

# Civil society, not state, to bring about change

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Civil Society

**S**ECULAR governance in a modern society throws up many challenges, particularly in developing societies. These societies can be divided into two categories: those which were colonized and those that were not directly colonized but were impacted by modern western societies. Those colonized were directly influenced by western legal concepts and practices.

When these countries became free the process of decolonization began but it was almost impossible to completely reorganize all the legal and administrative practices. At best some compromises could be worked out. Also, the impact of modern legal and sociological concepts was also very deep and no developing society could escape these influences. Such a deep impact of modern legal institutions created tensions between traditionalism and modernism in countries like India.

The British colonial rulers promulgated their own laws and legal institutions on the country. They abolished certain legal institutions but continued with some of them to avoid aggravation of social tensions. For example, they abolished the traditional criminal law and imposed the western criminal procedure code while retaining personal laws of different communities. All communities of India including the Muslims accepted this arrangement. Even the Muslim ulema did not protest against imposition of modern western criminal law. Not only this Maulvi Nazir Ahmad translated it into Urdu and was bestowed the title of Shamsul Ulema by the Britishers for his services.

The colonial rulers avoided imposing secular laws in the domain of personal laws as they were very well aware of the sensitivity of the issue. In matters of marriage, divorce and inheritance no community would have accepted modern secular laws. Any imposition of such laws would have created unmanageable conflict in the society. The British rulers did not want to take that risk. However, even for personal laws they introduced modern legal procedure and it was British judges who decided these cases. The traditional qazi and other courts were abolished.

marriage, divorce and inheritance. These rights, however, were available to Muslim women in traditional Shari'ah law. Some modernists tried to make uniform civil code as part of the Constitution as the Constitutional Assembly debates clearly indicate. However, there was great deal of opposition from leaders of various communities and it was for this reason that a compromise was worked out and personal laws were allowed to continue while the uniform civil code was made part of Directive Principles, not enforceable but desirable.

It was hoped by the modernists that in the near future the uniform civil code would become acceptable to Indian people. However, it was not to be for a variety of reasons. First of all religion very much remains an integral part of our lives. It could not be wished away as many modernists thought. Rationalism and humanism could not replace religion. Rationalism is an intellectual process and does help in critical inquiry but fails to produce any sense of ultimate Reality and relationship with that higher Reality.

Also, religion appeals to our emotions and becomes part of our culture and cultural traditions. It is so diffi-

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minority rights be they religious, cultural or linguistic. However, democracy is often reduced to majoritarian ethos and minorities suffer discrimination.

The Shah Bano case was not so much a fight for Shari'ah as for minority rights. The Muslim responded to the call for agitation by Muslim leaders fearing their Muslim identity is in danger. The fear was that if they did not fight against the Supreme Court judgment Islam may be wiped out from India. The judgment unfortunately pontificated that Islam is unfair to women and that government should enforce uniform civil code.

The majority communal forces, on the other hand, though hardly prepared for justice to their own women, began to demand enforcement of uniform civil code and accused the ruling Congress of not implementing UCC as it appeases the Muslim minority for its votes and condemned its secularism as pseudo-secularism. Thus a purely legal issue was politicised and was used to intimidate the minorities. The role of Muslim leaders was far from desirable but due to BJP's anti-minority politics their role at that time was seen by Muslims as that of saviour of minority identity.

Thus the modern secular but multi-religious democracies have their own problems. The competitive struggle for power between different religious communities deflects the country from its ideal secular course. It will be too much to expect that ideal secular course will prevail in multi-religious set up. In fact power interests are more basic than the secular ideals.

The media, both print and electronic, plays no mean role. It also falls victim to majoritarian attitude with some honourable exceptions. Some newspapers display almost chauvinistic attitude and condemn minorities outright without appreciating their problems. This further aggravates the situation and ultimately helps the reactionary minority leadership. And in all this the cause of women suffers. Gender justice becomes increasingly difficult to realise. Any progressive change in laws in favour of women is seen

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After independence, India of course decided to become a modern secular country. Its leaders like Jawaharlal Nehru were greatly influenced by western secularism and modernism. Nehru in particular was a great modernist and committed to the political philosophy of secularism and secular governance. Thus secularism became the sheet-anchor of Indian polity. However, even a secularist like Nehru could not abolish personal laws in India.

It was not only Muslims, as often claimed by many, who opposed imposition of modern secular laws known as common civil code. Traditional Hindus were equally, if not more vigorously, opposed to a change in their personal laws. In fact the Hindu Code Bill was introduced in parliament even before independence, i.e., in the early forties but it could not be passed due to vehement opposition from traditional Hindus. Nehru again tried after independence to reform the Hindu personal law and requested Dr.B.R. Ambedkar to draw up a Hindu Code Bill and introduce it in the parliament. The Congress ministers themselves opposed the bill introduced by Dr. Ambedkar and parliament was gheraoed by Sadhus and Hindu religious leaders. The bill had to be withdrawn and Ambedkar resigned as law minister.

It was only a watered-down version of the bill that was passed in three different acts. It is important to note that such reform was urgently needed as traditional Hindu did not give nay rights to women in matters of

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cult to separate the two. We cannot live in cultural void. Even western culture is influenced by Christian traditions and beliefs. It is after all not totally secular as some would like to believe. Western culture was considerably secularised over a period of two centuries. But our cultures are far more under the influence of religious beliefs, customs and traditions though the process of secularisation is having its impact on our cultures too. But our cultural institutions remain far more complex. Even rationalists and atheists cannot escape the vicelike grip of traditional cultures.

Thus in developing countries like India secular governance poses many complex problems, particularly in the field of law. This causes many anomalies, which is very difficult to remove. On one hand, it is difficult to enact changes in the law and, on the other, women are fast becoming aware of their rights and demand changes in the law. Even the courts, more often than not, become helpless as they have to operate within the given legal structure. The Shah Bano case is an important example of such anomalies.

The Shah Bano case, besides illustrating such anomalies, also throws light on the identity problems in a multi-religious but modern secular countries. The competitive religious identities pose serious political problems and gender justice takes a back seat. Religion, in a developing and multi-religious but democratic country, becomes part of power struggle between various religious groups. Democracy is supposed to ensure

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Thus at the level of the state any change in personal laws is becoming increasingly difficult. However, it does not mean that situation remains static. Modernisation and secularisation is bringing sometimes perceptible and sometimes imperceptible changes and these incremental changes become qualitative changes in the status of women. Increasing degree of education among women is creating new awareness about gender justice and is creating more and more pressure for change in traditional laws.

The state has some obvious limitations in enacting gender-just laws but it is civil society in general and women as part of that in particular, which will be a catalytic agent in ushering in needed changes. The role of NGOs in promoting gender justice has also been quite remarkable. These NGOs promote awareness among women for sexual equality. Equal democratic rights enshrined in the Constitution for both sexes and ever deepening democratic processes also sharpen awareness among women for sexual equality. In the given circumstances our best hope is not state but civil society, which is getting increasingly modernised and secularised. No political interests can stop this process. Not state but the civil society should be the leader. And in the modern civil society women will play more actively than ever before. ■

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