in the Muslim Personal Law.53

Coming to the next regime of Mr. Rajiv Gandhi, the attitude of the government not only remained non interference in Muslim Personal law but going a step further he strengthened the government stand on non-inteference of Muslim Personal law by passing a Bill in the Lok Sabha, that is, Muslim Women Bill. In order to allay the apprehensions arising from the Supreme Court Judgement in *Shah Bano case* Prime Minister Rajiv Gandhi decided to introduce the Muslim Women (Protection of Rights on Divorce) Bill in the Parliament with the plan that the government could not remain insensitive to the feelings and reactions of large sections of people, specially on delicate matters such as religion, custom, and cultural identities. The hush-rush circumstances in which the move was made to introduce the Bill were both unseemly and unwarranted. As an opposition member pointed out that the Bill was not mentioned in the list of business or even the supplementary list. The government’s attempt to introduce the Bill without consensus, has raised a number of doubt in the minds of the people. Is Rajiv Gandhi honestly interested in protecting
Muslim Women? or is he more interested in protecting the Muslim votes? Why has the government chosen to take the drastic step of amending the Constitution at the behest of what Rajabali calls the forces of reaction, without consulting the other point of view, even within the Congress (I)? Does it sincerely believe that it is practically possible for divorced Muslim women to obtain protection from the cruelty and barbarity of their men through the clauses of this Bill? Has Mr. Gandhi stopped to consider the consequences of his action will have on the other minorities.\textsuperscript{54}

Some opposition members condemned the government's move to appease the Muslim fundamentalists through legislation. Mr. Indradeep Sinha of the C.P.I. and Mr. V. Gopal Swami of the D.M.K. strongly criticised the ruling party's Bill in the Rajya Sabha and said, 'This clearly indicated that the ruling party had yielded to the pressure of Muslim fundamentalists.\textsuperscript{55}

It is true that the Mulsim Personal Law Board had organised massive demonstrations against the Shah Bano verdict and that both Hindus and Muslim communities were creating communal tension in the country. But should the laws of the law be held to ransom by a handful of communalists?

Hari Jai Singh says that It will be a pity if the politics of the compromise is allowed to degenerate into the politics of surrender before the forces of reaction and obscurantism.\textsuperscript{56}
As regards Rajiv Gandhi government’s views on Uniform Civil Code, the Prime Minister, Rajiv Gandhi in an interview to the editor of Tamil fortnightly Thughlak, Madras on January 13, 1986 said that he is in favour of a Uniform Civil Code but wants it to be introduced only after a consensus reached among political parties, religious leaders and imminent personalities. He further said that:

“Uniform Civil Code in our Constitution and it may be a very good thing if we can have it, But I do not see it coming about immediately. Before we get a Uniform Civil Code or a decision is taken about it must come by a specific decision, some sort of unanimity that we need in such a Code.”

He further said:

“It is not for me to codify the Muslim Law. It is for Muslim personalities and some senior people to come forward and see what can be done. Unless it is codified and it is put down on paper, it is going to be difficult for the courts to interpret it.”

The government clarified its stand on Uniform Civil Code in the following words:

“It has been the consistent policy of the government not to interfere in the personal laws of any community
until the initiative therefore comes from the community concerned. *In view of this the government do not propose to bring in any legislation on Uniform Civil Code.*\textsuperscript{58}

The Government made a submission before the Supreme Court in Oct. 1996:

"... Due to absence of uniformity of views among the different sections of citizens in the country as to the enactment of Uniform Civil Code of laws relating to marriage, succession etc., it is not possible for the union government to enforce a Uniform Civil Code for all communities in the country."\textsuperscript{59}

Union Law Minister D. Swami clarified the government's stand on Uniform Civil Code in the following words:

"The government does not propose to introduce a Uniform Civil Code in the country...."

"...The government would not interfere in the personal laws of the minority communities. A Uniform Civil Code can be introduced only when the initiative comes within the minority communities."\textsuperscript{60}

On 29th March, 1990 the Government reassured the minorities that any amendment to their personal laws will be made only upon the initiative of the community concerned.
"A Common Civil Code for all Indian Citizens would involve amendments to the Personal Laws of various communities. The government policy is to undertake such exercise on the initiative taken by the minority communities themselves. In view of the recommendation received from certain persons and associations belonging to minority communities, efforts are being made to ascertain the consensus of the minorities."\(^61\)

Again in 1991 the government declared its policy of non-interference in the personal laws of minority communities in following words :

"Introduction of Uniform Civil Code for all citizens will necessarily involve changes in the Personal laws of the minority communities. The consistent policy of the government has been not to interfere on its own in the Personal Laws of the minority communities unless initiative for the change comes from such communities."\(^62\)

During the surcharged atmosphere in 1986, Prime Minister Rajiv Gandhi declared the policy of the government in these memorable words :

"I do not see it coming about immediately. Before we get a Uniform Civil Code or talk about it, it must
come by a specific decision, some sort of unanimity that we need such a code.”

All these arguments of government spokesmen against Uniform Civil Code imply that there is a direct nexus between the Uniform Civil Code and Muslim Personal Law as though introduction of former is designed to cancel or even override the later. To consider the Uniform Civil Code as something aimed solely at Muslim Personal law is to give a wholly mistaken twist to the argument.

From the statements of government spokesmen, it appears that the government does not have a firm and clear stand. Theoretically a good many of government spokesmen seem in favour of reforming Muslim Personal Law, but in practice, seem reluctant to reform it because of political considerations.

C. Role of Opposition Parties

This section incorporates the stand taken by the opposition parties on the Uniform Civil Code. The Janata Party President, Mr. Chandra Shekhar, on April 15, 1986 is reported to have observed in Pune, "The Talaq Bill was absolutely unnecessary. I wonder why the government brought it.”

Mr. Syed Shahabuddin, another Janata Stalwart, says:

"First I must make it clear that the Constitution does not envisage a Common Civil Code but only a
Uniform Civil Code. A Uniform Civil Code, in turn, does not necessarily mean one single code for all sections of population but one that broadly reflects the varied ethos in the Country. I do not think that there is any constitutional compulsion to introduce an Uniform Civil Code as the Constitution does not set any time limit for this process”.

He further said that:

“I do not subscribe to the view that a Uniform Civil Code is essential for a National integration or the survival of a country on the other hand, if we force a Uniform Civil Code on unwilling people it will jeopardise National Unity when a Uniform Civil Code is enacted and if any rule in it contravenes the Shariah, Muslim should be granted exemption from it. Every law allows for exceptions. A Muslim cannot, in good faith, violate the Shariah. We should avoid a situation in which a good Muslim cannot be a good citizen as well.”

The National executive of the Bhartiya Janta Party at its 3 day meeting held at Chandigarh in Jan. 1980, in a resolution condemned the, “virulent campaign” launched against the Supreme Court by the Muslim League and Jamaat-e-Islami following the court’s Judgement in Shah Bano case. The
executive meeting described the judgement as "pre-eminently just and sensible".

The B.J.P. demanded that the amendment proposed be abandoned forthwith since it went counter to the spirit of the Indian Constitution, one of whose directive principles require the state to move towards a Uniform Civil Code.\textsuperscript{67}

The B.J.P. Bombay Unit at its executive committee meeting in Dec. 1985 demanded the expulsion of Union Environment Minister, Z.R. Ansari for his criticism of the Supreme Court judgement. According to the committee he had insulted the Constitution and lowered the prestige of Parliament. The committee has decided to observe 1986 as the Common Civil Code Year.\textsuperscript{68}

The Communist Parties have in this case taken a clear but cautious stand, upholding the principle of maintenance for divorced women, but reaserving judgement on the speedy implementation of a Uniform Civil Code. Mr. M. Basava Punnaiah, C.P.I Polit Bureau Member condemned in Calcutta on Dec 28, 1985 the statement made by the Prime Minister in support of Muslim conservatism that the western conception of the equality was not applicable to Muslim women in India.\textsuperscript{69}

The Polit Bureau of the Communist Party of India (Marxist) considers the Supreme Court judgement... as a judgement in the right direction. It ... said that:
"Religious practices violative of human rights and dignity and sacerdotal suffocation of essential civil and material freedom, are not autonomy but oppression."^70

The Central Committee endorsed the stand taken by the Polit Bureau on the issue of a Uniform Civil Code .... ‘Our party welcome the broad direction in the judgement. At the same time certain remarks in the judgement give an impression that the Hindu social laws have been reformed while in reality discrimination against Hindu women continue in the present setup. Instead of imposing a Common Civil Code by the state decree, it is a essential that the rights of women and their equal status are taken up for all communities and existing laws be amended or fresh legislations initiated providing equality for women in marriage, property and other social matters. This can help in paving the way towards evolving a Common Civil Code.’^71

The national council of CPI on 22 July, 1995 expressed ‘Serious concern over the calculated attempts by the B.J.P. to communalise the issue of social reform. It has announced to make framing of Uniform Civil Code a central issue of its poll campaign. It is obvious that by making the framing of Uniform Civil Code a poll issue, the B.J.P. has added a new plank to its strident Hindutva campaign.’ Framing of Uniform Civil Code is not a communal problem. It is basically a problem of social reform in the society.
The national council opined that framing of a Uniform Civil Code is a very complicated issue. Not only Muslims but almost all the religious communities in our country have their own personal laws. In such a situation, framing of Uniform Civil Code have to be preceded by reforms in various personal laws and customary laws.

Uniform Civil Code can be framed only on the basis of a broad consensus over the issues and it has to be based on gender equality. Imposition of Uniform Civil Code from above will be counter productive.²

The Janata Party President Subramanyam Swami said that the BJP is not sincere about the implementation of Uniform Civil Code in his own words:

“The BJP, if it is sincere about the Uniform Civil Code should begin by imposing in on its own leader and cadres when Ram Jethmalani was the Vice-President of the BJP for a number of years the BJP never questioned him as to why he has two legally wedded wives living in the city of Bombay 2 kms. apart. One BJP Rajya Sabha member from Gujrat has three legally wedded wives, not to mention another top leader of BJP who has kept a woman in his house for 25 years and reared children through her. It is this fraud that exposes the BJP’s commitment to Uniform Civil Code.”
"Besides calling for Uniform Civil Code in marriages we need a common code in other areas which BJP never raises; for example, the income-tax relief provided to Hindu Undivided Families (HUF) is not available to Muslim families. This does not bother the BJP because the Hindus are beneficiaries. In this inequity in law, Muslims are the losers. The crux of the BJP campaign for Uniform Civil Code is thus a creation of hatred and alienation of Muslims from Indian society and by such hatred to consolidate the Hindu votes. The BJP is not pro-Hindu because it has never come up with a single idea for reform in Hindu society, but it is purely an anti-Muslim party because its programmes revolve around undoing the position of Muslims in Indian society. In this respect BJP is a de-facto agent of Pakistan because Pakistan also propagates that Hindus and Muslims cannot be treated equally in India."  

An important leader of the BJP L.K. Advani said that:

"If the BJP is voted to power not only Muslim law, even Hindu, Christian and other laws would be changed suitably within the constitutional framework."

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Another important leader of BJP, Atal Bihari Vajpayee also declared that ‘The BJP will launch a national debate and a campaign on awareness on the question of a Common Civil Code’ .... He further said that:

“Political parties have not seriously tried to convince our Muslim friends that a Common Civil Code does not mean something that is anti Muslim ... There are practices under the Hindu Law also that need to be modified or amended.”

D. Role of the Press

Vasudha Dhagamvar is very critical about the role of press, when she says:

“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. Hamid Dalwais, Asghar Ali Engineer 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 reformer nor the pro-Uniform Civil Code Muslims are able to get publicity for their views....”
But the above assessment of the press is not correct. Most of the national English dailies and the leading newspapers in Hindi are always supportive of the idea of a Uniform Civil Code. Those Muslims who are pro-reformer and in favour of the implementation of the Uniform Civil Code are given space for their write-ups. They are also invited for talks on radio and television. In contrast the views of orthodox Muslims and opponents of the Uniform Civil Code are not given space for their write-ups and views. Of course, the media gives importance to the reports of the public demonstrations, dharnas, rallies and functions organised by Muslims as the masses attend this type of functions in large numbers. The media cannot suppress these news beyond a certain limit. Since Hamid Dalwai, Asghar Ali Engineer and the organisations like Satyashodhak Samaj have almost negligible following in the masses that’s why they do not get that publicity which is given to Shahbuddin, Zia-ur-Rahman Ansari, Banatwala, *Ulema* and organisations like Muslim Majlis-e-Mushwarat and All India Muslim Personal Law Board.

It is, therefore, submitted that the English press and Hindi press are supportive of the implementation of the Uniform Civil Code. But the *Urdu* press is totally against such a move as the *Urdu* has now become the language of the Muslims. The newspapers generally try to satisfy their readers and the views expressed in the write-ups in Urdu dailies, fortnightlies and the magazines overwhelmingly contain the material which is against
The Role of Muslim Thinkers, Minority Organisations, ...

the imposition of Uniform Civil Code. It means that the majority of the Muslims do not want the abrogation of their Personal Laws. In this way we can say that the press like politicians, scholars, social workers, human rights activists is also divided on communal lines. The role of the press should be to present the correct picture of the problem. But our national press has failed to discharge its duties honestly.

Summary

It is highly unfortunate that the role of press and politician in this regard has been quite poor and has badly failed to generate a congenial environment to promote the objective of Uniform Civil Code. The politicians have not so far shown any strong endeavour because of political consideration. Their motive seems to be that by talking of Uniform Civil Code publicly they will loose their vote bank and it will be better for them to be silent on this important issue. Similarly, the state has also not made any serious effort to discharge this constitutional obligations. It is evident from the above study that the government has not taken any serious steps to explain the contents and significance of Article 44. It is clear from the study that no party has so far raised itself above the political alliances with communal parties.

The government’s stand since the independence is not to implement the mandate of Article 44 on minorities without their consent. It have seen that, since pre-partition days, the Indian
National Congress has maintained its commitment to the protection of personal laws of various communities. All Prime Ministers from Pandit Jawaharlal Nehru to Narsimha Rao, although supporting the view that Uniform Civil Code should be for all the communities, also have maintained that this would not be done without the approval of the community concerned. This approach is different for the majority community as they do not have that sense of insecurity as the minorities have in their minds. Whatever changes were made in classical Hindu Law in 1955-56 they were very essential for the Hindu community. But even in those Acts and later on in their amendments the government has inserted so many laws which are against the philosophy of Uniform Civil Code. Even the NDA government headed by Mr. Atal Bihari Vajpayee has also left the issue of Uniform Civil Code untouched on the basis of consensus reached between the various constituents of National Democratic Alliance.

Thus, the situation remains same that the Uniform Civil Code is not going to be applied on minorities without their consent in near future.
References

2. *Id.* at 49
5. See *Supra note* 1 at 6
7. *Supra note* 3 at 59.
10. *Supra note* 3 at 65
11. *Id.* at 67.
14. *Al-Jamiat*, Urdu weekly (Delhi), May 1, 1970.
15. All India Muslim Law Convention, Dec 1972, Bombay.
18. *Hindustan Times*, Dec. 30, 1972 Also See the All India Muslim Personal law convention, Bombay Dec. 1972.
22. Mohammad Yunus Saleem, This is a non issue, *The Times of India*, March 30, 1986.


26. Ibid.


32. “Call to with draw Talaq Bill”, *The Times of India*, March 9, 1986.

33. *Supra note* 3 at 94.

34. *Id.* at 101.

35. *Indian Express*, New Delhi, August 11, 1970.


42. *Supra note* 3 at 30.


49. One legal writer mentioned that the Law Ministry had attempted to find existing rules in the various systems of Personal laws which were already in conformity with each other or could be made to conform with slight modifications. This technique was given a trial when the law ministry made and offered to draft a common law for all religious endowments as suggested by the Commissioner of Hindu religious endowments (Sarkar, RC.S. "Uniform Civil Code", *Journal of Constitutional and Parliamentary Studies*, Vol. III, pp. 76-89).


55. *Supra note* 1 at 36.


64. *Supra note* 3 at 44-45.


68. *Indian Express*, December 26, 1986.


72. *Muslim India*, September 1995, p. 401


76. *Supra note* 1 at 49.