

Presidential Address

I would seek your permission to begin my address with two thought-provoking extracts of historical importance from the speeches of our eminent leaders for they throw light on a fundamental principle informing the political, revolutionary, moral and democratic struggle of the country which should never be forgotten or ignored by our intellectual and political leadership.

The first of these is from the Presidential Address by one of the most revered leaders and a frontranking fighter of freedom Maulana Abul Kalam Azad which was delivered at the annual session of the Indian National Congress held at Ramgarh in March, 1940. The Maulana had said :—

“I am a Muslim and feel proud of it. I have inherited glorious traditions of Islam going back to thirteen hundred years and I am not prepared to forgo even the smallest part of it. My valuable legacy consists of Islamic teachings, history, arts and literature and culture. It is my duty to stand guard over these. As a Muslim I have a peculiar religious and cultural identity and cannot permit anybody to interfere with it.

“The consciousness I have just spoken of is supplemented by another perception born out of the facts of my life. The spirit of Islam does not stand in its way ; it rather leads me to this perception and I feel proud that I am an Indian, a part of the indivisible nationality of India. I constitute an important part of this texture of Indian nationa-

lity which would remain incomplete without me. I am an indispensable element in the factors that go to make it and I can never forgo my claim to it."¹

The second passage has been taken from the Convocation Address delivered at the Kashi Vidyapith, Varanasi on 14th August, 1935 by Dr. Zakir Husain Khan, an eminent educationalist of international fame who rose to become the President of India.

"I would beg your indulgence for my plainspeaking before this distinguished gathering when I say that the factors responsible for alienating Muslims from the composite Indian nationality are selfishness and short-sightedness of certain individuals and the failure to give a concrete shape to the future of India. But alongwith these there is the lingering fear that the Muslims would lose their cultural identity under the national government. Muslims would never be willing to pay this price, cost what may. I am glad, not only as a Muslim but also as a true Indian, that the Muslims are not prepared to bear this loss. Apart from its detrimental effect on the Muslims, such a loss would degrade even the Indian culture.

Like the bud I am melancholy, heavy-hearted, The garden shall be no more, then, if I cease to exist."²

1. *Khutabat-i-Azad*, Sahitya Academy, Delhi, pp. 297-98.

2. *Talimi Khutabat*, Dr. Zakir Husain Khan, Maktaba Jamia, Delhi, 1952, pp. 23-24.

A great country like India has remained a centre of different religions, cultures, languages, traditions and customs for the past several centuries. In its long history India has not only permitted but also regarded with reverence and protected and developed all these diverse elements as a means to peaceful coexistence, promoting common national interests and eliciting cooperation of all for the common purpose. A secular and democratic system of government was necessary for such a country in which everyone had the liberty of one's conscience and creed. The idea was born out of realism and true patriotism and contained the essence of values enshrined in different cultures and their philosophies of life. Indeed, the sentiments expressed by the two aforementioned leaders show their courage and farsightedness which was expected of them.

It was because of this realistic assessment of the obtaining situation and to lay the foundation of a truly democratic form of government that Article 25 was included in the Constitution of India. This Article was meant to satisfy all the sections of Indian population and divert their energies from striving to protect their religions and creeds, cultures and traditions and personal laws and social structures to the solidarity, integrity and progress of the country so that India may take its rightful place of honour in the comity of nations through united and concerted effort of all its inhabitants. This Article which forms part of the Fundamental Rights granted to the citizens of India reads :

“Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the

right freely to profess, practice and propagate religion."

This provision was eminently suited to the political, ethnic, cultural and religious conditions obtaining in the country as well as mental characteristics of its people. The country was only required to translate it into practice with complete sincerity and a firm determination.

The monumental Indian Constitution on which some of the best legal brains and experts of constitutional law had spent much time and labour, whose every comma and full-stop was discussed in great detail, however, also contained an incongruous provision in Article 44 which recommended a uniform civil code for the country in the shape of Directive Principles of State Policy. This Article reads:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

At the time the Constitution was being framed, the Muslim leadership was given an assurance that the Fundamental Rights conferred by the Constitution adequately protected the right of Muslims to have their own personal law, for, in any case, the Fundamental Rights were more important and sacrosanct than the Directive Principles. However, it was apprehended that this provision for the uniform civil code was dangerous for the Personal Law and community life of the Muslims (which happens to be an inseparable part of their religion). It was like an explosive matter which could catch fire any time with the slightest pressure or the heat generated in the body-politic of India and destroy the religious and cultural rights guaranteed by the Constitution. This fear is now coming true. The natural course of events shaped by a number of factors like

the ignorance about the true character of Muslim Personal Law and Islam, the relationship between the two, disregard for the creed, emotions and psychology of the Muslims, Hindu revivalism, electoral considerations inherent in pleasing the majority as well as shallow thinking have been responsible for it. After keeping mum for a long time, the voice for an uniform civil code and reform in the Muslim Personal Law was raised first in 1972 and then renewed after short intervals within and out of the Parliament. These demands were discouraged initially on account of different political reasons and also for not hurting the Muslim susceptibilities (which was likely to have an adverse effect during the elections). The Government of India repeatedly assured that it had no intention of taking any such step until the communities concerned themselves demanded reforms in their Personal Laws. At the same time, however, several persons belonging to those very communities continued to raise the question within the Parliament and outside it which made it manifestly clear that the demands by them were motivated rather than being the voice of conscience of those raising the issue.

Be that as it may, there was hardly any doubt that the declarations and assurances of those wielding power were no better than mere cloaks to conceal their real intentions. The issue could be whipped up any time to generate heat and fire.

Two factors are responsible for the issue being revived again and again. The first is the concept of democracy which assumes that the law made by the elected representatives of the people encompasses the entire gamut of human life. Personal Law affects not only the life of the individuals but also regulates the relationship between

individuals. The people or religious communities which have no concept of 'revelatory' Law, consider these laws as the product of human experience fulfilling the requirements of social needs and propensities (and unfortunately most of the religions excluding Islam and Judaism, particularly those of Aryan origin, subscribe to this view.) For them continual change in the law to meet the exigencies of the changing times and its requirements are but natural. This concept of the law makes change or reform in the man-made law not only permissible but even obligatory with the changing circumstances.

Another factor is the universal tendency to bring about as much uniformity as possible in the different sections of the population of a country. This view was forcefully projected through literature, politics and mass media during the opening decades of this century in Europe where, by and large, the population has the same culture, religion, social structure and family laws. This concept was imported in the eastern and Asiatic countries although they had several religions, cultures and social customs and traditions. The diversity of religions, cultures and customs and organisation of social life in the eastern lands had never been a source of friction, hatred and disorder: confusion and tumult in these countries had always been caused by struggle for power between selfish political leaders. On the other hand, Europe has seen two most sanguine wars in the recent past despite its uniformity of culture and religion, which had not left untouched even Asiatic and eastern countries. The First World War was fought between Great Britain and Germany, both of which are Christians and Protestants and share almost the same culture and personal law. Then why did they fight? If

uniform civil code could stop friction in society, it should have stopped these nations from fighting each other. The Second World War has the same story to tell. These countries fought bitterly with inconceivable ferocity. Go to the law courts and you would find Muslims contesting law suits. One Muslim wants to put another Muslim to shame and often decimate him although both are governed by the same personal law. Often such contesting parties belong to the same family and are closely related to each other. The same is the case with Hindus whose civil code does not prevent them from litigation and infighting. Truly speaking, discord and enmity are the results of selfishness, excessive love of wealth and materialistic way of thought fostered by our faulty system of education and imperfect curricula which ignore moral education. It has nothing to do with one's family laws. I have no hesitation in affirming publicly that the uniform civil code will not bring about any change in the existing moral state of the nation. Then why is it that we are repeatedly asked to adopt a uniform civil code for the sake of greater harmony and affinity between different communities? It shows loose thinking and a deplorable state of mind bent upon mimicry of the West.

In addition to these two factors, I am constrained to point out yet another reason. Errors and blemishes found in the Personal Laws of certain communities are unavoidable in any man-made law. Change and reform in such laws become the responsibility of a welfare and democratic state and its own leadership. We have nothing to say about such reforms. We neither condemn nor protest against them.

But, so far as the Muslims are concerned, the situa-

tion is entirely different. Their Personal Law is a part and parcel of their faith; they believe that it has been laid down by the same God who has revealed the Quran and prescribed the creed and religious observances. This has been specifically and repeatedly stated, in the Quran and hence Muslims are bound to give faith to it. They will not remain Muslims if they reject this view. It simply means that their Personal Law has been laid down by the All-knowing God, the Lord and Creator of mankind and the universe, who knows the requirements as well as weaknesses of human nature.

‘Should He not know what He created? And He is the Subtle, the Aware. (Q. 68 : 14).

God is, thus, the Creator of time also. However necessary and correct we may deem division of time into past, present and future, it is all ‘past’ for Him. Once it is accepted that God has given certain laws for a living, universal community, it becomes an eternal law and any talk about change or reform in it tantamounts to intellectual and virtual dissimulation. It is not simply a matter of faith in an unseen reality or a religious creed, there are ample evidences of this law being perfect, balanced and just as well as transcending time and space. Such a large number of Muslim and non-Muslim legists and eastern and western scholars bear testimony to the fact that its denial amounts to closing one’s eyes to a known fact and reality. Several treatises exist on the subject which can be seen by anyone interested in the subject.

When the matter was raised in India and its dangerous portents became visible, the Muslims formed a united front under the banner of “Muslim Personal Law Board” at Bombay in December 1972 in order to take stock of the

proposed legislations from time to time and awaken Muslim public opinion against the impending dangers. It was such a well represented organisation of different sects and schools among the Muslims that has never existed since the Khilafat Movement. It organised such mammoth gatherings as were not to be seen after 1947. The formation of the Board and the public support it received in its massive gatherings succeeded in making the government as well as those favouring reform in the Muslim Personal Law realise that Muslims were united on this issue and therefore it would be unrealistic or even harmful for the political parties to pursue the matter.

This was the situation when the Supreme Court delivered the historic judgment in the case of Shah Bano on April 23, 1985. It stirred the entire Muslim community—its masses, scholars, intellectuals and lawyers. It hurt their feelings even more than the sufferings it had to undergo during the communal riots since it forebode intellectual apostasy, revolt against the Shariah and shutting the doors of divine blessings for the Muslims community. Has not God warned them that—

“For they who do not judge in accordance with what God has revealed are, indeed, deniers of the truth.” (Q. 5 ; 44)

It meant that non-Muslim judges or those not conversant with the Quran, Traditions of the Holy Prophet, Islamic jurisprudence and its principles or even Arabic language were entitled to make wishful interpretation of the Quran with the help of translations and second-hand information gathered from various sources. Such interpretations of the Quran could well be the outcome of their own thinking or influenced by the so-called progressive ideas

inimical to the very concept of religion. This was not only contrary to the rules for interpretation of religious scriptures but also challenged the principle of specialisation in different branches of learning, accepted universally from times immemorial in the fields of language and literature, philosophy and logic, science and technology and sociology and anthropology.

Indiaa Muslims provided such a massive evidence of their attachment to the Shariah and love for Islam on this occasion as had not been witnessed since a long time. Mammoth gatherings were organised from one end of the country to the other and even those in smaller towns and urban centres attracted people exceeding a hundred thousand. In a meeting held at the Shaheed Maidan in Calcutta on April 7, 1985, the gathering exceed five hundred thousand souls even according to conservative estimates. There were innumerable such gatherings from the north to the south, from the valley of Kashmir to Kanyakumari which were attended by eminent religious scholars and members of the Muslim Personal Law Board. Innumerable letters and telegrams were sent to the Law Minister and Prime Minister protesting against the Supreme Court's decision.

The popular and spontaneous sentiments of the Muslims were, however, opposed tooth and nail by the English and Hindi Press. Its inimical attitude to the Muslim Personal Law was perhaps more severe than even to the demands of separate nationality and division of the country. The Press and the leaders of communal organisations took the Muslim sentiments against the Supreme Court's decision, which, in any case, affected a microscopic number of divorced women among the Muslims, as if it

were something like foreign invasion of the country or the outbreak of widespread epidemic or a volcanic turmoil. As I had said during my dialogue with the Press in Delhi, they had lost all sense of proportion in this matter.

Alongwith the countrywide protests and public meetings (which were everywhere conducted in an orderly manner with full sense of responsibility to law and order) the leadership of the All India Muslim Personal Law Board established contact with the Prime Minister Mr. Rajiv Gandhi and the Law Minister Mr. Ashok Sen. They met the Prime Minister twice or thrice and discussed the matter with him to apprise him of the religious aspect as well sentiments of the Muslims on this issue. The Prime Minister (who must have received reports of discontent among the Muslims) gave a patient hearing and was convinced that it was a religious matter pertaining to Muslims. It could be handled by their religious scholars alone since they were deeply versed in religious sciences and had no political end in view. He expressed the desire, more than once, to discuss the matter with eminent scholars and was satisfied that Islam fully protects the rights of fair sex including divorced women. He observed on an occasion that Islam confers more rights on women and protects them better than modern legislations. He presented the Muslim Women (Rights on Divorce) Bill to the Parliament which showed his realism, moral grit and sense of responsibility. He issued the whip to his party members and ultimately the Bill was passed on May 6, 1986 by a clear majority. Indian Muslims (who can still distinguish those who sincerely helped them from the persons who opposed or wanted to make a political capital out of the issue) openheartedly acknowledged the noble gesture of the Prime Minister and

expressed their gratitude to him. Telegrams thanking the Prime Minister were sent from all parts of the country and even several organisations and academic bodies in other countries congratulated him. The newspapers and magazines of Saudi Arabia, Kuwait, U.A.E. and Arabic journals of Britain wrote editorials, for the first time, expressing satisfaction over the realism exhibited by the Indian government in solving the issue.

The episode showed the logic of events or practical wisdom succinctly described by a famous legist E. Bodenheim, in his discussion on the legal philosophy of social control. He says :—

“If the feelings of fairness of a large part of the population are outraged by a system of law purporting to establish ‘orderly’ condition of life, it will be extremely difficult for the public authorities to maintain such a legal system against attempts at evasion or subversion. Men will not stand long for an order they feel to be totally unreasonable and unbearable, and a government bent on perpetuating such an order will run into serious difficulties of enforcement. Thus an order which does not have a substantial anchorage in justice will rest on an unsafe and precarious basis. As John Dickinson points out : ‘We come upon the need for not merely a system of fixed general rules, but of rules based on justice, or in other words, on a regard for certain demands and capacities of human nature. Otherwise the system would not be workable ; offending ingrained proclivities and standards of judgment, it will be continually violated and so fail to yield the

certainty which is the excuse for its existence".¹

It would be pertinent to mention here that so far as the cooperation with the All India Muslim Personal Law Board is concerned all the Muslim political and non-political organisations, sects and schools of thought wholeheartedly supported the cause. Their leadership took keen interest in the matter and participated in the campaign launched by the Board.

I would be failing in my duty if I do not make a mention of those who have advocated the cause and given expression to the Muslim public opinion within and outside the Parliament. Mr. Ziaur Rahman Ansari, a member of the Central Government and Mr. Banatwala from among the members of Parliament especially deserve our thanks. Mrs. Najma Hapattullah and Begum Fakhr Uddin Ali Ahmad and a few other educated women showed their interest in matters pertaining to Islamic Shariah which makes it manifestly clear that educated Muslim women like their menfolk are satisfied with the provisions of Shariah and deem it superior to all other man-made laws.

The religion that has reached us and of which we are custodians has not been conferred upon us by the intellectuals, social workers, reformers or founders of empires. All of them deserve our respect but not as founders of religion. There is a line of demarcation between a revealed religion and a culture or civilization or a school of thought which can never be ignored, and it consists of the fact that the revealed religions have been preached by those elect and godly persons who were honoured by God with the

1. E. Bodenheimer, *Jurisprudence*, Harward, 1967, p. 213

mantle of prophethood. They received revelations from God. Those who disregard this line of demarcation very often confuse the issue and knowingly or unknowingly make such demands on religion which cannot be simply accepted by it. Such people often assume the responsibility of interpreting religious realities—just to make a show of their wide knowledge or catholicity of views—in a way as if all religions are nothing more than philosophies or social orders evolved by men or products of social thoughts and experiences. The error often committed by responsible and sedate persons is due to the fact that they are not aware of the line of demarcation between religion and other principles of things and ideas. Philosophy, social sciences, anthropology, culture, civilization and society are all facts of human life and we do not deny them. We pay due regard to them and are aware of the duties we owe to each of them. Even the Muslim society has its own schools of thought in regard to sociology and anthropology but one has to acknowledge the reality that Islam is a ‘religion’ which was brought to us by the Prophets of God. It was not the outcome of their thought or wisdom, it emanated from a source beyond them and was as much binding on them as on us or any other follower of Islam.

“Nor doth he speak of (his own) desire,

It is naught save an inspiration that inspired,

Which one of mighty powers hath taught him”.

(Q. 53 : 3-5).

“And thus have We inspired

in thee (Mohammad) a spirit of Our

command. Thou knewest not what scripture was,

nor what the faith. But We have made it a

light whereby We guide whom We will of our bondmen. And Lo ! thou verily dost guide unto a right path.

(Q. 42 : 52)

Revelation and prophethood are the two basic concepts of Islam. We have nothing to complain if our non-Muslim friends or their scholars, separated by a long period of time from prophethood, are not able to appreciate our view-point. They really do not know what these concepts mean and what are their demands. Even the Arabs were not aware of these concepts before the advent of Islam. We do not mean to belittle anyone's intelligence or intentions but it is a fact—established by history and psycho-analysis—that anyone not conversant with the true content of revelation and prophethood, its demands and requirements and mental dispositions leading to action, will not be morally and legally justified in tendering any advice to Muslims in any matter pertaining to religion.

Another thing to be understood is the scope of Islam. Religions differ on this point and have different grades of the concept. There are religions which originated with revelation and prophethood but they limited their religious life within a limited circle, say, devotional practices. But this is not the case with Islam. Islam embraces the entire gamut of man's life. It forms a primary, essential truth of Islam which cannot be appreciated without understanding the relationship between the Creator and the created beings as taught by Islam. Every Muslim is an obedient servant of God. This relationship is eternal, deep, wide and universal. Says the Quran :

“O you who believe, Surrender yourselves wholly

unto God, and follow not Satan's footsteps, for, verily, he is your open foe."

(Q. 2 : 208)

I would also submit that if the Muslims agree to give up (or modify) their Personal Law, they would be reduced to half or semi-Muslims, or rather the danger is that they would not remain Muslims at all. Those who have studied the philosophy of morals and religion are aware of the fact that no religion can be severed from the peculiar cultural process with which it is always inextricably intertwined. The relationship between the two is so close and natural that the one cannot exist in the absence of the other. It would mean that one would be a Muslim within the mosque (and how long one remains in the mosque ?) but not a follower of Islam in his house or in his dealings with his kith and kin, in fulfilling his obligations to them or in division of inheritance from his progenitors. No. We cannot allow any other social or cultural system or a civil code different from that of Islam to be foisted upon us. We regard it a call for apostasy and we shall face it. This is our fundamental and religious right in a democratic country. We enjoy this right under the Constitution of the country and deem that to fight for our just rights is in the interest of the country. Democracy can be maintained in this country only by safeguarding the rights of every section of our population, allowing them to freely express their views and to practise their religion. This is the way to peace within the country and satisfaction of all communities.