



BOOK REVIEWS

READINGS IN UNIFORM CIVIL CODE. By Narmada Khodie (ed.). Thacker and Co., Bombay, 1975. Pp. 221. Rs. 50.

THIS IS a collection of twelve papers dealing with the proposed uniform civil code for India. The contributors, most of whom are well known legal scholars, dwell upon various problems relating to the introduction of such a civil code. As may be expected, a good deal of attention is focussed on Muslim personal law as a devoted adherence to it is considered to constitute a serious hindrance to implementing the constitutional directive of adopting a common civil code.

In the first part of the book P.M. Mukherji and A.B. Shah present convincing arguments in favour of adopting a uniform civil code. Justice Mukherji is not unaware of the fact that the modern nation state has very often “multi-racial posture and pluralistic groups” within the state. All the same, he states:

But while these races, linguistic groups, minorities, faiths and religions, live within a state, and have to be respected, a line must be drawn in favour of a Uniform Civil Code, for the sake of larger interest of the nation and state.¹

He also points out:

Different laws and different procedures for different communities of men living within the same nation lead to an inherent weakness and debility in the body politic. Somehow or other it is disturbing to the common ethos included in the dominant conception of nationalism and patriotism.²

Shah, President of the Indian Secular Society, emphatically endorses this view, stressing a point of argument based on secularism. After having pointed out that the enactment of a uniform civil code would partially clear the ground for the participation of Muslims on equal terms in the larger life of the nation by pulling down some of the walls which today keep them confined within a prison house of their own, he proceeds to state:

The enactment of a uniform civil code would be an affirmation of the secular values enshrined in the Constitution and an important step towards a modern, democratically integrated society in India.³

1. N. Khodie, *Readings in Uniform Civil Code*, (hereinafter referred to as *Khodie*) 8.

2. *Ibid.*

3. *Id.* at 20,



In his paper "The Indian Civil Code or a Code of Family Law: Practical Propositions", Derrett makes a number of suggestions for a prudent adoption and successful implementation of a family code. He believes that a common denominator could be discovered which would tend to draw together gradually all the elements of the population without any elements being subjected to severe strain or unnatural distortion.⁴ He emphasises that a uniform civil code must follow upon a thorough investigation of all existing systems which it is intended to replace.⁵ The present reviewer had occasion to express a similar view at an international seminar on Religion, Morality and Law, held in Delhi in 1973. He said:

When a common civil code is envisaged, it is not only laws of religious communities that have to be taken into consideration, but also those of tribal communities, which are not contradictory to one another and which are not in violation of the Constitution.⁶

Derrett's suggestion for the adoption of a general family law appears plausible. He says that there can be a general marriage law by which all are presumed to be governed, unless they take the step of registering their marriage as a customary or religious marriage. Certain conditions should be laid down which will make it impossible for the traditional rules to be abused.⁷ He suggests the adoption of two methods for this; first, deprive customs of legal effect, and second, invent a new tort, providing for payment of damages to the aggrieved party, as for instance, when a Muslim woman, after having been unilaterally divorced by her husband, is not given maintenance by him until her remarriage, or when a Muslim husband marries a second wife without the free consent of the first.⁸ These suggestions may not be too difficult to implement, but one would easily visualise a grave difficulty. We may come across, say, religious or ignorant Muslim couples entering into traditional marriages without bothering to take the necessary steps which are considered a prerequisite for opting for the exceptional marriage envisaged under the proposed code. When they live together and have children, is the law going to declare their relationship illicit and denounce their children as illegitimate? The so-called scheduled tribes may also enter into traditional marriages. In spite of this difficulty which may not be insurmountable, it may turn out to be a useful experiment tending to the successful creation and implementation of a common family code. Muslims may not take kindly to the idea of the legislative creation of new torts suggested by Derrett. Even without these new torts the experiment is likely to succeed, though its success may not be phenomenal in the initial stages.

4. *Id.* at 28.

5. *Ibid.*

6. See J. Minattur, "Law and Religion in a Secular State" *The Century*, January 26, 1974, p. 9.

7. *Id.* at 32.

8. *Id.* at 37.



It may be recalled that while clause 39 of the draft of the Fundamental Rights Sub-Committee of the Constituent Assembly provided that "The State shall endeavour to secure for the citizens a uniform civil code,"⁹ the Minorities Sub-Committee recommended that

This clause may be redrafted to make it clear that while a uniform civil code for all citizens was eminently desirable, its application should be made on an entirely voluntary basis.¹⁰

When a newly enacted family code will be intended for general application, if there is provision made in it for opting out of it, its application could still be regarded as on a voluntary basis, so that no minority group would have any reason to complain of the adoption of the code.

Master-Moos contributes an excellent, comprehensive study of the personal law of the Parsis to the volume. Though titled, "Personal Law of the Parsis with reference to a Proposed Family Code", it is, in the main, an *expose* of Parsi personal law. One wonders why similar studies of personal laws of Christians, of Jews and of various tribal communities were not included in the book, if the discussion of the personal laws of a particular community were regarded as relevant to the question of the adoption of a uniform civil code. If the general reader is unfamiliar with Parsi personal law, so is he with regard to the personal laws of Christians, of Jews and of tribal communities in India.

Master-Moos advocates the adoption of a single family law code which would have different parts for different communities in India. There would be a general part containing laws applicable to all persons of all religions and communities, *e.g.*, adoption, legitimacy and legitimation, and a second part consisting of several divisions setting out different laws applicable to Parsis, those applicable to Hindus, those applicable to Muslims, *etc.* Because of the concept of personal law and the great variety of peoples and societies co-existing in the sub-continent, she argues that the proposed code should have separate parts setting out different laws applicable to different groups of people. She specially points out that

For the Parsi community it is especially important for the preservation of its religious and ethnic identity that personal and religious laws should not be merged in the miasma of general civil laws applicable to all persons in India.¹¹

It is precisely because almost every community, with the possible exception of the majority community, would tend to think that it should preserve its religious and ethnic identity through adherence to its personal laws, that

9. See B. Shiva Rao, II *The Framing of India's Constitution*, 176 (1967).

10 *Id.* at 209.

11 *Khodie*, 169.



the adoption of general civil laws which would discourage fissiparous tendencies in the nation, turns out to be an urgent need. The question is which is to be preferred: religious and ethnic identity of various communities or national identity, the identity and integrity of the nation as a whole.

Proof readings, as may be seen from the pages of the book, has been inexcusable, to say the least. From the title page where the editor's London degree is spelt *M. Phill* to the last page where the Index contains such strange creatures as *abscence*, *imperisonment* and *Napolean*, the book is littered with printer's errors beyond the dreams of distraction.

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