

SHAA BANO'S CASE

Why Muslims Resist A Common Civil Code

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Reproduced here is an article published in The Statesman February 25 analysing why the Muslims in India, comprising a minority community, would resist any move by the State to introduce a common civil code for all.

NOW that the agitation against the Supreme Court judgment in the Shah Bano case has again been revived it is time to reassess our attitudes and see why a simple issue of providing alimony to a divorced woman created such a row all over the country. There is now no doubt as to what Muslim public opinion in the matter is. No other issue has agitated the Muslim mind so much in post-independence India.

Muslim newspapers and journals are unanimous that by accepting Shah Bano's claim the Supreme Court violated the laws of the Shariat. More than the operative part of the judgment, Muslims resented the references in it to the need for a common civil code. This judgement, it was said, was an attempt to introduce such a code through the back-door.

Another fallout of the Shah Bano controversy has been that many Muslims became conscious of the fact that non-Muslims in this country have a poor opinion of their community's personal law. Many Muslim papers have admitted in the last two months that customary practices of the community have contributed much to giving a wrong impression to other communities about the Shariat. One conservative Urdu daily from Bombay said recently—almost as a confession—that some Muslims do treat their women as chattel and there is an urgent need to reform this attitude. There have also been appeals to the ulema to help draft a code of conduct for the community.

Notwithstanding all this an overwhelming majority of Muslims resist with great determination the idea of a common civil code. Any member of the community who pleads for such a code, or even for some reform in Muslim personal law is considered an apostate and not given a proper hearing. This may explain why many Muslim radicals who had been so outspoken in favour of reform when the Shah Bano case began now prefer to lie low.

It is important to remember that social reform cannot be brought about merely by legislation. Those who wax eloquent on the need to help poor Mus-

lim women by reforming Muslim personal law should see how little the anti-dowry laws have helped to eradicate that evil from Hindu society. Social reform is assisted more by education and economic factors than by laws passed by legislatures.

POVERTY

We have to look at the backwardness of Muslims in education and their poverty, to understand why several archaic customs survive. In 1983, the secretary of the Minorities Commission said that Muslims were ten times more backward in education than other communities. Our primary task, therefore must be to remove this backwardness rather than to lament the excesses being committed on Muslim women by their husbands.

To know how deeply the Muslim masses are opposed to any change in their personal law it would be enough to see how the late Hamid Dilwai's efforts at reform failed to make an impact on the community. The people remain unconvinced by the moderates who plead that there is enough scope within the framework of Quran for necessary reforms. As a matter of fact, all modernists whether radicals or moderates, are regarded as renegades.

This conflict between the modernists and traditionalists is nothing new. A storm was raised in the 19th century when Sir Syed Ahmed Khan founder of the Aligarh Muslim University, asked Muslims to learn English and reform their social customs. The ulema were furious and Syed Ahmed Khan was virtually declared an apostate. In the end, though he succeeded to some extent in persuading the Muslim elite to receive modern education through English, but his ideas on the religious thought and social customs of the Muslims had no impact on his community as a whole.

Much has changed since the days of Syed Ahmad Khan, and the Muslims of the sub-continent have accepted many practices which they loathed in those times. One of the greatest changes has been that the people of Pakistan have accepted considerable reform in Muslim personal law. Polygamy has been practically banned there and the traditional Muslim divorce, making it easy for a man to get rid of an unwanted wife, has been replaced by new laws. There are some other Muslim countries too where traditional laws have been similarly amended.

But these arguments cut no ice with Muslims in India. This is because Muslims live here amid a non-Muslim majority, and the Government though elected by all communities is largely non-Muslim in character. There fore although the civil laws in India may not have anything to do with religion, to the average Muslim they are all Hindu laws.

Not surprisingly, therefore whenever there is any talk of reforming Muslim personal law or introducing a common civil code, Muslims fear that Hindu laws are going to be imposed on them. This fear, it must be said is reinforced by the discrimination a Muslim has to face while dealing with individuals and institution. This is a fact of life in present-day India: a Muslim cannot escape from it whether he is seeking a job or trying to do business with any organization. Widespread prejudice prevails against the community and whatever the reasons for this may be it makes a Muslim feel like an alien in his own land.

CULTURAL HERITAGE

This discrimination affects adversely not only the Muslims' economic welfare; the cultural heritage with which they have enriched life in India is also being eroded. The most glaring

example of this is the treatment being meted out to Urdu. Though the language has many non-Muslim protagonists it is the Muslim community which has contributed most to its growth and is consequently identified with it. A Muslim's love for Urdu is only second to the regard he has for his religion. But what we have done to the language claimed to be its own by the country's largest minority? In its home State (Uttar Pradesh), one cannot even make a representation in Urdu to any Government department.

A Muslim has also to live with the fear of communal riots whose rising graph tells us that even those areas which were earlier considered immune from the virus of communal hatred are no longer safe. Bitterness grows because a Muslim no longer expects the police force with a negligible number of his co-religionists in it, to save him from marauding mobs. One has only to read the accounts (in Urdu papers) of communal killings in Meerut, Aligarh, Bhiwandi and other places to know what Muslims feel about the role of our police forces. Moreover, State Governments lack the political will to punish those who are guilty of instigating riots or participating in such killings.

All this makes a Muslim feel that the state in India which is largely administered by the Hindus, is working to ruin and destroy him and erase his religious identity. We must remember this whenever we cite examples of those Muslim countries which have reformed their civil code. Whatever other difficulties those countries may have faced while introducing changes, Governments there did not suffer from the handicap of being regarded as unauthorized to do so.

It will do us no good to relate the question of a common civil code to national integration or unity. We should have seen by this time that any effort to such a law of on the minorities will achieve the opposite. The Shah Bano controversy has already given a handle to obscurantist elements to inflame feelings.