

Presidential Address

In the name of Allah, the Beneficent, the Merciful.

Praise be to Allah, the One, and blessings and peace be on him after whom there would be no Apostle of Allah.

Dear friends,

An essential ingredient of the faith and creed, so far as Muslims are concerned, is that their Personal Law is the creation of the same God who has revealed the Quran and laid down the articles of faith and practice. The Quran has repeatedly laid stress on it. The Muslims are thus bound to have faith in it for they would not remain a believer if they do not firmly hold this view. It also means that this law is the creation of God, All-Knowing and All-Aware, who has designed man as well as the universe and knows their needs and weaknesses. He has Himself said : *Should He not know what He created ? He is the Subtle, the Aware.*¹

God is the Creator of time also. It may be necessary for us to divide time into past, present and future, but for God all of it is nothing but past—that of which He knows everything.

1. Q. 67 : 14.

Now, once we accept that the Personal Law of Muslims has been formulated by God as a universal and comprehensive code of life for a community destined to live for ever, will not the demand to amend or alter it amount to a logical contradiction or rather hypocrisy and duplicity, if the man demanding it happens to be a Muslim.

What I have stated is not a product of blind faith or religious fanaticism or else Muslim chauvinism. There are empirical evidences and rational grounds, asseverated by eastern and western scholars and unbiased jurists, as well as matter of fact manifestations of this law being comprehensive and just and capable of transcending the limitations of time and space which cannot be denied by anybody except those who are bigoted and narrow-minded. This is a subject which has been studied by many an eminent scholar who have expressed their considered opinion on it.

A number of impartial legal experts and sociologists of the western countries have paid homage to the Quranic laws upholding the dignity and rights of women. We will cite here only two or three of their observations on the subject. One of it is from a European lady who had been actively associated with a reformative movement in India and was the President of the Theosophical Society in the southern part of the country. The opinion expressed by her is in itself significant since a woman scholar should naturally feel more concerned about anything concerning the rights of women. She says :

“.....it must be remembered that the law of

Islam in relation to women was until recently, when parts of it have been imitated in England, the most just law as far as women are concerned, to be found in the world. Dealing with property, dealing with rights of succession and so on, dealing with cases of divorce, it was far beyond the law of the West, in the respect which was paid to the rights of women. These things are forgotten while people are hypnotised by the words monogamy and polygamy and do not look at what lies behind it in the West—the frightful degradation of women who are thrown into the streets when their first protectors, weary of them, no longer give them any assistance.”¹

Another scholar, N. J. Coulson : writes in *A History of Muslim Law* :

“Without doubt it is the general subject of the position of women, married women in particular, which occupies pride of place in the Quranic laws. Rules on marriage and divorce are numerous and varied and, with their general objective of improvement of women’s status, represent some of the most radical reforms of the Arabian customary law effected in the Quran.....She is now

1. Annie Besant, *The Life and Teachings of Mohammad*, Madras, 1932, p. 3,

endowed with a legal competence, she did not possess before. In the laws of divorce the supreme innovation of the Quran lies in introduction of the 'waiting 'period' (*iddat*).''¹

Describing the process of emancipation of women Dorner writes in *the Encyclopedia of Religion and Ethics* :

"Certainly the Prophet of Islam raised the status of women above that assigned to them in Ancient Arabia ; in particular, the woman was no longer a mere heritable chattel of her deceased husband's estate, but was herself capable of inheriting ; while, again a free woman could not now be forced into marriage, and, in cases of divorce, the husband was required to let the wife retain what he gave her at marriage. Moreover, women of upper classes might occupy themselves with poetry and science, and even act as teachers, while those of the lower rank not seldom shared the joys and sorrows of their husbands, as mistress of their household. The mother likewise must be treated with respect."''²

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1. N. J. Coulson, *Islamic Surveys : A History of Islamic Law*, Edinburg, 1971, p. 14.
 2. *Encyclopedia of Religion and Ethics*, Edinburg, 1912, Vol. V, p. 271.

All of us know what is happening in Europe : how its social order has reached the depths of social disintegration and decay. The crumbling family life, degeneration of social relationships, dereliction of religion and morals and absolute permissiveness have pushed the countries of the West or rather its entire civilization to the brink of disaster—a calamity that had effaced the ancient Greek, Roman and Sassanid civilizations from the face of the earth leaving only their names in the pages of history. Neither the material and industrial progress, nor its brilliant intellectual and scholarly attainments, nor yet its armaments, martial prowess and political ascendancy over the rest of the world can save any country whose core is sickly, which is empty from within. Iqbal, the Poet of the East, has aptly observed that :

Like a fruit ripened, it is sure to drop ;

In whose bag, it is to be seen, does the
Occident slump.

Nobody will raise one's eye-brow on fornication being committed by anyone throughout his life, but divorce is looked with disfavour ; a thousand objections are raised against it. How far is it justified ? The crisis that has overtaken the family and social life in the West is best illustrated by the following excerpt taken from a prestigious journal of the United States.

“A race of urban nomads who have wandered far from family roots tends to turn work into the spiritual hearth, a chief source of warmth and support. When the supervisor proves to be an idiot, when the pay is bad

or the job insecure or unrewarding, then the worker experiences a strangely intimate and fundamental sense of betrayal, a wound very close to the core. Or perhaps the wound is his discovery that the core is empty. And with that discovery, he may resort to a pistol, a length of rope or a fistful of pills, leaving behind a note: 'Burned out',¹

We are not at all ashamed of our Family Laws: we are prepared to demonstrate that every bit of it is judicious and sound. Our scholars have written encyclopaedic works on it which can suffice for a library. Friends,

A great country like India has been the home of different religions, languages, cultures and civilizations for centuries in the past. Throughout its long history it has acknowledged and admired freedom of conscience and different cultural identities, and allowed these to be conserved by their adherents. It has allowed these to be safeguarded and even developed since in its view this has raised its name and fame in the comity of nations. And, it was for this reason that it has opted for a secular and democratic form of government, which, if brought into existence with complete impartiality and sense of responsibility, would be the safest and most suitable administrative set up for this country. This is

1. Lance Morrow, *The Burnout of Almost Everyone in the Time*, Magazine dated September 21, 1981, p. 54.

the essence of its long cultural and historical experience, a principle dictated by true patriotism for the country and a lesson taught by its literature and philosophy.

It was because of this realistic approach 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, having different racial characteristics, religions, cultures and languages, and to divert their energies from striving to protect their different traits and characteristics, personal laws and social structures to the endeavour for solidarity, integrity and progress of the country so that India may take its rightful place of honour among the nations of the world through a united and concerted effort of all of 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, practise and propagate religion.

This provision was eminently suited to the political, ethnic, cultural and religious conditions obtaining in the country as well as the mental characteristics of its people. The country was required to translate these objectives into practice with complete sincerity and firm determination. But to this monumental Constitution on which some of the best legal brains and experts of constitutional law had spent much of their time and

labour, whose every comma and full-stop had been discussed in great detail, another incongruous provision was added in the shape of Article 44 which recommended an uniform civil code for the country as a Directive Principle of State Policy. This Article said :

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

Two factors are responsible for this controversial provision. 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. On the other hand, the Personal Law of a people affects not only the life of the individuals within a community but also regulates relationship between its members and brings about cohesion between them. But the people or religious communities which have no concept of a “revelatory” law, consider all the laws including “Personal Law” as the product of human experience and a means to realise their social needs and propensities, and unfortunately most of the religions excepting Islam and Judaism, particularly the faiths of Aryan origin subscribe to this view. For them continual change in law to meet the exigencies of changing times and its requirements is but natural. This concept of law makes the change or reform in man-made laws 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 propagated through literature, politics and mass media during the opening decades of this century in Europe where, by and large, the people living in different countries differ only in language but have the same religion, culture, social structure and family laws. This concept was imported into the eastern and Asiatic countries although they had different religions, cultures and social customs and traditions. The diversity of religions, cultures and customs and organisation of social life on varied patterns in the eastern countries had never been a source of friction, hatred and disorder. Confusion and tumult in these countries has been caused by struggle for power by the selfish political leadership. On the other hand, Europe has seen two most sanguine wars in the recent past despite its uniformity of culture and religion and social structure, 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 Christian and Protestant and share almost the same culture and personal law. Then, why did they fight? If uniform civil code could stop friction between different peoples, it should have restrained these nations from fighting each other. The Second World War has the same story to tell. These two countries fought bitterly with inconceivable ferocity.

We do not have to go far away to find similar examples. Drop in on any court of law in any city or town. You will find one Muslim contesting a law suit against another. One Muslim wants to put another

Muslim to shame or even put him to the greatest harm although both are governed by the same personal law. Often a man of one community is murdered by his co-religionist or by a man belonging to the same family. The same is the case with the Hindus whose civil code does not prevent them from enmity and litigation. Truly speaking, discord and animosity 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 an uniform civil code for the sake of greater harmony and affinity between different communities? Repeated exhortations for it show a pitiful mentality of shallowness, inferiority complex and blind imitation of the West.

It would not be out of place to cite here an eminent legist, E. Bodenheimer, on the subject of legal philosophy of social control. His observations are instructive enough to show us the way of realistic approach to social control through legislative process. 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. Man 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 has also to be remembered in this connexion that if any law designed to bring about uniformity and unanimity infringes the articles of belief of any religious community; it would produce more tension, a sense of coercion and compulsion and helplessness rather than unity, harmony and willing cooperation in any effort to develop the country and make it prosperous. There can be nothing more harmful for a free country with a composite nationality.

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

Friends,

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 architects of empires. They all deserve our respect. But, so far as the religions, civilizations, systems or schools of thought and the results of enquiry or study are concerned, they always have some line of demarcation which makes one distinct from the other. In the case of revelatory religions the line demarcating them from other faiths is that they have been brought to the people by those elects of God who were bestowed Divine Aposleship and were honoured with revelation from on High. Those who ignore this feature or misunderstand it very often confuse the issue and knowingly or unknowingly make such demands on the adherents of such religions which cannot be simply accepted by them. These religions can in no case give countenance to such claims and expectations. The people unaware of this fact very often assume the responsibility of interpreting religions they do not understand—if only to make a show of their wide knowledge and catholicity of views—in a way as if all religions are nothing more than different philosophies or social orders evolved by man or products of social thoughts and experiences of a particular age.

This is an error often committed by responsible and sedate persons because they do not know what separates a religion, specially a revealed one, from social and cultural philosophies, ideologies and doctrines. Philo-

sophy, social sciences, anthropology, culture, civilization and social order are all facts of human life and we do not deny them. We pay due regard to them and are aware of their importance and acknowledge our responsibility towards them. In fact, the Muslim society has its own social set up, a distinct culture and an specific school of thought but beneath these lies the fact that they have their roots in a 'religion' which was brought and propagated and made a part and parcel of our lives by the Prophets of God (peace be upon all of them), yet it was *not* the outcome of their thought or wisdom for it emanated from a source beyond them, and it was as much binding on them as it is today obligatory for 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,¹
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.²

There is a fundamental difference between the knowledge and experience acquired through human perception and intellectual faculties and the revelation from God and prophethood which constitute the channel for reception of divine knowledge. We have nothing

1. Q. 53 : 3-5

2. Q. 42 : 52

to complain if our non-Muslim scholars, separated by a long period of time from the era of prophethood, are unable to comprehend these concepts. Even the Arabs before the advent of the Prophet had no idea of the notion. We do not mean to belittle anybody's intelligence nor cast doubt on anyone's intentions but the fact remains—established by history as well as by psycho-analysis—that anyone not conversant with the true contents of revelation and prophethood, their demands and requirements, and the resultant mental dispositions leading to thought and actions of their believers, can never be morally and legally justified in tendering any advice to the Muslims or deciding an issue having a bearing on these matters.

There are also religions, as history tells us, which originated with revelation and prophethood but they confined their religious life within a limited sphere, say, their devotional practices. But this is not the case with Islam. Islam embraces the entire gamut of man's life. This forms a primary, essential truth of Islam which cannot be appreciated without understanding the relationship between the Creator and created beings as taught by Islam. Every Muslim is an obedient servant of God. This relationship is eternal, deep, wide and also definitive. Says the Quran :

"O ye who believe.
Enter into Islam
Whole-heartedly ;
And follow not

The foot-steps
Of the Evil One ;
For he is to you
An avowed enemy.”¹

Therefore, if the Muslims agree to the changes being made in 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.

Friends,

All those who have been students of the philosophy of ethics, psychology and religion are cognizant of the fact that no religion can be disconnected 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. Each one of these protects and helps the other to develop and prosper. It would mean that one would be a Muslim within the mosque (and how long one remains in a 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 to apostasy and we shall face it, cost what may. This is our fundamental, legal and religious right in a democratic country. We enjoy this right under the Constitution of the country and we deem

1. Q. 2 : 208

that fighting for a just cause is in the interest of the country as a whole. Democracy can be maintained in this country only by safeguarding the rights of every section of our population and allowing them the freedom of expression and conscience. This is the way to the satisfaction of all communities and bringing peace to the country.

Those who were discerning and far-sighted had long ago visualised the signs of impending danger looming large on the horizon. Demands were made soon after independence, though in a subdued tone, for the enactment of an uniform civil code and amending the personal laws. They had a prognostication that these faint voices will become louder after some time. Therefore, they formed a united front under the name of Muslim Personal Law Board at Bombay in December, 1972. The Board started monitoring proposed legislations, their objectives and approach, and also started educating Muslim public opinion so that no action could be taken against them suddenly and surreptitiously. The Board thus formed was so wide-based and representative of all sections of the Muslims that nothing parallel to it had been seen by the country after the Khilafat Movement. It attracted such large gatherings as had never assembled under any banner of the Muslims after 1947. The formation of this Board and the mammoth rallies and meetings it was able to organise forewarned the government as well as those demanding reform and change in the Muslim Personal Law about the sentiments of the people on this matter. It became

clear to them that Muslims were unanimous on this issue and, therefore, it would be impolitic and unwise as well as against the interest of political parties banking on Muslim votes to make haste in this matter.

This was the situation: Muslims were resting on their oars. On 23rd April, 1985 the Supreme Court delivered an explosive judgment about maintenance of the divorced women in the Shah Bano case which created a commotion in the Muslim community and stirred its scholars, journalists, lawyers and intelligentsia in a way that was not witnessed even on the occasions of wide-spread and gory communal riots. Everyone felt shocked and was emotionally shaken to the core since it was a portent to the denial of their cultural existence and religious identity—a veiled threat of apostasy. Had not the Quran warned the Muslims that:—

Whoso judgeth not by that which Allah hath revealed: such are disbelievers.¹

The tumult had been caused by the non-Muslim judges. It could have been provoked even by Muslim judges not conversant with the Quran, Traditions of the Prophet, exegesis of the Quran, Islamic law and jurisprudence and the nuances of Arabic idiom, and who have to depend on the second-hand sources like the translation of Quranic terminology into other languages and are very often predisposed to alien influences or the views of those who style themselves as holding 'progressive' views. All these things open the way to a

1, Q. 5 : 44

wishful interpretation of religious injunctions which is against the accepted norm for explicating any religious principle or the text of a religious scripture. This also amounts to disregarding the views of those who have specialised in any particular branch of knowledge and are normally entitled to speak authoritatively on the subject. This is a principle which holds good in all branches of arts and literature and has the seal of acceptance for centuries past. In fact, this is the criterion followed everywhere, in language and literature, in logic and philosophy, in science and technology and in civics and sociology.

Indian 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 hundreds of thousand. In a meeting held at the Shaheed Maidan in Calcutta on April 7, 1985, the gathering exceeded half a million people even according to a conservative estimate. 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 and resolutions passed in these meetings were sent to the Prime Minister and Law Minister of the Central Government protesting against the judgment of the Supreme Court.

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 and sentiments of the Muslims was perhaps more severe than even the demand of separate nationality and division of the country in the pre-partition days. The Press and the leaders of communal organisations (including some leftist parties) painted the Muslim demand to do away with the Supreme Court's decision, which, in any case, affected a microscopic number of divorced women among the Muslims, in such lurid colours as if it were something akin to foreign invasion on the country, or a volcanic eruption, or yet outbreak of an epidemic. As I had once observed, in one of my meetings with the Press at Delhi, the National Press had then lost the sense of proportion in this matter.

Alongwith the country-wide protests and public meetings and demonstrations (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, the Law Minister, Mr. Ashok Sen and their colleagues. They met the Prime Minister twice or thrice and frankly discussed the matter with him to apprise him of the religious aspect of the issue and intensity of Muslim sentiments which had been hurt by the judgment. 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 alone, which could be handled only by their religious scholars who were deeply versed in their religious sciences and had no political ends in view. He expressed the view, more than once, that after discussing the matter with eminent religious scholars, he was satisfied that Islam fully protected the rights of the fair sex including divorced women. He observed on an occasion that Islam conferred more rights on women and protected them in a better way than modern legislations. He presented the Muslim Women (Protection of Rights on Divorce) Bill to the Parliament which showed his realism, moral grit and sense of responsibility. He even issued a whip to his party members to cast their votes in favour of the Bill.

Before the Bill was placed on the table of the House the members of the Muslim Personal Law Board and legal experts had studied it in depth. They had found several flaws in it which required to be set right. Some of the eminent lawyers had also prepared a list of amendments in the Bill which was handed over by the President of the Board to the Prime Minister before the Bill was presented to the Parliament. He had also requested the Prime Minister to remove the flaws in the Bill in the light of suggestions made in the memorandum so that a perfect and satisfactory legislation, satisfying the demands for which the Muslims had been making the protests, might be placed on the Statute Book. The Prime Minister assured the President to review the Bill but he could not do so in the extremely short time

available to him. He thought that it would be a great achievement even if the Bill in its former shape could be passed by the Parliament. He also promised that the flaws in the Bill pointed out to him would be removed later on. The Bill was thus passed by the Parliament on the 6th May, 1986 with a clear majority in its favour. Indian Muslims (who can still distinguish those who sincerely helped them from the persons who opposed them or wanted to make a political capital out of it) open-heartedly acknowledged the noble gesture of the government and expressed their gratitude to it.

Dear friends,

Before the Bill was discussed in the Parliament those who were opposing it raised a delicate issue. Justice V. R. Krishna Iyer declared that the Bill would be challenged in the Supreme Court since it violated Articles 14 and 15 of the Indian Constitution which guaranteed equality to all citizens and prohibited discrimination on grounds of sex and religion. He maintained that the Act would, in any case, be struck down by the Supreme Court, since it was clearly a responsibility of the Court to declare any enactment violating the provisions of Constitution as ultra vires. These were the circumstances in which a further proviso was added to the effect that if any divorced woman was not satisfied with the Bill and wanted to get maintenance under Section 125 of the Code of Criminal Procedure, in preference to the provisions of the Islamic Law, then she could move an application before a magistrate who would decide her case accordingly.

This amendment also provided that such an application by the divorced woman alone would not be deemed sufficient. The divorced woman and her former husband should both declare by an affidavit that they would prefer to be governed by the provisions of Sections 125 to 128 of the Code of Criminal Procedure. This meant that if the application was moved only by the divorced woman, she would be governed by the aforesaid Bill and not by Section 125. This proviso further provided that such an application for being governed by the provisions of Section 125 should be made on the date of the first hearing of the application.

We came to know of these amendments during a conversation with the members of government on the 19th April, 1986. We inferred from it that some clever person, expert in the nicities of law, had suggested it to the Law Minister or to an adviser to the Prime Minister. If we rejected it, we would go back to the stage where we had started this struggle and the Bill, which was to be presented to the Parliament in a few days, would get indefinitely postponed or be shelved for the present. Some of those who enjoyed the confidence of the Prime Minister also hinted that if we accepted the amendment, the government would see that the Bill was passed and defend it in case of any litigation in the Supreme Court. On further consideration we found that the provision about the option to be governed by Section 125 had been virtually made ineffective by the two conditions for its coming into operation. Section 125 provided maintenance to the divorced woman for the rest of her

life and so only an indiscreet husband would like to be governed by it by moving a joint application for it alongwith his ex-wife. Similarly, only an imprudent women, having no fear of God, would prefer to be governed by this provision under which the maintenance depended on the life and affluence of the ex-husband, while Islamic Law provided for her sustenance and support in all exigencies. She would not get any maintenance from her ex-husband if he were to die or be reduced to penury.

Dear Brothers-in-Islam,

Now I want to address you in the Quranic parlance and desire to know how far you follow Islamic teachings in your daily affairs. You should yourself see how you are paying respect to the Quranic injunctions and its social laws. How far do you prefer your family traditions and customs and whatever you have taken over from your neighbours? How have you come to accept the increasing demands of dowry? You call it by any name, but the question is wherefrom have you borrowed it? Did it come from Mukkah and Medina, the sacred cities? Was it prescribed by Quran; what is the source of this beneful practice? Your cultural identity has been denied because you have accepted and owned these alien customs and usages.

I proclaim that our protests against interference in the *shariah* through legislative measures are correct and justified. This is our legal right and we shall continue to protest so long as such interference continues to be

made. In a democratic country where the Law is supreme and every citizen has been accorded an equal right, it is the duty of all citizens, their organisations and the representatives of each section of our society to demur in the Parliament, in its meetings and through newspapers, at the rights not being restored to it or at the injustice being done to it. No country with a democratic set up can do without it.

Governments endowed with a sense of realism prefer to have an opposition party so that its faults and failings may be brought to its notice and it may be able to work in a way that may satisfy the aspirations of the people. That is why we shall continue to complain. We should rather be proud of the fact that our country allows the citizens to raise their voice of protest; this right has not been taken away from the people. We have a right to make protests and in our view this is for the good of the country. In fact, it is extremely dangerous for a country to curb this right, and our country is fortunate to allow it. We shall, therefore, continue to make complaints to our legislators, the members of government and the ruling party.

But, if we have the right to complain against the government and our countrymen, why should we not have the right to find fault with our own people. Our complaint to you will, in fact, be the grouse of the *shariah*, a censor by religion, which will ask you in what esteem do you take the laws of God and how you are acting upon them? It will ask you whether you are enforcing these laws when you are free to do so? It

would be meaningless to ask the government to enforce these laws while you are yourselves ignoring them in your hearths and homes.

I want you to go back to your houses after taking a pledge that henceforth you would abide by the injunctions of the *shariah*. How calamitous is this custom of dowry? The bridegroom and his relatives present a long list of demands and impose conditions. Innocent girls are burned when these conditions are not fulfilled. Innumerable incidents of this nature occur in the country. In Delhi alone twelve brides are burned on an average every day. Do you think that the Lord and Master of this world, who is the Creator of both males and females, would acquiesce to this brutality. Can any country, any society prosper with this kind of tyranny? Or, can it hope to have the blessings of God? You are all followers of the Prophet who was Mercy for the Worlds, and nobody should have dared such an atrocity in your presence. In a meeting held at Delhi I had drawn the attention of the people towards a verse of the Quran in which God says :

And Allah would not punish them while thou wast with them, nor will He punish them while they seek forgiveness.¹

Similarly, the inheritance should be shared by the legatees according to the rules of the *shariah*. Marriages should be contracted with women in keeping with the conditions laid down by it. You should know the better

1. Q. 8 : 33

and accepted way of divorce as taught by the Prophet. You should also be aware of how divorce comes into effect according to Islamic law ; what are the revocable and irrevocable forms of divorce. You ought to understand that divorce is permissible but looked with disfavour for the Prophet has said : 'It is permissible but as a last resort.' It is something that should be resorted to in the case of a dire necessity ; for safeguarding oneself from the things impermissible, for avoiding an extremely difficult situation, with a heavy heart, and to meet an inescapable urgency. But the divorce has become a custom and a convention with us. We are to an extent responsible for the blame laid on us by others, though not to the extent we are reproached on this account.

Friends,

Now I would like to place before you the programmes and achievements of the Board :

(1) The All India Muslim Personal Law Board and the Imarat Shariah Bihar and Orissa had entrusted the work of codification of family laws relating to marriage, divorce, rights and obligations etc., in modern legal phraseology to certain religious scholars and expert legists under the supervision of the respected Amir of the Imarat Shariah. The work started a few months back has been completed and reviewed by certain eminent scholars. After this compilation takes the final shape, no court of law, legislator or critic of Islamic law will have an occasion to complain that the only compilations of Muslim Law available to them are those by non-Muslim lawyers

and that no authentic code exists at present.

(2) Efforts are also being made simultaneously to reform the Muslim society, purge it of un-Islamic customs and usages and to make their life conform to the Quranic injunctions and the teachings of the Prophet. Dar-ul-Qaza or Shariah Courts are also being established so that Muslims may be able to decide their disputes in the light of *shariah* and may become self-reliant, insofar as the matters relating to *shariah* are concerned.

(3) Executive of the Board has considered it necessary to take some more steps in the light of events that have come to pass after the Act was passed, and which could not have been foreseen earlier. The first of it is to get the Act reviewed by the experts of *Fiqh* and modern law (who are fortunately available among the members of the Board) so as to formulate suggestions for making it more effective. These amendments would be presented to the Prime Minister by some responsible members of the Board with the request to get these amendments or an amended Bill passed by the Parliament or take some other steps to enforce the Act more effectively. The government will, it is hoped, satisfy the largest minority of the country by acceding to this democratic and just demand (which is purely religious in character) and thereby earn goodwill of its co-religionists all over the world. The Board considers it necessary not only for the Muslim but also in the interest of the country, and will be taking action in this direction very shortly.

Another step felt necessary by the Board is that the Ministry of Law or the Supreme Court should advise all

the courts in the country that the Muslim Women (Protection of Rights on Divorce) Act passed on May 6, 1986 and the amendments that may be made therein, is an enactment in operation on the subject and that the cases coming in its purview should be decided according to its provisions. It has been noticed that certain courts have ignored the Act and decided cases according to Section 125 of the Code of Criminal Procedure. This has been done by the Gujarat and Kerala High Courts. It has also been noticed that the advocates engaged by the party divorcing any woman are either unaware of the Act or do not press to decide the case in accordance with its provisions. They often do not pay due attention to it in conducting their pleadings. It is necessary to apprise the lawyers, to whichever creed they may belong, about this Act and to feed them with necessary material on behalf of the Board otherwise the Act will remain ineffective. It is hoped that the Board will shortly take steps in this direction also.

I would like to thank all of you who have afforded me an opportunity to express myself before you, freely and frankly, in a congenial atmosphere. I am glad that this conference is being held in this historic city which had a memorable role in the Khilafat and Independence movements. It was the city where the Nadwatul Ulama movement took initial shape. Eminent religious scholars had come together in this city who formed the Nadwatul Ulama Association and planned to establish an educational institution for which the Providence has selected the neighbouring city of Lucknow. Maulana Syed

Mohammad Ali Mongeri, one of the most eminent scholars of his time, and father of the founder of All India Muslim Personal Law Board, Maulana Syed Minnat ullah Rahmani, had been in this city for a long time. It was here that he conceived the idea of having an institution of the type of Nadwa and gave it a practical shape. It was also this very city where the demolition of Machhli Bazar mosque during the British regime created an stir among Muslims of the country and galvanised them to stand up for the protection of their mosques and the defence of their religion. The movement was lent support by the powerful pen of Maulana Abul Kalam Azad through his journal *Al-Hilal*, which also published the stirring article *Mashad-i-Akbar* by Maulana Syed Sulaiman Nadwi. These memorable events and glorious traditions of this city make it the most befitting place for holding this conference here.

12 Rajab, 1409
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S. ABUL HASAN ALI NADWI



