

## EDITORIAL

Non-interference in the religious matters of their subjects was the general policy followed by the British rulers in India. Each religious community was permitted to follow its personal laws in the field especially of marriage, divorce, inheritance, succession, gifts and adoption of children. This was a tradition the British inherited from the Mughal period during which although the Civil Laws and the Criminal Laws in force were the Islamic Law, non-Muslims had the freedom to follow their own religious and customary laws. When the East India Company re-organized the Judiciary in 1765, it left the Islamic Law intact, but in 1862 the Islamic Criminal Law was replaced by the Indian Penal Code which still continues to be in force under the same name. But as regards the laws governing the family and personal matters, in compliance with the demand of Muslims in general the 'Muslim Personal Law (Shariat) application Act of 1937, was enacted. Under this act it was provided that in matters of marriage, Mehr (dower), maintenance divorce, *khula* Juridical separation, guardianship, gift, succession and *aukaf*, where parties are Muslims, the rule of decision shall be the Muslim Personal Law.

It is in this legal context the question of having a Uniform Civil Code came up in the Constituent Assembly of India immediately after its independence. The main supportive thought behind this thinking was that secularism clearly demands a Uniform Family Law, and that separate family laws for different communities would result in discrimination between the communities which is repugnant to the secular character of the State. Sri K. M. Munshi, a member of the Constituent Assembly said during the debate that the purpose of the draft proposal for a Uniform Civil Code is to divorce Civil Administration of the State from religion. After a protracted debate on this issue the following Clause was adopted as Article 44 in the Indian Constitution: "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India."

Article 44 appears in 'Directive Principles of State Policy (Part IV, Articles 36-50). These provisions are not enforceable by the law court (art. 37). They are ideals which should govern the State Governments in their policy making. Article 47 laid down the enforcing of Prohibition as one of the directive principles of State policy. No State

Government in India is now seriously thinking to implement this directive. This is a clear indication that the directive principles were never conceived to be mandatory. If the directive concerning the Uniform Civil Code is made mandatory, it would go against the following fundamental right enunciated in article 25: "Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

The issue of evolving a Uniform Civil Code in India took a new turn when the Supreme Court of India gave, in the case of Mohammed Ahmed V/s Shah Bano (23-4-1985), the judgement that in the case of the divorced woman it is incumbent upon the ex-husband under section 125 of Criminal Procedure Code, to provide her maintenance if she is unable to maintain herself, till she marries or dies. The Muslim scholars regarded this judgement as an open interference in the Muslim Personal Law (Shariat), and an indirect attempt to impose much against their wish, the operation of a Uniform Civil Code on them.

"The Centre for the Study of World Religions (CSWR), Bangalore in collaboration with World Fellowship of Inter-Religious Council (WFIRC), took the initiative to organize a National seminar on Uniform Civil Code in a Multi-Religious Society", (February 21-23, 1986) to provide a forum for open discussion on this very sensitive religious issue. Like the CSWR, WFIRC is also a voluntary registered body started with the noble idea of bringing together people and institutions working towards inter-religious dialogue and harmony. It was formed as a follow up action to the World Conference of Religions organized in Cochin, Kerala, November 15-21, 1981.

The present number of *Journal of Dharma* contains a few papers presented in this seminar. In order to give a clear idea of the contributors actual involvement in the discussion the rhetorical style especially of the first two texts are being retained. The essays taken together would give a vivid picture of the sharp division among the scholars on this issue. The contributors are responsible for the reviews expressed in the individual articles.

On May 6, 1986, the Lok Sabha, the Lower House of Indian Parliament passed a Government bill under the title 'The Muslim Women

(Protection of Rights on Divorce) Act, 1986 to undo the Supreme Court verdict in the Shah Bano case and thus soothe the ruffled feelings of the Muslim leaders. According to the new legislation the maintenance of a neglected divorced Muslim woman and her children beyond the two year period, is made to devolve on the benevolent relatives with thicker wallets, if any, assuming that the husband is made to pay *mehr* and other dues within the *iddat* (i.e., a period of three months after the divorce). The new legislation is being criticised as a regressive measure, rather than an enactment guided by the dictates of an enlightened social conscience.

“While Muslims want to preserve their Personal Law wholly untouched as in Thailand, Burma, Greece, Ethiopia, Ghana, Gold Coast, Uganda etc. those who oppose it propose to evolve a mandatory, and not a voluntary”, common civil code, applicable to all citizens irrespective of religion, race, caste, creed or language. Although we could not find a common meeting point in these opposing positions the participants in the seminar were able to agree on the following two statements :

(1) This seminar recognizes that there are sharp differences of opinion on the issue of a Uniform civil code. It, therefore recommends that the personal law of each community be progressively, separately codified. (ii) Inter-religious dialogue on the feasibility of uniform civil code in our multi-religious society shall be carried forward further.

The essays in this issue are to be read in the spirit of these two statements.

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