

The Issue of Personal and Customary Law in South Asia: A Political Analysis

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Abstract

For all countries of the world, including those in South Asia, a uniform civil code is a dream that should be cherished by all. It is so because this dream subsumes certain ideals precious for all civil societies, namely, an unequivocal commitment to equal respect for all religions, freedom of conscience, and freedom of expression. In short, democracy—democracy, which respects pluralism and the rule of law—democracy, which averts fundamentalism of all hues and intolerance of others' ways of life. But there is an inherent contradiction. All plural and democratic societies are also expected to grapple with the issue of minority rights. One of the most essential ingredients of minority rights is the right to maintain one's traditional rights, for this is intricately linked to the question of ethnic identity. Since all societies are supposed to treat all their citizens equally, how would they reconcile themselves to the maintenance of traditional rights of different communities yet treating them equally? The question, therefore, is whether a common civil code for all communities is a step in the right direction of nation-building or the maintenance of personal laws of different communities the right strategy. The issue is complex. National integration is not merely territorial integrity. It means an emotional bond amongst all segments of society leading to a common goal for the well being of all. In this march, a common system of law is just one component. But to achieve this goal no segment should be coerced, for that way it would be counterproductive. The same is true with the ideal of a uniform civil code. If the minorities are feeling attached to their personal laws it must be because they are still not confident about the intentions of the majority. Once that trust is developed no minority would feel insecure and in that harmonious climate it is possible to work for a uniform civil code. The situation does not seem to be conducive in South Asia at present but the efforts must be on.

The Question

All plural societies are forced to grapple with the issue of minority rights. One of the most essential ingredients of minority rights is the right to maintain one's traditional rights, for this is intricately linked to the question of ethnic identity. While this is one aspect of the reality, there is yet another aspect, which just contradicts this commitment to minority rights. Since all societies, democracies in particular, are supposed to treat all citizens equally, how do they reconcile themselves to the maintenance of traditional rights of different communities, those of the majority and those of the minority, yet treating all nationals as equal? The issue of personal law forms an important part in the formation of group identity and as such any encroachment upon those laws is seen as detrimental to the interests of that particular community. If the community happens to be in the minority category its apprehensions become more pronounced and it is viewed as a zero-sum game—a minority's loss is the majority's gain. In the long run it widens the majority-minority divide and makes the task of nation-building difficult. In the context of South Asia, the question before us therefore is whether a common civil code for all communities is the step in the right direction of nation-building or the maintenance of personal laws of different communities the right strategy. The issue is more complex than what appears.

The Scope

The present article is exploratory in nature. It is not a legalistic study. It views the problem from a political perspective. Broadly, it is divided in two parts. The first part discusses the state of personal law in four plural South Asian states, namely, Bangladesh, India, Pakistan and Sri Lanka, while the second addresses the question raised in the introductory paragraph above. The database of the article is small as the details of personal laws prevailing in the above countries are not easily available in New Delhi where the author is presently located. Even the library of the Indian Law Institute is of limited help. This underscores the necessity of further research on the subject. Readers are, therefore, requested to treat the article as a research note and not as a definitive study.

Stock Taking

In the first instance it is important to have a broad overview of the state of personal laws in the four countries under review. Personal law has been designated also as customary law, family law or civil law. Since most of these laws have their origins in the religious and customary traditions of different communities any tampering with them is generally viewed as intrusions into one's religious beliefs. As such, it often becomes acrimonious. It is generally noticed that the concerned governments are fearful of codifying the laws of the minority communities fearing that it may send wrong signals to the minorities. The latter may brand them as suppression of their group rights, which may have a negative impact on the political future of the ruling party. But since in case of the majority no such fear is generally expressed, the codification of personal law becomes much easier. Of course, at times even that process meets with opposition. Let us take stock of the situation in each of the nations.

Bangladesh

There are two major communities in Bangladesh, Muslim and Hindu. Muslims are a predominant majority constituting about 87% of the population, while the Hindus are the largest minority constituting about 11%. Besides, there are Buddhists and Christians. The tribal communities inhabiting the Chittagong Hill Tracts, who are about 1% of the population are mostly Buddhist. Christians are small in number and are scattered all over the country.

The original constitution of the country, introduced in 1972, was a secular one. But in 1977 Ziaur Rahman dropped secularism, enshrined in Article 12, as one of the state policies in favour of Islam. Soon afterwards, Islam was declared the state religion. The preamble of the constitution of Bangladesh talks of 'the high ideals of absolute trust and faith in the Almighty Allah' while Article 2A mentions that 'the state religion of the republic is Islam.' Indeed, the said article also declares that 'other religions may be practised in peace and harmony.'

Muslims of Bangladesh are Hanafi Muslims. Their personal law is primarily the one enjoyed during the colonial rule. There were some modifications brought out during the Pakistan days and after independence too some new laws were passed. To understand the current situation one must refer to two British period laws and one Pakistan period law. The British period laws are the following:

- a) Muslim Personal Law (Shari'at) Application Act, 1937. It directed the courts to apply the Shari'ah law to Muslims in matters of personal status, family relations, succession, gifts and waqfs (in respect of adoption, will and legacies, if opted formally).

- b) Dissolution of Muslim Marriages Act, 1939. It enforced the Maliki law on women's right to seek judicial divorce and repealing the rule that apostasy of a married woman would *ipso facto* dissolve her marriage.

The Pakistan period law is the following:

- a) Muslim Family Laws Ordinance, 1961. In East Pakistan it came to be known as 'East Pakistan Muslim Family Law Rules, 1961.' It imposed restrictions on polygamy and talaq, introduced a new provision into the law of inheritance for the benefit of 'orphaned grand children' and amended the Child Marriage Restraint Act of 1929 and the Dissolution of Muslim Marriages Act of 1939—both for the purpose of raising the age of marriage for females.

Following its independence, Bangladesh inherited Pakistan's legal system through the retrospective operation of the Bangladesh (Adaptation of Existing Bangladesh Laws) Order 1972. In 1985, by ordinance number 14, Bangladesh amended the East Pakistan Muslim Family Law Rules, 1961. The changes introduced were of an administrative and verbal nature. In 1988, by ordinance number 25, the Dissolution of Muslim Marriages Act, 1939, was further amended to modify the law on option of puberty.¹

Presumably, no law has been passed in Bangladesh to influence the personal law related to marriage and divorce of other communities like the Buddhists, Christians and Hindus. There are certain laws passed in respect of preventing cruelty to women (1983), deterring child marriage (1984), and prohibiting the practice of dowry (1984), but they are meant for all communities and cannot be put in the category of personal law. In order to promote religious activities of various faiths the government after independence established the Religious Affairs Ministry, which in turn established the Hindu Religious Welfare Trust and the Buddhist Religious Welfare Trust to cater to the welfare needs of the communities. The nation-building tension of the Bangladesh society is reflected in its legal discourse. The following passage from a study of two British legal experts presents the situation objectively:

The stronger position of non-Muslim minorities and a less vigorous politically motivated drive towards Islamisation of the entire legal system in Bangladesh, coupled perhaps with greater dependence on foreign donors, has led to a less explicitly Islamic orientation of post-independence Bangladesh laws. Further, the distance from Pakistan, both political and geographical, and the proximity to India (a classic love/hate relationship of close neighbours) has meant that, despite protests, many modern Bangladeshi legal reforms actually follow the Indian law very closely [for example the anti-dowry law of India]. Overall, from an avowedly secular starting point, Bangladeshi constitutional law has moved towards paying lip service to Islamisation, far less so than Pakistan. In the personal law sphere, where Muslim law continues to be applied, the lack of scholarship in traditional Muslim law is now felt to be a handicap and many disputes involving complex questions of Islamic law appear to be settled by discourse to provisions under the general law rather than the personal law.... However, Bangladeshi jurisprudence has now also begun to acknowledge that the procedural provisions of the Ordinance [of 1961] and real legal life quite apparently do not match. By a different route, thus, Bangladeshi law has arrived at a position similar to Pakistani law, arguing that better justice may be achieved, first, by recognition of the particular facts and circumstances of the case and secondly, by recourse to the ideal norms of the shari'a rather than secular modern legal provisions which purport to be morally neutral.²

India

Of all the South Asian states, India is the most multiethnic. Since it has a large population (more than a billion) even a small minority in absolute terms means a large number of people. In this predominantly Hindu country, the Muslims are the largest minority constituting about 13% of the population. Christians and Sikhs account for about 2% of the population each, while the Buddhists,

Jains and Parsis are even less in number. For the purposes of affirmative action (in Indian parlance, called positive discrimination, or reservation, or quota system) and the civil law, the Buddhists, Jains and Sikhs are treated at par with the Hindus. In 1955-56, all Indians other than Christians, Jews, Muslims and Parsis were given a common civil statute in respect of marriage, divorce, maintenance, minority guardianship, adoption and succession. Although many of the provisions of the statute were not based on Hindu shastric tradition still it came to be known as Hindu law presumably because the predominant community to be governed by the statute was the Hindu community.³

There is a plethora of personal, regional and customary laws in the country but the one that is most controversial is the issue of Muslim personal law. In this article this alone would be discussed for otherwise it would be too unwieldy in the given space. But some brief references to other communities may be useful. Jews follow their own personal law in India. So do the Parsis. Since they are microscopic minorities no one pays attention to their laws. They too do not seem to be disturbed by the possibility of having a uniform civil code. The same is the reality with the Christians. It may be argued that these minorities do not appear to be bothered about a uniform civil code because such a situation is still not in sight. Or, may be they are taking it for granted that the Muslims in anyway would fight their battle too.

Muslim personal law in India is largely not codified. There are no officially recognised Shari'ah courts either. The state courts generally administer the law on the basis of the Indo-Muslim (earlier 'Anglo-Mohammadan') judicial precedents. But one still can refer to some pieces of enactment. The most significant enactment governing the application of Islamic law to the Muslims is the Muslim Personal Law (Shari'at) Application Act of 1937. After India's independence in 1947 the scope of the law was extended to include three south Indian states, namely, Andhra Pradesh, Kerala, and Tamil Nadu. There is also the Dissolution of Muslim Marriages Act of 1939. On the basis of this act the state courts can dissolve women's marriages, on their request, on grounds specified in the law, which are primarily drawn from the Maliki law. Following the passage of the Muslim Women (Protection of Rights on Divorce) Act in 1986, criminal courts are empowered to enforce some of the rights generally available to divorced women under the Islamic law.⁴

Pakistan

All personal laws that were operative in undivided India continued to be valid in Pakistan after it was created on 14 August 1947. Soon afterwards, however, between 1948 and 1952, new laws were enacted to extend the North Western Frontier Province (NWFP) Shari'at Application Act of 1935 to the provinces of Punjab and Sind and the princely states of Bahawalpur and Khairpur. These laws enlarged the scope of the 1937 act, unlike Bangladesh and India where the provisions of the act still hold good. In 1955, shortly before the first constitution of Pakistan was promulgated in 1956, a commission was set up to survey the prevailing marriage and family laws with a view to suggesting measures that would ensure women 'their proper place in the society in accordance with the fundamentals of Islam.' The seven-member commission submitted a report that evoked considerable amount of controversy. Many leading theologians opposed the report, most notable amongst whom were Maulana Abu'l A'la Maududi and Mufti Muhammad Shaafi' Deobandi. These oppositions got reflected in the constitution, which declared that no law repugnant to Islamic injunctions would be passed and all existing laws would be reviewed and revised so as to put them in conformity with those injunctions.⁵ The constitution of 1956, however, was abrogated in 1958 following a coup.

In 1961, when the constitution still remained abrogated, the government passed the Muslim Family Laws Ordinance, drawing from the recommendations made in the above mentioned report. This ordinance, coupled with two other related ordinances issued thereafter, sought to usher in some progressive measures, such as, compulsory registration of all marriages, discouragement of polygamy and divorce, reforming the principles governing dower and maintenance of wives, ensuring

inheritance rights of orphaned grandchildren of deceased persons in their estates, etc. The members of the ulema were not happy with these provisions as they considered them to be unnecessary interference with the Shari'ah.⁶

In 1962, Pakistan promulgated a new constitution. It repeated the same commitment not to enact any law repugnant to Islamic principles. In the same year was passed the Muslim Personal Law (Shari'at Application) Act which was amended in 1963-64. It widened the scope of the Shari'ah law and made it uniformly applicable for the entirety of West Pakistan. Evidently some special provisions remained valid for East Pakistan.

In 1973, Pakistan promulgated its third constitution. Like the earlier constitutions, it too declared that 'all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah' and that 'no law shall be enacted which is repugnant to such injunctions.' This constitution, however, was placed under suspension after the military coup led by General Zia-ul Haq in July 1977. Immediately after his take over he addressed the nation over television declaring: 'Pakistan, which was created in the name of Islam, will continue to survive only if it sticks to Islam. That is why I consider the introduction of Islamic system as an essential prerequisite for the country.' In 1979, the supremacy of the Shari'ah was established in all branches of law.⁷ Through various Hudud Ordinances, the Quranic penal laws on theft, fornication, false accusation of unchastity, prohibition of alcohol, etc. were introduced. Jurisdictional conflicts between the Supreme Court and the Federal Shariat Court, however, continued.⁸

Indeed, there was no effort to interfere with the personal laws of other communities. All laws governing these communities were from the pre-independence period. Following is a list of some such laws: The Christian Marriage Act 1872, The Parsi Marriage and Divorce Act 1836, The Hindu Widow's Marriage Act 1856, The Hindu Marriage Disabilities Removal Act 1946, the Buddhist Law, The Arya Marriage Validation Act 1937, The Hindu Inheritance (Removal of Disabilities) Act 1928, The Hindu Disposition of Property Act 1916, The Hindu Inheritance (Removal of Disabilities) Act 1928, The Hindu Law of Inheritance (Amendment) Act 1929, The Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, The Hindu Women's Rights to Property (Sind Extension to Agricultural Land) Act 1943. There was, however, one law in this category which was post-independence, namely, The West Pakistan Hindu Women's Rights to Agricultural Land Ordinance 1959.⁹

Sri Lanka

Ethnically the population of Sri Lanka may be divided into six main groups: the Sinhalese, the Sri Lanka Tamils, the Moors, the Indian Tamils, the Malays and the Burghers. According to the census of 1981, the Sinhalese form the majority accounting for 74% of the population, Sri Lanka Tamils 12.5%, the Moors 7.1%, and the Indian Tamils 5.6%. The Sinhalese are mostly Buddhist, the Sri Lanka and Indian Tamils mostly Hindu, and the Moors Muslim. The Malays and Burghers are small minorities who form only 0.3% each of the Sri Lankan population. They are Muslims and Christians, respectively.

In essence the Sri Lankan constitution is secular, but it gives primacy to Buddhism, the majority religion. According to Article 9 of the constitution (1978), 'the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha *Sasana*, while assuring to all religions the rights granted by Articles 10 and 14(1)(a).' The Article 10 reads: 'Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.' Article 14(1)(e) guarantees that every citizen is entitled 'the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.' In spite of the essential secular thrust of the constitution there is no reference in the constitution to a uniform civil code for the country. The Directive Principles of State Policy (Article 27), unlike the Indian

constitution, is silent on the matter. Evidently, the question of personal law of different communities is not a political issue in the country and the different communities have their specific family laws that govern them.

There are specific customary laws that govern the transfer of agricultural land in Jaffna. Known as Thesavalamai Law, this ancient customary practice has evolved over centuries particularly during the colonial rule when efforts were also made to codify it. Much of its codification in the twentieth century has been through case laws. In brief, it applies to transactions relating to land owned by Jaffna Tamils. It does not apply to Tamils from other areas. Under the law, land has to be offered to either the co-owners or the persons having hereditary rights before it is sold to others.¹⁰

The Kandyan section of the Sinhalese population has a special marriage law, the roots of which are pre-colonial. The current version of that law is the Kandyan Marriage and Divorce Ordinance 44 of 1952; this law has implications for inheritance as well. The Sinhalese as a whole are governed by the general laws on marriage and divorce. It is more complicated for the Hindus. Their marriages are governed by the General Marriage Ordinance of 1907, but they have property in Jaffna, the inheritance is governed by the Thesavalamai.

So far as the Muslims are concerned, it was in 1906 that a semi-official code of Shafi law was prepared. In 1929, on the recommendation of the Akbar Committee, the government issued a Muslim Marriage and Divorce Registration Ordinance. Following the country's independence in 1948 the Muslim Marriage and Divorce Act was passed in 1951. Under the provisions of the act a Muslim Marriage and Divorce Advisory Board was set up to advise the government on the matter. Thrice the act was amended during 1954-56. In 1969, the act was once again amended to incorporate a Supreme Court ruling that the Judicial Commission would appoint the qadis.¹¹

Politics of Personal Law

Of all the four states discussed in this article only India has a secular constitution. Sri Lanka is virtually secular but its constitution gives primacy to its majority religion, Buddhism. The remaining two states, Bangladesh and Pakistan have Islam as the state religion enshrined in their constitutions. As such, the discourse over personal law and its possible and desirable replacement by a uniform civil code is most vibrant in India. An analysis of this debate gives a clue as to how the issue can be related to the overall question of democratisation.

The directive principles of state policy of the Indian constitution states that 'the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India' (Article 44). In five decades not much progress is noticeable in the direction. On the contrary, the subject has become so much wrapped up in communal politics that there is no sign of its getting implemented in the foreseeable future. Nobody can dispute that in any true democracy all citizens must enjoy the same law, whether it is criminal or civil. Why is then in India so much controversy over the introduction of a uniform civil code? To understand these dynamics one must understand the texture of politics in India. But before that a short history of the controversy would be in order.

The History

Prior to the arrival of the British, India had a multiple system of laws based on either Hindu Law or Muslim law. The British Indian government thought of replacing these by uniform codes, both civil and criminal. The earliest of such uniform codes was the Indian Penal Code (IPC), promulgated in 1861 and is effective till this day with certain amendments. It supplanted both the Hindu law and the Islamic Shari'ah law. The fact that neither community protested shows there was no particular liberal or conservative outlook to be associated with either community. Of particular importance is, that the

supplanting of Muslim criminal law by the IPC showed that there was nothing sacrosanct about Islamic law which could not be modified.

The IPC was translated into Urdu by Maulvi Nazir Ahmed for which he was crowned with the title 'Shamsul Ulema' by the British which means 'the sun of theologians.' According to Asghar Ali Engineer, Muslim criminal law is as much part of the Islamic Shari'ah as is the Muslim personal law, and therefore, 'the argument that the Shari'ah is divine and immutable ... is not very convincing. Such an argument could then have applied to the abolition of the Muslim criminal law too.'¹²

It was not only criminal law that was codified, even several aspects of civil law were codified too during the British period to which both communities acquiesced. A major portion of civil law dealing with sale, contract, negotiable instruments, trusts, company law, transfer of property and procedures for settlement of cases and disputes was brought under a uniform code. M C Setalvad, India's former attorney general, while delivering the Patel Memorial Lecture in Delhi in 1965 had no hesitation in saying that India 'owes a great debt to the British for the introduction of uniform and equal laws applicable to all citizens. Secularism and equality were writ large in the codified and other laws administered by the British.' He reminded his audience: 'Let us not forget that the criminal and civil laws in operation before the advent of the British were in many respects unequal in their dealings with the citizen and discriminated in favour of those highly placed in caste hierarchy.'¹³

The British did not touch many personal laws of different communities governing matters such as marriage, divorce, inheritance, joint family systems, and so on. Changes in the domain of personal laws were made more in respect of the Hindu community as the demands for such changes had come from within the community itself. The best example is the passage of the Hindu Widow's Marriage Act 1856, which was the result of painstaking efforts by Ishwar Chandra Vidyasagar, a great social reformer of Bengal of the nineteenth century. Since there was no such demand from the Muslim community the British hardly touched the Muslim personal law. Although some aspects of the Muslim personal law were either codified or influenced by legislation, they were restricted in scope and did not really affect the personal laws governing marriage, divorce and inheritance. For instance, with the Muslim Personal Law (Shari'at) Application Act of 1937 the British had assured the Muslims that their own personal law would prevail over the Indian customary law, but the personal law *per se* was neither codified nor more clearly defined. Mohammad Ali Jinnah, the leader of the Muslim League, who was a progressive and modernist Muslim, successfully sponsored an amendment, which allowed Muslims to choose between Muslim personal law and Indian customary law in some cases of adoption, inheritance and wills. But the orthodox Muslims criticised Jinnah on the ground that he was using it as a ploy to register the support of the wealthy Muslim landlords who wanted to maintain their authority to dispose of their property, unrestricted by Islamic law.¹⁴

Recent Indian Experience

In India in a significant sense and in Sri Lanka in a very limited sense the question of personal law has been politicised. In Bangladesh and Pakistan, both Islam oriented states, it is a political issue of a different kind. In the context of India, one must not read too much into the fact that the Hindus are demanding a uniform civil code because they are progressive and the Muslims are opposing it because they are orthodox. There is some element of truth in these characterisations but this explanation is simplistic. One must not forget that the Hindu Widow Marriage Act 1856, to which reference has been made above, was possible only because Vidyasagar could resist the pressure from the orthodox Hindus. He outmanoeuvred them on their own turf by quoting not from the exotic theories of modern jurisprudence but from those very Hindu religious texts to which they used to take recourse. He proved that several of the Hindu religious texts themselves directly or indirectly sanctioned remarriage of widows. The religious basis of Hindu personal law was, therefore, underlined. One significant departure must, however, be noted. When the act was passed there was no reference to its

sanction in Hindu religion. On the contrary, the preamble of the act stated that although many Hindus believed that it was 'not in accordance with a true interpretation of the precepts of their religion' still for the 'promotion of good morals' and 'public welfare' the marriage of Hindu widows is legalised.¹⁵

We have seen above that Jinnah was not averse to the idea of the British taking some progressive steps in the realm of Muslim personal law. But as the Pakistan movement picked up momentum after 1940, and as it increasingly became necessary for the Muslim League to widen its support base amongst the Muslims, the League started playing the personal law card. It launched a propaganda that in 'Hindu India' after independence Muslim personal law would not be respected. The Jamaat-e-Ulema-e-Hind (the organisation of Muslim theologians), which was opposed to the League and subscribed to the theory of the Indian National Congress that India was one nation, took this up as a challenge and tried to convince the Muslims of India that just as the British did not fiddle with the essentials of Muslim personal law the Indian government would not touch them either. The ulema sought an assurance to this effect from Mahatma Gandhi and Jawaharlal Nehru and received one. Against this background Nehru persuaded the Indian Constituent Assembly not to press for a uniform civil code although B R Ambedkar, the chairman of the drafting committee, was in its favour. Placing the subject in the list of directive principles of state policy was a compromise that satisfied all. Earlier, three Muslim sponsored amendments to exclude Islam and/or all religious personal laws from the uniform code had been defeated.¹⁶

Keeping in view the idea of striving for a uniform civil code the Congress government under the leadership of Nehru thought of at least bringing some progressive changes in the Hindu personal law. A Hindu code bill was tabled in the parliament in 1954. The bill unnerved both the Hindu and Muslim communities. The Hindus ultimately relented and the bill was passed in parts, namely, the Hindu Marriage Act, the Hindu Minority (Age) and Guardianship Act, and the Hindu Adoption and Maintenance Act. The Muslims feared that now that the process had started to codify the personal laws the days were not far when their Shari'ah laws as well would be tampered with. In 1955, the Working Committee of the Muslim League observed that 'the personal law of the Muslims is a vital part of their religion and the substitution of it by any other law is a direct negation of religious freedom guaranteed in the constitution.'¹⁷

A decade later the controversy again surfaced. In January 1964, an International Congress of Orientalists was held in New Delhi attended by some 600 delegates, mostly from India and West Asia. The congress offered a special symposium on 'Changes in Muslim Law.' Mohammad Carim Chagla, the then union minister of Education and former chief justice of the Supreme Court of India, chaired the session. He set the tone of the meeting by highlighting in his introductory remarks the need for a uniform civil code in India. The idea was endorsed by delegates from Egypt, Iran and Turkey, who felt that the same was true for their own countries as well. There was, however, one dissenting voice. It was that of the Iranian scholar, Syed Hossein Nasr. He argued that since Islam and shari'ah were one and the same thing any tampering with the latter meant tampering with Islam. He went to the extent of arguing in favour of polygamy.

The impact of the congress was limited and the Indian press virtually ignored its proceedings. Still, it contributed to dividing the Muslim community between the traditionalists and the modernists insofar as the question of Muslim personal law was concerned. The Congress government was in a dilemma. The traditionalists had the votes and the modernists had the ideas for progress. The government, however, took the risk of starting the process by improving the lot of the divorced Muslim women along the lines of their Hindu or other counterparts. The basic idea was that the three-month maintenance scheme as provided in Islam was not enough. The traditionalists opposed this on the ground that the Islamic solution to the problem was much more than just the three-month maintenance scheme. They argued that after the expiry of the period, the financial burden of the divorced Muslim woman was borne by her father or other male relatives failing which by the whole Muslim community through the Waqf board. All sounded well and probably it worked in

predominantly Muslim societies but whether it would work in India was debatable. As one scholar noted: 'The system works better in a predominantly Muslim society where expectation and social pressure should intervene to insure that the system works. In a predominantly Hindu society, where divorce is scarcely acceptable, the Muslim practice cannot be taken for granted. Members of a divorced Muslim woman's family may well feel she has brought dishonour on them all, and may not be willing to receive her, much less support her.'¹⁸

Despite opposition from Muslim traditionalists, the government, in 1973, amended certain provisions of the Criminal Procedure Code (Cr.P.C.) in respect of maintenance of wives, including divorced wives. They included Muslim women as well. Divorced Muslim women thus became entitled to maintenance, which was not there in the Muslim personal law. Muslim traditionalists continued to protest as a result of which an amendment in the law was carried out. It was agreed that if divorced Muslim women received the support under the norms of Islamic law and practice they would not be entitled to maintenance. Though there were inherent legal complications in the amended Cr.P.C. provisions, several cases involving divorced Muslim women were adjudicated, viz., *Bai Tahira vs. Ali Hussain Fissali Chota*, 1979; *Fuzlunbi vs. Khader Vali*, 1980; *Zohara Khatun vs. Mohammad Ibrahim*, 1981; and *Smt. Khatoon vs. Mohammad Yamin*, 1982. In all these cases the Muslim personal law was not upheld.

The question of government's authority to interfere in the family law of Muslims, however, continued to agitate the Muslim minds. Muslims launched two journals in 1981 and 1983, respectively, to discuss and debate the issue. The journals were the *Islamic and Comparative Law Quarterly* and the *Muslim India*. It was against this background that the controversial *Shah Bano* case came to the Supreme Court for decision in 1985. The case of *Mohammad Ahmad Khan vs. Shah Bano* concerned the same provisions of the Cr.P.C. as in earlier similar cases. In this case also Muslim personal law was not upheld. But the judgement made a reference to the Quran to which the Muslims took umbrage interpreting it as interference with Islam and showed their anger electorally. The results of the by-elections of 1985 showed a loss of Muslim votes for the Congress.

In the face of Muslim opposition the Rajiv Gandhi government decided to settle the matter politically. Since his party had an overwhelming majority in parliament he got the Muslim Women (Protection of Rights on Divorce) Act 1986 passed, which did away with the relevant Cr.P.C. provisions and provided for remedies for divorced Muslim women according to the Muslim personal law. In one respect it was the first instance in independent India that a portion of the Muslim personal law was codified. If this could be seen as progress, in another respect it was a backward step in the journey towards a uniform civil code. It certified the sanctity of Islamic law through an act of parliament. Progressive Muslims, more so progressive Muslim women, saw it as Rajiv's capitulation to conservative forces within the community.¹⁹ Interestingly, even in Pakistan some commentators called it 'a setback for Indian Muslims' and criticised Rajiv Gandhi for giving in to the Muslim conservative pressure 'in dire need of Muslim votes.'²⁰

In 1994, a controversy erupted over an Allahabad high court verdict pertaining to the system of talaq in the Islamic tradition. The verdict which was issued by the Lucknow bench of the high court said that talaq at one sitting was illegal. It again divided the Muslim community. The All India Muslim Personal Law Board objected to this interference with Muslim personal law and threatened to move the supreme court against the judgement. On the other hand many Muslim intellectuals including women strongly supported the judgement. Eventually, on 4 August 1994, the supreme court stayed the operation of the verdict till it disposed of the case.

The controversy, however, had one positive result. The ulema entered into some serious discussion to draft a standard nikahnama (marriage agreement) for the country's sunni Muslims. The proposed nikahnama stipulated that no man should resort to triple talaq. If he did he would be bound to pay double the mehr. This form of talaq, known as talaq-e-ahsan, was most preferred by the

Prophet. It meant pronouncing talaq once in the presence of four respected members of society, two from each side, preferably those who witnessed the marriage. This form of divorce allowed for a three-month period when reconciliation could be attempted, failing which, the divorce became effective. On the question of second marriage the nikahnama stipulated that the husband would not remarry without the first wife's consent. If he did, he would have to pay her double the mehr. The first wife would have the first right to the matrimonial home and would not be compelled to share it with the second wife. It also recommended that mehr should not be in cash but in shares, land or gold or silver, all of which would appreciate in value. An accompanying note would lay down the guidelines on calculating the mehr according to the man's income and status. The finalisation of the nikahnama is pending the approval of the All India Muslim Personal Law Board.

Sri Lankan Experience

In Sri Lanka where the political controversy is ethnic, between the Sinhalese and the Tamils, the Sinhalese generally consider the Thesavalamai law of Jaffna as something of a favour done to the Tamils, which they argue must be withdrawn. According to them it deprives the majority Sinhalese to settle in Tamil majority areas although the country is one and the constitution gives the right to all its citizens to settle anywhere in the country. In the aftermath of the July 1983 anti-Tamil riots when the Sinhalese-Tamil ethnic conflict entered into a new phase of intensity this misreading of the law became more popular. So much so that the Committee for Rational Development, a group consisting of Sinhalese, Tamils, Muslims and Burghers of different political persuasions dedicated to the cause of finding solutions to Sri Lanka's social and ethnic problems, considered it to be their duty to put the record straight. It clarified: 'Muslims, Burghers and Sinhalese have in fact bought land in Jaffna. Under the Thesavalamai, there is a concept of pre-emption under which co-owners, co-heirs and adjacent landowners—who had a mortgage over property located in the Northern Province—have the first option of purchase. It is not racial exclusion but an exclusion peculiar to the nature of an agricultural community. Today, in fact, the owner only gives notice before selling in the open market.'

In explaining why only few a Sinhalese had settled in the Northern Province the Committee clarified that the 'migratory patterns in Sri Lanka have pushed members of all communities who wish to better their prospects into the cities such as Colombo and its vicinity. Besides, land in Jaffna is relatively infertile and would not have attracted migrants interested in an agricultural livelihood. It could be argued that the paucity of Sinhalese settlers in the Northern Province exists for the same reason why there is perhaps paucity of Tamil settlers in Hambantota.'²¹

Bangladesh and Pakistan Experience

Unlike India, neither in Bangladesh nor in Pakistan has there been any effort to either codify or modernise the personal law of the minority community. Since Pakistan is an Islamic state and the state religion of Bangladesh is Islam it is structurally impossible to think of a uniform civil code in either of these countries. If at all it is attempted, it would mean that non-Muslims too would have to abide by the Islamic precepts of family law. Bangladesh was a secular state for a brief period between 1972 and 1977 and it was technically possible only then. But once its thrust became Islamic following the amendment of 1977, which replaced the word 'secularism' by the phrase: 'absolute trust and faith in the Almighty Allah,' the emphasis changed totally. This religious majoritarianism was further cemented when in 1988 the Eighth Amendment to the constitution made Islam the state religion. Moreover, since Hindus are increasingly becoming a threatened lot in the country, there does not seem to be any possibility in the near future that the state would be concerned about bringing changes in their personal law keeping in view the progress that is being registered in neighbouring India. Although, like India, one does not hear much of communal riots in Bangladesh between the Muslims and Hindus but that does not mean that the latter are a safe and proud minority. The undercurrents of Muslim majoritarianism are increasingly reducing them to a second class citizenry and since they are

not considered as a threat in any respect there is no need to fight with them. As one Bangladeshi Hindu scholar writes:

Most minorities complain of discrimination in the workplace, especially in government jobs and business. In times of a communal flare up, security of life and property is threatened as during the post-Babri Masjid incidents. The minorities blame the administration for not giving them adequate protection. All this makes them feel like second-class citizens. It is little wonder therefore that given the opportunity they want to migrate to India.²²

The extent of the missing Hindu population is estimated around 1,220,000 during the period 1974-81 and about 1,730,000 during the inter-census period of 1981-91. On the basis of this it was calculated a few years ago that, on an average, about 475 Hindus disappeared every day from the soil of Bangladesh since 1974.²³

In Pakistan, the thrust of politics is Islamic almost from the very beginning. The Islamic forces even tampered with the Objectives Resolution of 1949, which contained a clear secular promise. The original text of the resolution was not accurately preserved and clever alterations were made in it before it was to form the preamble to the 1956 constitution. For example, the word 'God' was replaced by 'Allah.' From the original sentence '... adequate provision shall be made for the minorities freely to profess and practise their religions...' the word 'freely' was deleted. It would be a correct analysis to say, therefore, that the objectives resolution, 'judged in the light of later events, and with the benefit of hindsight today, is considered a decisive first step from the ideal of a Muslim national state towards an Islamic state.'²⁴

There are several clauses in the constitution of Pakistan that come in the way of members of the minority communities being treated at par with the majority. For example, a Muslim alone can be the president of Pakistan. Ever since the Eighth Amendment to the Constitution of 1985 the minority community is debarred from either contesting or voting for any of the general seats as they were renamed as 'Muslim Seats.' As a result, a non-Muslim cannot vote for a candidate of the constituency where he is registered as a voter. He can contest or vote only for a minority seat in which case the whole of Pakistan or the whole of the province becomes his constituency. The blasphemy laws put them under great stress. These laws call for death penalty for any remarks considered insulting to Islam or Prophet Mohammed. The case of two Christians in a blasphemy incidence is a case in point. In 1995, two Christians, 14-year old Salamat Masih and his uncle Rehmat Masih, 40, were sentenced to death by a session court for throwing pieces of paper containing blasphemous words into a mosque in 1993. At the time of the offence Salamat was just 11. Mercifully, the Lahore High Court acquitted them for want of evidence.²⁵ Would the punishment have been the same had a couple of Muslims, let alone minors, desecrated a Hindu temple or a Christian church?

Since the minorities are very small in number their voice is seldom heard. According to the census of 1981 Hindus constitute 1.5% of the population, Christians 1.6% and the Ahmediyas 0.1%. Most of the Hindus live below the poverty line. In the aftermath of the destruction of the Babri mosque in India (1992) when there was a lot of commotion in Pakistan, the Karachi-based journal, *The Herald*, noted: 'Since Hindus are not "people of the book," most Muslims consider them to be inferior. Even today as the twentieth century comes to a close, most Muslims will not eat or drink with Hindus, nor will they touch Hindu's eating utensils. This intense discrimination is manifested at all levels and in all forms. Thus, Hindus form one of the poorest and most exploited communities in the country.'²⁶ Against this background, while on one hand Muslim personal law is expected to become increasingly Islamic, Hindu and Christian personal laws would be left untouched for sheer apathy and indifference. This indifference must not be interpreted as some sort of a sign of respect for the minority sentiments. It amounts to treating them as second class citizens for whom the state has no time.

The Overall Experience

From the above discussion on the experience of four South Asian countries in respect of personal law, several conclusions can be drawn. First, any community if it is in majority is willing to modernise its personal law because its cultural identity is neither in question nor under threat, perceived or otherwise. Second, the majority community deems any demand of the minority for retention of its personal law as an impediment to emotional integration of the nation and, as such, against national interest. Third, Hindus are relatively more open to a secular civil code than the Muslims as their religion is pluralistic and not based on any single book or the teachings of a single sage or guru. Fourth, the same is true of the Christians to some extent because over the years Christianity too has become pluralistic with a strong tradition of Protestantism. Fifth, Buddhism anyway, was a protest movement against the evils of Hinduism and as such has a liberal orientation insofar as the question of personal laws of the minorities is concerned. The Sinhalese-Buddhist apprehension about the Thesavalamai law is more due to its fear that the Tamils are bent upon disintegrating the country and carving out a separate state for themselves. Sixth, the majority of Indian Muslims are very touchy about their personal law and they are reluctant to accept any change in it if it is even remotely different from what is laid down in the Quran and Shari'ah. Seventh, whatever codification of Muslim law has been possible in India, it is due to the proactive steps on the part of the Indian state, which have forced the Muslim traditionalists to at least agree to some codification. Eighth, the Muslim leadership, howsoever progressive, is still not in a position to challenge the conservative forces within the community as the experiences of Bangladesh, India and Pakistan suggest. As a result, the political leadership, even if Hindu, as is the case in India, has placated these forces to the detriment of the Muslim society. Ninth, as long as the personal laws of different communities would draw their sustenance from religion it is difficult to introduce a uniform civil code and in this sense the greatest resistance would come from the Muslims.

Personal Law and Democracy

The relationship between democracy and personal law is complex. What is more democratic: efforts aimed at introducing a uniform civil code, or a commitment to retain the personal laws of religious and ethnic communities? At the core is the issue of citizenship. There cannot be two opinions that in a democracy all citizens are expected to enjoy equal rights and privileges they must be covered under the same criminal and civil laws. The Indian Penal Code for example is applicable to all Indian citizens equally. In so far as a common civil code is concerned, a reference to India's Special Marriage Act 1954 would be instructive. It is a secular act and any two male and female adult citizens can take advantage of it irrespective of their religious affiliations. It also provides opportunity to those who have already married according to their personal law to apply for registration of their marriages under this act and make its provisions applicable to them. The act provides for liberal grounds of divorce, a severance from his joint family of the Hindu marrying under it, and the application of the Indian Succession Act in relation to succession to his property, to the exclusion of the Hindu law of succession or any other personal law. Setalvad said:

The act may perhaps be described as "a uniform civil code of marriage" and a step towards the uniform civil code for all citizens contemplated by the constitution. Those who take advantage of its provisions will be Indians governed by a uniform law of marriage though belonging to different religions. The Hindu or the Muslim marrying under it, though he ceases to be governed by his personal law in important matters, will not cease to be a Hindu or a Muslim.²⁷

It is, however, interesting that still not many Indian citizens are opting for marriage under this act. All Indian communities are very traditional and as such most marriages are still solemnised through religious rites. They seldom bother to get their marriages registered under this act unless they want to go abroad and the host country insists on a marriage certificate before issuing the visa. What is, therefore, more important is to start the process of universalisation of civil law one by one, starting

with the majority community as has been done in India through the Hindu Code Bill. The idea was first mooted when the Hindu Law Committee was appointed on 2 January 1944 which prepared a draft code of Hindu law. When the draft was introduced in the Central Assembly in 1947, before independence, it was not approved on account of vociferous opposition. The matter was again debated in the Constituent Assembly but it again met with stiff resistance leading to its rejection in September 1951. Only in 1955, owing largely to Nehru's persuasive skill that the bill was enacted by the parliament, though in parts, as noted above. It may be underlined that Nehru had argued in favour of the bill not from the point of view of Hindu religion but from his sense of Hindu history. As one scholar puts it:

"The uniform civil code of which the Hindu Code was the first step was validated on the grounds of the secular state. That being settled, if a remainder of past Hindu flexibility could be used to get Hindus to take the first pill, that would be utilised. But the movement towards a uniform civil code was based on the nature of citizenship in the secular state."²⁸

Secularism and uniformity of civil code have, therefore, an umbilical connection. Therein lies the problem with states where the constitution, leave alone the texture of their national politics, is not secular. One cannot conceive of a uniform civil code either in Bangladesh or in Pakistan because in both of them Islam has been declared as the state religion and where the personal law of the majority community is solely based on the Quran and Shari'ah. Clause 1 of Pakistan's Sharia Act reads: 'Nothing contained in this Act shall affect the personal laws of the non-Muslims.'²⁹ To work out a common civil code for all Bangladeshi and Pakistani nationals the first step that has to be taken is to sever the linkage between the personal law of the Muslims of the two countries from the Quran and Shari'ah. To do that the states would have to declare them as secular—a tall order indeed. Although Sri Lanka too has given Buddhism a pre-eminent position in its constitution, it has refrained from calling itself a Buddhist state, whatever that would have meant. And since Buddhism is not so exclusive like Islam in terms of its religious and social canons it is possible that it may one day consider going for a uniform civil code provided it can resist the opposition from the Muslims, who are increasingly becoming politically powerful. The only hope, therefore, lies with India to show the way for other regional states to emulate.

But to show the way, mere constitutional commitment to secularism is not enough. The Indian society also has to be secularised for all laws, after all, are nothing but social contraptions meant to ensure peace and harmony amongst all citizens. The history of the uniform civil code controversy in India suggests that India's politics has not yet prepared its people for it. The ghost of partition still haunts the nation and the undercurrents of Hindu-Muslim divide continue to dictate the electoral battles in several parts of India. Of late, the rise of the Hindu nationalistic Bharatiya Janata Party (BJP) to the centre stage of Indian politics has instilled a sense of insecurity amongst India's minorities, particularly the Muslims. Following the demolition of the Babri mosque in 1992 by a fanatic Hindu mob, in the presence of BJP's highest leadership and state police, in violation of court orders and political commitments made at the highest level, the Muslims have lost faith in the Indian state's capacity and interest to safeguard their rights. Against this background, BJP's penchant to replace the various personal laws by a uniform civil code is viewed with suspicion.³⁰ Although Lal Krishna Advani, the former president of the party and now the Home Minister of India, talks of setting up a law commission to study all the personal laws of different communities so as to identify the progressive elements in them before opening a debate on the draft uniform civil code thus prepared,³¹ the overall tenor of his party's political logic in favour of the code overshadows this sensible approach. Most of the Muslims naturally misread the logic and think that the party is trying to Hinduise the personal laws.

In this failure the role of the Muslim leadership is no less responsible. It was as early as the sixties that serious efforts were made to draft a uniform civil code. But primarily on account of Muslim conservative reaction the process had to be stalled. It may be noted that in the Orientalists'

Congress there was a lone voice of the Iranian scholar Nasr against the uniform civil code. But that became more important for the Indian Muslims than the entire body of Islamic scholars who were in favour of the common code. The Majlis-e-Mushawarat that came into being immediately afterwards and articulated the Muslim point of view against the common code was essentially conservative in its approach. Not that there were no progressive Muslim views but they could not reach the Muslim masses. Even when the BJP was making a big noise about the necessity of introducing a uniform civil code they could not provide the Muslims with a sensible alternative. Even Najma Heptullah, the deputy chairperson of the Rajya Sabha and a progressive Muslim leader from the Congress party, became a victim of day to day politics. She commented: 'The BJP talks only about Muslim personal laws. What about Hindu inheritance laws? Why should Hindu law be the prototype for any uniform civil codes, when it is discriminatory against women?'³² Either she misread Advani or she was playing to the Muslim gallery.

While a uniform civil code is a desirable ingredient of democracy, it is not a prerequisite. A democracy can thrive even by respecting different personal laws of different communities. It all depends on the specific historical experience of a nation and texture of the society—multiethnic or mono-ethnic. For example, Israel, generally considered as a very modern society, has not enacted a common civil code. It has left the Muslim and the Christian Arabs to be judged on personal legal matters by their own religious courts, as the rabbinical courts take care of the cases of Jewish Israelis. In contrast, however, predominantly Muslim Albania and Turkey have introduced secular civil codes without any reference to the Quran. Given the plurality of South Asian states probably the Goa model can be the most suitable.

The Cordigo Civil Portugues of the Portuguese Civil Code (PCC) was introduced in Goa in 1870. With some modification it is still operative in the state. It is uniform for all communities with certain specific provisions for particular sections. For example, Hindu men there have the right to polygamy, but only under specific circumstances keeping in view the Code of Usages and Customs of Gentile Hindus. This also is more in theory than in practice.³³ The Muslims of Goa have accepted the PCC. In 1981, when the government of India appointed the Personal Law Committee and asked it to find out how the personal laws applicable in the rest of the country could be extended to Goa it met with stiff resistance from the progressive Muslims of the state. As against the views of the Goa Muslim Shariat Organisation the Goa Muslims under the leadership of the Muslim Youth Welfare Association and the Goa Muslim Women's Associations campaigned for the continuation of the PCC.³⁴

Another possible way of dealing with the issue is through the human rights model. What is needed is to argue, as some scholars have done, that a uniform civil code 'does not reject religion, but only the formulations and dogmas of "traditional" religions insofar as they are not in harmony with "justice, equity and good conscience." The disharmony arises because some of the formulations and dogmas are inconsistent with the UN Declaration of Human Rights; are incapable of, and/or ineffective in solving social problems especially as they capitulate to the *status quo* by compromising with worldly values which are not in conformity with true spiritual patterns.'³⁵

Conclusion

For all countries of the world, including those in South Asia, a uniform civil code is a dream that should be cherished by all. It is so because this dream subsumes certain ideals precious for all civil societies, namely, an unequivocal commitment to equal respect for all religions, freedom of conscience, and freedom of expression. In short, democracy—democracy, which respects pluralism and the rule of law—democracy, which averts fundamentalism and intolerance of others' ways of life. National integration is not mere territorial integrity. It means an emotional bond amongst all segments of society leading to a common goal for the well being of all. In this march, a common system of law is just one component. But to achieve this goal no segment should be coerced for that way it would be

counterproductive. The same is true with the ideal of a uniform civil code. If the minorities are feeling attached to their personal laws it must be because they are still not confident about the intentions of the majority. Once that trust is developed no minority would feel insecure and in that harmonious climate it is possible to work for a uniform civil code. The situation does not seem to be conducive in South Asia at present.

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Notes

- 1 Tahir Mahmood, *Statutes of Personal Law in Islamic Countries—History, Texts and Analysis*, New Delhi, India and Islam Research Council, 1995, Second Edition, pp 54-57.
- 2 David Pearl and Werner Menski, *Muslim Family Law*, Lahore, Brite Books, 1998, pp 49-50.
- 3 Tahir Mahmood, "Common Civil Code, Personal Laws and Religious Minorities" in Mohammed Imam (ed), *Minorities and the Law*, Bombay, N M Tripathi, 1972, p 463.
- 4 Mahmood, *Statutes of Personal Law in Islamic Countries.., op.cit.*, pp 87-88.
- 5 *Ibid.*, p 74.
- 6 *Ibid.*, p 75.
- 7 *Ibid.*, p 77.
- 8 For more on this point, see P Nayak and S Nayak, "Status of Muslim Personal Law in Pakistan" in Ramakant, *et.al.* (eds), *Contemporary Pakistan: Trends and Issues*, Delhi, Kalinga, 2001, Vol. I, pp 43-75.
- 9 Compiled from S A Abid (ed), *Manual of Family Laws in Pakistan (Amendments and Case Law up to date)*, Lahore, Civil and Criminal Law Publications, 2000.
- 10 For a detailed description of the law and its history, see Ivor Jennings and H W Tambiah, *The Dominion of Ceylon: The Development of its Laws and Constitution*, Westport, CT, Greenwood Press, 1952, pp 261-75. See also, Savitri Goonesekere, *The Sri Lanka Law on Parent and Child*, Colombo, Gunasena, 1987.
- 11 Mahmood, *Statutes of Personal Law in Islamic Countries.., op.cit.*, p 91.
- 12 Asghar Ali Engineer, "Common Civil Code: A Poser," *The Hindu*, New Delhi, 11 March 1993.
- 13 M C Setalvad, "Secularism: Patel Memorial Lectures 1965," New Delhi, Publications Division of the Government of India, January 1967, pp 49-50.
- 14 Patricia Risso, "Indian Muslim Legal Status (1964-86)," *Journal of South Asian and Middle Eastern Studies*, 16(2), Winter 1992, pp 56-57; Partha Chatterjee, "Religious Minorities and the Secular State: Reflections on an Indian Impasse," *Public Culture*, Chicago, 8, 1995, p 25.
- 15 For the full text of the Act, see Abid, *Manual of Family Laws in Pakistan, op.cit.*, pp 541-42.
- 16 See Engineer, "Common Civil Code," *op.cit.*, and Risso, "Indian Muslim Legal Status (1964-86)," *op.cit.*, p 59.
- 17 Moin Shakir, *Muslims in Free India*, New Delhi, Kalamkar Prakashan, 1972, p 85.

- 18 Risso, "Indian Muslim Legal Status (1964-86)," *op.cit.*, pp 66-67.
- 19 Zoya Hasan, "Minority, Identity, State Policy and the Political Process" in Zoya Hasan (ed), *Forging Identities: Gender, Communities and the State*, New Delhi, Kali for Women, 1994, pp 59-73.
- 20 Rabab Naqvi, "A Setback for Indian Muslim?," *Dawn*, Karachi, 16 May 1986.
- 21 For the full text of the report, see *Lanka Guardian*, Colombo, 1 November 1983. The report was reproduced in *Tamil Times*, Surrey, December 1983, pp 4-10.
- 22 Meghna Guhathakurta, "Bangladesh: A Land of Shifting Populations" in Tapan K Bose and Rita Manchanda (eds), *States, Citizens and Outsiders: The Uprooted Peoples of South Asia*, Kathmandu, South Asian Forum for Human Rights, 1997, pp 117-18.
- 23 Saradindu Mukherji, "Migration: Generous or Hapless Hosts?," *The Hindustan Times*, New Delhi, 13 October 1996.
- 24 Dieter Conrad, "Conflicting Legitimacies in Pakistan: The Changing Role of the Objectives Resolution (1949) in the Constitution" in Subrata K Mitra and Dietmar Rothermund (eds), *Legitimacy and Conflict in South Asia*, New Delhi, Manohar, 1997, pp 126-27.
- 25 Olive Peacock, "Christian Minority in Pakistan" in Ramakant, *et.al*, (eds), *Contemporary Pakistan: Trends and Issues*, *op.cit.*, p 112.
- 26 *The Herald Annual*, Karachi, January 1993, p 87.
- 27 Setalvad, "Secularism," *op.cit.*, p 52.
- 28 Robert D Baird, "Religion and the Legitimation of Nehru's Concept of the Secular State" in Bardwell L Smith (ed), *Religion and the Legitimation of Power in South Asia*, Leiden, E.J. Brill, 1978, p 83.
- 29 For the text of the Act, see *Pakistan Affairs*, Washington, D.C., 44(11), 1 June 1991, pp 2-3.
- 30 For a dispassionate discourse on the subject, see John H Mansfield, "The Personal Laws or a Uniform Civil Code?" in Robert D Baird (ed), *Religion and Law in Independent India*, New Delhi, Manohar, 1993, pp 139-77. Also see, Mohammed Imam, "Muslim Law Reforms in India and Uniform Civil Code" in Imam, *Minorities and the Law*, *op.cit.*, pp 385-417.
- 31 Advani's Presidential Address at BJP's Plenary Session, 1986.
- 32 *India Abroad*, New York, 5 March 1993.
- 33 Nishtha Desai, "Uniform Civil Code in Goa Protects Women's Rights," *Times of India*, New Delhi, 27 June 1996.
- 34 Nishtha Desai, "Goa Code has Meshed Well with Muslim Culture," *ibid.*, 29 April 1997.
- 35 S Neelakanthan and Nasir Tyabji, "The Case for a Secular Civil Code," *The Hindu*, New Delhi, 25 July 1991.