

WHAT
MUSLIM PERSONAL LAW
MEANS TO MUSLIMS ?

(Presidential Address delivered at All India
Muslim Personal Law Board Conference
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FOREWORD

The All-India Muslim Personal Law Board is a representative body of all the important religious, political and cultural organisations of the Indian Muslims. Being a non-political organisation it also enjoys the support of an overwhelming majority of the representatives of Muslims in various national political parties, Muslim legislators, scholars, lawyers etc., and thus it is the only organisation that can authoritatively speak for all the Indian Muslims, belonging to all sects and schools, barring, of course, a few individuals who have no following whatsoever among the Muslim masses. The Board has no apologies, no excuses to offer, nor to explain away or make acceptable to others what has been laid down by the Qu'ran and the Prophet in regard to Muslim Personal Law and what has been so consistently accepted and adhered to by the Muslims. Its stand is clear and unequivocal : no change in the Personal Law of Muslims. The Presidential address delivered by Maulana Syed Abul Hasan Ali Nadwi at the conference of All-India Muslim Personal Law Board held at Calcutta on April 6 and 7, 1985, candidly explains the Muslims' point of view in this regard. It gives the reasons why Muslims cannot agree to any change in their Personal Law, the background as well as the reasons for not appreciating the Muslim view-point, the fine distinction between the concept of revealed law and modern legal philosophy and the unreasonableness of

the demand for an uniform civil code in a way which would not only be found instructive by the Muslims but would also be appreciated by broadminded non-Muslims who want to understand the reason for reluctance of the Muslims to any change in their Personal Law.

There are others who hold the view that the Muslim Personal Law is stagnant, glorious for its time, a handicap for ours, and hence it must change like other laws. Change in human understanding, progress in standards of civilization, which is considered to be linear in time, and advances in technology are all supposed to be genuine pressures on the Shari'ah to change or to give up those parts which do not seem to rhyme with the changing time. But what has really changed ? Essential human nature, its motives and drives, its emotions and desires have remained virtually unchanged throughout the ages. Technology has certainly advanced and some ways of looking at the world have altered but no new definitions and concepts like 'cruelty', 'civilised', 'justice', 'equality' have emerged to command universal adherence. Man's lusts and fears, hopes and anxieties, loves and hates, aspirations, yearnings and longings remain what they have always been. Similarly, the idea that something which evolves later in time is necessarily superior to that which preceded it is also untenable. The only absolute and universal criteria can be those given by God, the All-knowing, whose words are above any change.¹

1. See Kurram Murad, *Shariah, the Way of Justice*, Leicester, 1981, and Dr. Muhammad Muslehuddin, *Philosophy of Islamic Law and the Orientalists*, Lahore, n. d.

Experience has shown that the conflicting demands of law—stability and change—have never been reconciled. The law that is based purely on reason carries the seeds of its own destruction, for human reason is fallible and erring. Actually, the tension caused by the demands of stability and change calls for balance and harmony which are conspicuous by their absence in the modern laws of the West. They lack balance and stability since they have to serve the interest of an ever-changing society. Divine law is distinct from human laws, which are always subject to change and correction, in that it has its own method and ethical norms of good and bad which keep social change itself within bounds. It controls the society and is not controlled by it. Undoubtedly it is eternal and immutable for the simple reason that it has to exercise its controlling force on the society. It has, as a matter of fact, kept the social fabric of Islamic society compact and secure throughout the last fourteen hundred years. Its objective is to give rise and guide a 'moral-spiritual' society. It has accordingly established, in the words of Hamilton A. R. Gibb, "norms for all Muslim institutions and societies, which have ever since remained the sheet-anchor of Muslim culture through the many and terrible vicissitudes of later centuries; it expressed and went far to creating a united Muslim community, in spite of political fragmentation and conflict; and it is still, notwithstanding all the criticisms of Muslim modernists and reformers, the sole embodiment of what would otherwise be merely formal unity of faith among all Muslims."¹ Such

1. Hamilton A. R. Gibb, *Studies on the Civilization of Islam*, London, 1962, p. 200.

a law has necessarily to be immutable yet it contains broad principles that admit of interpretation which can accommodate changes in life. Such is its capacity to reconcile stability with changing need of life that the Branch of Oriental Statutes of the International Congress of Comparative Law held in Paris on the 7th of July, 1951, and attended by eminent scholars and professors of law from both the East and the West, adopted the following resolution :-

"The delegates, being interested in the problems brought about during the 'Week of Islamic Law' and in the discussions which demonstrated the indisputable value of the principles of Islamic Law, and the fact that the variety of schools within this great juridical system implies a value of juridical elements and remarkable techniques, allowing this law to respond to all needs of adaptation required by modern life."¹

But, let it be understood clearly that the overall scheme of the Shari'ah and its various specific provisions for meeting the changing needs of life are determined by the way Islam resolves the perennial question of tension between the individual and society, in accordance with its own objectives and within its own framework. It needs no outside interference.

Lucknow

August 10, 1985

S. G. MOHIUDDIN

1. *Islamic Studies Quarterly*, Vol. XXIII, No. 4 (Islamabad, 1984), p. 387 (cited from *Law and the Problems of Stability and Change* by Dr. M. Muslehuddin).

PRESIDENTIAL ADDRESS

Gentlemen,

I would first of all seek your apology for not being able to present a written address as it is customary on such occasions. My heavy pre-occupations apart, I had to go on tours after short intervals. But this unintended lapse on my part might have been for the better. Without underrating the solemnity or utility of Presidential Addresses prepared before-hand for such august gatherings which have become a part of our intellectual, literary and political history I must say that sometimes such pre-meditated addresses or a part of them become out-dated by the time they are delivered, or changed circumstances make them lose some of their relevance. May be that the Providence had willed me to speak to you spontaneously on this occasion in the light of recent developments in our country.

Friends, differences of opinion, denial of anything or even opposition in any matter is not necessarily the result of enmity or clash of interests. Oftentimes, this is caused by misunderstanding or faulty information which is, in my opinion, more dangerous than ignorance of anything. Such misunderstandings and faulty knowledge and ignorance has in the past led to as lamentable consequences at the level of individuals and families as in the case of nations and countries. Instances can be found in the pages of history where a misunderstanding, lack

of knowledge or incorrect information has resulted in clash of arms.

I do not think that all those non-Muslim individuals and associations or schools of thought which are opposing the Muslim Personal Law and advocating an uniform civil code are motivated by a hatred of Muslims. I think that misunderstanding or lack of correct knowledge is to be blamed more than anything else.

I want to invite your attention to two aspects of the issue ; the status and importance of the Muslim Personal Law among the Muslims themselves. Those who are serious-minded and patriot, possess a constructive rather than destructive frame of mind, and are also realists and liberal in their attitude never find it difficult to accept a given fact. I hope that this august meeting and our mass-media would enable me to have their ears.

As a student of comparative religions I can speak authoritatively for all those religions which claim to be a revealed one, have a scripture and a prophetic tradition, but I will prefer to speak here about the religion of which we claim to be followers. One of the fundamental truths about this religion is that it has been handed down to us not by philosophers, social workers, reformers or conquerors. The persons belonging to these groups undoubtedly deserve our esteem. Moreover, every religion, culture, system and school of thought has always a line of demarcation which separates it from others in its deeper content and the resulting manifestation. This demarcating line in the case of revealed religions, which can never be overlooked, is that they should reach the people through those exalted persons who are raised up

as messengers of God and blessed with revelation from Him. This is the basic fact and all those who fail to comprehend it very often make such demands from the followers of these religions which cannot be accepted by them so long as they do not renounce their faith. Such demands are obviously not justified at all. Such wiseheads sometimes assume the responsibility of interpreting the religious injunctions of other people by placing reliance on their own studies or pet views—thinking that as liberals they are competent to do so. They try to describe all religions as if they were merely different philosophies or man-made social or cultural systems evolved through human experience. This mistake is not unoften made by even thoughtful and responsible persons. They do not know what separates a revealed religion from other faiths. Philosophy, social sciences, cultures and civilizations, societies and social organisations exist as perceptible realities. We do not deny them and acknowledge them as such. We are also aware of our obligations and responsibilities towards each of them. But we cannot lose sight of the fact that the Muslim community also constitutes a society, a culture and a school of thought. It is a faith and a way of life which was brought and propagated, made a part of our lives, by those who were the Apostles of God. It was neither a product of their brains nor their utterances were in compliance with their own wish or understanding. What they brought was a revelation; something emanating not from an internal but an external source and as holy and sacred to them as for us. The Quran says:

“Your comrade is not astray, neither errs, nor speaks he out of caprice” (53 : 3-4)

The Prophet was told :

**“Thou knowest not what the Book was, nor belief ;
but We made it a light, whereby We guide whom
We will of our servants. And thou, surely thou
shalt guide unto a straight path.” [42 : 52]**

There are people, learned and wise who have spent their lives writing books after books unnecessarily to start a campaign of criticism and vilification about a people they wanted to take the benefit of their counsel without giving thought to the simple fact that they ought to have first tried to understand the people, their beliefs and the way of thought. They should have understood that the people they intended to address were followers of a Prophet of God who himself refrained from giving any instruction to his companions without receiving a revelation from God. I can cite scores of eye-witness accounts when the Prophet was asked something but instead of giving any answer to such questions, he told the enquirers to wait till a revelation was received by him. Often it happened that somebody came to enquire about a certain matter and a revelation was instantly received explaining the issue. The companions beside him at the time of revelation could mark the change in the Prophet's condition and tell others to see for themselves how the Prophet received revelations. Once a companion of the Prophet was by his side when revelation came upon him. He says that the Prophet's thigh fell upon his so heavily that he feared it would break. The Prophet appeared to be in transport on such occasions, away from his surroundings. When he recovered, he narrated the revelation received by him. Once the disbelievers asked

the Prophet about Ashab-i-Kahf (the Seven Sleepers) and Zul-qarnain (the two horned one). The Prophet awaited a revelation until 15 days passed and the disbelievers got an opportunity to reproach the Prophet. The Suratul Kahf was ultimately revealed and the Prophet was able to narrate the whole story as if reciting from a book.¹

The revelation and prophethood basically differ from the commonly understood concept of inspiration. I do not blame our non-Muslim friends and scholars for the distance of time from the age of prophets has made it difficult for many of us to understand these concepts properly. Even the Arabs before the advent of the holy Prophet suffered from similar misgivings. It is not due to lack of understanding or that they are unable to comprehend these concepts. It is a historical fact and psychological inadequacy that anyone not conversant with the content of revelation and prophethood and the sublime positions they occupy, and the demands they make on those who accept them, cannot be deemed as competent to advise the Muslims on any question pertaining to their religion. The first question that a court has to decide is whether a person is competent to present a case before it. A number of learned lawyers are present here. They can vouch that a new advocate has first to present his certificate or degree to satisfy the court that he has studied law. Thereafter the court would satisfy itself that the lawyer is attorney-at-law in a particular case. But, strange though it may seem, everybody

1. See *Tafsir Ibn Kabir*, Vol. IV, p. 366.

considers himself competent, nay, to have the right, to advise others and demand a reform in matters pertaining to religion without bothering to know about its propositions, its history and the spirit underlying its principles. And if a follower of that religion opposes such a move, he is dubbed as ignorant, conservative and a dolt.

I am a student of religion. I can also say that I have studied history and literature. Hence I cannot dare give any advice about anything whose fundamentals are not known to me. If anyone has not studied even elementary science, physics or mathematics, no sane person would allow him to dispute the findings of a physicist or a mathematician. Then why everyone is deemed competent to say whatever he likes about any religion, interpret or misinterpret it, point out its shortcomings and propose reforms in it according to his sweet-will. Does this practice not flout the accepted principle about every discipline of learning? Today every branch of learning is based on specialization. Is religion exempt from this accepted norm? Every religion has a distinctive ethos, its own terminology, different words for different concepts, a different psychology and if a man ignorant of all these, whether he is a Muslim or non-Muslim, expresses a discordant view about any issue pertaining to the Muslim Personal Law, he certainly exceeds his limit. He is neither aware of the context nor the checks and balances kept in view in the case of a certain juristic issue about which he is raising an objection. He is even ignorant of the fact that if any opinion is to be expressed about any matter forming part of an integrated system, it has to be viewed in its totality and not in segments. But the

state of affairs here is that any one can say whatever he likes or take the pen to air his views, however ill-conceived, in the press. This gives rise to anarchy—an intellectual anarchy which is more dangerous than political lawlessness. You might have marked that mental and moral anarchy precedes political anarchy in any country. Being a student, if not a scholar of Islam, although I have spent my life in its study, I can assert with the fullest sense of responsibility that it is essential to understand the reality of revelation for comprehending the religion of Islam. It is based on celestial revelation brought by the prophets. You will find the Jews, whose religion is based on revelation, extremely jealous in this regard. Tell a Jew that a certain law followed by him is unjust or wrong, he would reply that it is based on the commandments brought by Moses. He would tell you that he has to follow it even if the entire world considers it wrong. Even today the entire social structure and the family laws of Israel are based on Jewish religious law.

Then why the energy of this country or its citizens is being wasted on this issue. Every moment of the national life is too precious ; it ought to be devoted to development and progress of the country; it is absolutely necessary that the present atmosphere of mental confusion, misunderstanding and apprehension should be brought to an end for ever. No country can progress if different segments of its society are apprehensive of their future. It would be a disservice to the country if the energy necessary for the country's integrity, safety and development is spent on creating unnecessary doubts and fears and then allaying them. I would even say that if

the Muslims of this country entertain the fear that their future generations will not have the same faith or not participate in the same cultural process that they have followed and considered essential, then this will give rise to an internal unrest among them which would be harmful for them as well as the country. It is no part of wisdom that at the time when the country is not passing through any crisis, there is no emergency, no cyclone, no drought, no external aggression caused by the Muslim Personal Law, demands should be made time and again for amendment in it.

Another matter that needs to be clearly understood is the scope of Islam. Different religions have different views in this regard. There are religions which trace their origin to revelation and prophethood, but they have themselves limited the sphere of their religious teachings to devotional exercises. But this is not the case with Islam. Islam encompasses the entire gamut of human life. This is a fundamental creed of Islam which cannot be understood without appreciating the relationship between God and man in Islam. Every Muslim deems himself as a dutiful servant of God ; this relationship is everlasting, comprehensive, deep and extensive. The Quran directs the Muslims:

“O you who believe: enter into Islam wholly and not follow the foot-steps of Satan; surely he is to you an enemy manifest”. (2: 208)

Here is no qualification, no reservation, no division that a certain part of man's life is personal and another part devoted to God. No part of it is apportioned for the country, or state, or family, or tribe, or community. It

belongs wholly to God. Every act of a Muslim is prayer if performed in obedience to God. Islam really means total submission to God. A Muslim cannot take the plea that his economic difficulties, cultural demands or family traditions require that he should not follow the Islamic rules of inheritance. He cannot say that he does not want his landed property to be apportioned after him since a part of it would go to his daughter married into another family. Islam encompasses the entire life of a Muslim and nobody, no government, no religious scholar, no jurist and no Imam has any say in this matter. I am making this statement here before a number of religious scholars present here; and they would be duty-bound to contradict me if I am wrong.

Now these two things have to be clearly understood by all: that we have received this religion through revelation and that even the Prophets of God were ordered to act on Divine commandments. The Quran says:

"And now We have set thee on the right path. Follow it and do not yield to the lust of ignorant men". (45: 18)

This is the command given to an impeccable Prophet. Then how can we be asked to give up or change the *Shariah*?

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1. *Shariah* is composed of divine revelation and the sayings and doings of the holy Prophet. Both these have to be equally accepted by a Muslim for God says:

"Whatever the Apostle gives you, accept it and whatever he forbids you, forbear from it."

We are sometimes told that a uniform civil code is necessary for the unity and integrity of the country or for promoting a sense of common citizenship. I would ask you a simple question which can be answered by any student. The First World War was primarily a conflict between England and Germany. Englishmen and Germans were both Christians, both were Protestants and their family laws were also the same. You can find out that both subscribed to the same laws of Christianity. Then why did they fight? If uniform civil code was capable of diffusing the conflict, it should have come to their rescue then. The same was the case during the Second World War. Christians and Protestants, whose culture, family laws and social customs and traditions were the same fought the most terrible war of history. Go to any court of law and you will find a Muslim litigating with another Muslim. One Muslim denounces another Muslim and wants to put him to the greatest harm although their family laws are one and the same. Very often there are cases of manslaughter within a family. The reality is that discord and enmity 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 overlook moral education. It has nothing to do with one's family laws. I have no hesitation in saying that uniform civil code will not bring any change in the existing moral state of the nation. Then why is it that we are told repeatedly to adopt a uniform civil code for the sake of greater harmony and affinity between different communities?

Friends, many of you would be aware that I belong

to a family which had first raised the banner of revolt against the Britishers and made great sacrifices for it. The city of Calcutta will bear witness that the body of those godly men had landed here to embark the ships for Hijaz. It came here disseminating the light of Faith and adherence to Islam¹. On return from Hajj they had stirred up a spirit of Jihad against the British rule throughout the country.² But the Quran commands me to be always fair and let no indignation, howsoever righteous, against any people make me depart from the path of truth, justice and equity. It says:

And let no detestation for a people incite you not to act fairly; act fairly, that is nigh unto piety". (5: 2)

I must say that Englishmen were more realistic in this regard. When they took over the administration of India, they decided that they would not interfere in the Personal and Family Laws of the Muslims and Hindus. It was the result of this policy that learned treatises on Mohamman Law came to be written in this very city by Rt. Hon'ble Justice Amir Ali and Sir Abdur Rahim. Englishmen took two very wise decisions. The first was that they decided

1. The body of travellers meant here is Saiyid Ahmad Shaheed and his companions who left Rae Bareli in July 1821 for Calcutta. It had 400 intending Hajees in the beginning but when it embarked the ships, their number had swelled to 693. The journey from Rae Bareli to Calcutta was performed on boats via Ganges river. The party undertook the task of reforming the creed and morals of the Muslims throughout its journey. (See *Saiyid Ahmad Shaheed, His Life and Mission* published by the Academy of Islamic Research and Publications).

2. See *Our Indian Musalmans* by Sir William Hunter.

that the religious susceptibilities of any people should not be injured unnecessarily as this would create difficulties in administration. This is the attitude of a nation which has experience of administration. The other decision they took was to keep the educational system thoroughly secular. They decided that educational curriculum might include stories of cats and dogs but not of any religion. I have also read English Primers and Readers which contained stories of jinn and devils and animals but had nothing of Greek mythology or Christian creed. This gave satisfaction to the people. The factors that made Hindus and Muslims to join hands for fighting the war of independence and ultimately pushed the British power out of India were entirely different. But I maintain that the above-mentioned decisions of the Englishmen helped to strengthen and prolong their rule in India ; otherwise what happened in 1857 would have come about in 1757. It could have happened in the beginning of the eighteenth century. They were able to rule undisturbed for more than a hundred years because of their wise decision not to interfere in the religious matters and personal laws of the people in this country and to adopt a secular system of education, leaving the people free to follow their religion.

I would also submit that if the Muslims agree to give up their Muslim Personal Law, they would be reduced to half or semi-Muslims, or rather the danger is that they would not remain Muslims at all. Those who have studied philosophy of morals and religion are aware of the fact that no religion can be severed from its 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 another. It would mean that one would be a Muslim in the mosque (and how long he remains in the mosque?) but not a follower of that faith in his house or in his dealings with others. No. We cannot allow any other cultural system or civil code to be foisted upon us. We regard it as call of apostasy and so shall we face it. This is our fundamental and religious right in a democratic country. We enjoy this right under the constitution of the country and deem that to fight for our just rights is in the interest of the country. Democracy can be maintained in this country only by safeguarding the rights of every section of our population, allowing them to freely express their views and to practice their religion. This is the way to peace within the country and satisfaction of all communities.

I thank you all for the honour you have done to me and allowing me to express my views before you.

