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## History of the Evolution of Muslim Personal Law in India

The demand for a Uniform Civil code as contemplated in Article 44 of the Constitution of India has gained momentum in recent times. It has also provoked intense opposition from a section of the Muslim community. As this is a problem affecting the rights and duties of an important community in India and is also likely to affect communal harmony it is worthwhile to study the gradual stages of the evolution of Muslim personal law in our country and as to how the Islamic legal system has been handled by the successive rulers.

According to Amir Ali, "Of all systems of law, the Islamic system furnishes, from a historical point of view, the most interesting phenomenon of growth. The small beginning from which it grew up, and the short space of time within which it attained its wonderful development, mark its position as one of the most important juridical systems in the civilized world."<sup>1</sup> It is an undisputed fact that each age has its ideals of law and justice and its standard of punishment, just as each age has its stanpard of morality, its measure of judging social evils and its method of removing socio-political abuses.

### 1. Was Muslim Law applicable to all ?

It is ordinarily believed by the common man that the Muslim sovereigns governed India with the laws of *Shariat* (Canon law of Islam) "Imported readymade from outside India."<sup>2</sup> This is not essentially true. This mistaken notion has arisen and got currency from the superficial and careless study made by certain historians. It has to be

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1. Amir Ali, *Mohammedan Law* 2 Vols, (1912) 5th ed. Calcutta, 1928, p. xxxii.
  2. Sarkar Jadunath, *Mughal Administration*, P. 23.

borne in mind that Islamic Law consists of two parts, religious and secular: and that each portion has its special application. *Shariat* enjoins that the Canon Law should be made applicable only to those who believe in the Islamic religion. Consequently, the whole body of the Islamic law is not applicable to non-Muslim. Their legal relations are to be regulated "according to precepts of their own faith."<sup>3</sup> The Muslim jurists have classified Muslim law under two broad heads — *Tashriyi*, religious, and *Ghair Tashriyi*, secular. The purely religious portion of law is applicable to Muslims only. The secular portion which is in substance common to all, applies to Muslims and non-Muslims alike. The principle is thus stated in the *Fatwa-i-Alamgiri*. "Non-Muslim subjects (*Dhimmi*) of a Muslim State are not subject to the laws of Islam." The Prophet himself enjoined — "Leave alone the non-Muslims and whatever they believe in". On the basis of this principle the Hindus, Budhists, jains and other communities were allowed to be governed by their own laws and carry on their mode of worship according to their religious rites and ceremonies. A through study of the legal system in India under the Muslim rule would indicate that the Muslim sovereigns, as a rule followed this principle.

## 2. Legal system under the early Muslim Sovereigns

Though Muhamed Ibin Quasim annexed Sindh and Multan in 712 A. D. he did not establish any Muslim Government in the proper sense of the term but entrusted the internal administration of the conquered provinces to the Brahmines who held important positions during the time of erstwhile Hindu ruler. The period of successive invasions from the incursions of Sabuktigin (991 A. D.) lasting till the permanent conquest of India by Muhammed Ghori (died 1206) also were all invasions which can be described as mere plundering expeditions, and there is no proof of any administration of Muslim Law during this period, as well.

### (a) Slave Dynasty to Sher Shah (1206 — 1555)

The period of the settled government commenced from the Slave Dynasty (1206-1290 A.D) and continued during the reign of Khalji dynasty (1290 - 1321), the Tughlak dynasty (1321 - 1413), the Lodi

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3. Bailie, *Digest of Moohummudan Law*, P. 174.

dynasty (1451 - 1526) and the Sur dynasty (1539 - 1555). They established regular tribunals and appointed *Quaziz* and *Muftis* all over the country. It appears that two kinds of tribunals existed — the court of *Shariat* and the Court of Common Law. The Court of Canon Law used to deal with the cases involving the personal law of the Muslims and the infringement of religious injunctions. The Court of Common Law decided the cases of a secular nature, both among Muslims and non-Muslims.

As regards non-Muslims, Hindus, Budhists etc ; they were subject to the tribunals of the country, but the cases which involved their personal law were decided by the Court of Common Law assisted by the learned men of their community, just as the Court of Canon Law was assisted by the *Mufti*. During the reign of Sher Shah the powers of the Court of Canon Law were restricted and the administration of Muslim Law was modified to suit the requirements of that age.

#### (b) Under the Mughal Emperors

In A. D. 1526 Baber established the Mughal Empire. He was succeeded by his son Humayun. Both of them, in general, followed the policy of Sher Shah in the administration of law and justice, and the *ulemas* (religious scholars) appear to have exercised considerable influence during this period.

A drastic change occurred during the time of Akbar, and this era marks the downfall of the *Ulemas*. Though "Dini-Ilahi" and the conferences of scholars belonging to different religions held at Ibadat Khana shattered the orthodox Sunni School to some extent, the dominance of Islamic Law was not fully extinct. The judicial officers such as the Chief Qazi and the Qazis used to try cases according to the Muslim Law, and in conformity with the Common law, i.e., edicts, ordinances and instructions issued by the Emperor. Jehangir, to some extent, revised the policy of Akbar. The Institutes of Jahangir show that he interdicted the cutting of noses and ears and death penalty could not be inflicted without the permission and confirmation of the Emperor.

Aurangzeb who ascended the throne in 1659 has been highly maligned and grossly misrepresented by prejudiced historians. His sense

of justice and acute anxiety for the Rule of Law was praiseworthy. A pious Muslim, he was well acquainted with the *Hadis* (sayings of the Prophet) and the standard books on theology. He was also a great jurist, and had committed the Quran to memory. In 1665, the Emperor ordered for the compilation of the celebrated code, the *Fatwa-i-Alamgiri* which contains all the essential principles of the Hanafi system of Muslim law. Islamic criminal law was tendered with mercy during his reign. In his "History of India," Alexander Dow says that Capital punishments were almost totally unknown under Aurangazeb. According to an eminent historian "It does not appear that a single Hindu suffered death, imprisonment or loss of property for his religion, or indeed, that any individual was ever questioned for the open exercise of the worship of his fathers".<sup>4</sup> He abolished all imposts on the Hindus, such as taxes on bathing in the Ganges, carrying bones of dead persons for throwing them in the Ganges, Hindu fairs and festivals. Those who were proved to have committed theft, highway robbery etc. were subject only to imprisonment, and not to amputation. The *Shahi Farmans* issued by him throws a flood of light on his idea of civil and criminal justice.

The extent of the application of Islamic and Secular laws during the Muslim rule has been summarised by Wahed Husain in an outstanding thesis published by the University of Calcutta. I am giving below a few conclusions therefrom :

- i) **Civil Law :** a) The purely personal law of Islam relating to inheritance, succession, marital rights, guardianship, will, endowment, gift etc., was applied to Muslims only. b) The secular portion of the civil law relating to trade, barter, exchange, sale, contract, etc., was made applicable to Muslims and non-Muslims alike.
- ii) **The Laws of the Land :** The system of taxation relating to land revenue, minerals, quarries, manufacture, agriculture, excise, octroi (*chung*), merchandise, sea-borne trade, etc., were adopted from the people of this country by the Muslim sovereigns of India with necessary modifications. These taxes and imposts were levied on and realised from all races (including Muslims) alike.

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4. M. Elphinstone: *The History of India*, (London : 1857), p. 656.

- iii) **The Religious and Personal Laws of the non-Muslims :** Suits involving points of personal law of the Hindus, were used to be decided with the aid of learned Hindu Pandits ; in the case of the other races, with the aid of their learned men.
- iv) **Criminal Law :** The portion of the Islamic Canon Law which deals with religious infringement, was applied to Muslims only ; such as drinking, marrying within the prohibited degree, apostacy, etc., For such offences non-Muslims were not held liable to punishment under the laws of Shariat.
- v) **The Edicts and Ordinance :** contained in the Farmans and Dastur-ul-'amal for the guidance of the officers of the state: They were the common law of the people of the country as opposed to the Canon Law. These *Qanuns* were binding upon the judicial and executive officers, and in compliance therewith the courts of common law were established in India<sup>5</sup>.

Such have been the scope and extent of the law applied to the Muslims and non-Muslims of India during the Islamic rule. It is clear that the body of laws which controlled the social life and regulated the legal relations of the Indians (including Indian Muslims) consisted at least of three kinds of laws—the Indian Law, the Muslim law, and the *Lex Loci* or the municipal laws of the country which did not properly come within the scope of the Hindu or Islamic law, but mainly consisted of the various local taxes and duties and customs. This kind of law was often imposed by the Farmans and edicts of the emperors. Further, the secular portion of the Muslim law underwent changes and was often modified by the Shahi Farmans.

### 3. Muslim Personal Law under the East India Company

The foundations of British India were laid by treaties with Muslim rulers representing the authority of the Delhi Empire. Bengal, Bihar and the Carnatic were ceded to the British under more or less compulsion by the so called Muslim potentates, and were governed by the

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5. Wahed Husain, *Administration of justice during the Muslim Rule in India*. (Calcutta : University of Calcutta), pp. 14 - 16.

East India Company down to 1857 in the name of the titular sovereign, who had in fact been a British pensioner. The *farman* of 1765 purported to vest in the Company only the *diwani* (collection of revenue and civil jurisdiction); the administration of Criminal justice remained for many years ostensibly in the hands of the Nawab-Nazim of Bengal, and the Nazamal Adalat or Chief criminal Court sat not at Calcutta but at Murshidabad, the Nawab's capital. The *Farman* itself bound the Company to decide causes "agreeably to the rules of Mohomet and the laws of the Empire." They used to administer the Muslim Law, except where the practice of the Muslims themselves had been to leave disputes between Hindus to be determined according to their own *Shastras* as interpreted by Hindu Pandits. The famous Regulation 11 of 1772 by Sec. 27 enacted that "in all suits regarding inheritance, succession, marriage and caste and other religious usages or institutions, the laws of the Quran with respect of Mohamedan and those of the *Shastras* with respect to Gentoos (Hindus) shall be invariably adhered to." Muslim law officers were attached to all civil and criminal courts to advise on questions of law. Criminal proceedings in particular were assumed to be governed by the *Shariat* unless the Company's Government should think fit to order otherwise. Not till 1790 was this jurisdiction withdrawn from the Nazim, and from that date the system was gradually anglicised by successive Regulations. However the Muslim element did not entirely disappear till 1862, when the Penal Code and the Criminal Procedure Code came into force, not as regards rules of evidence till the passing of the Indian Evidence Act of 1872. The Company Regulations of 1772 were followed, and to some extent interfered with, by the Act of Parliament known as the Regulating Act of 1773.

By Sec. 17 of this Act, it was enacted that in disputes between the native inhabitants of Calcutta "their inheritance to lands, rents and goods and all matters of contract and dealings between party and party, shall be determined in the case of Mohamedans by the laws and usages of Muhamedans, and in the case of Gentoos by the laws and usages of Gentoos, and where only one of the parties shall be a Muhamedan or Gentoos by the laws and usages of the defendant."

Meanwhile, as we have seen, the Muslim Criminal Law, modified from time to time by the Company's regulations, governed not only

Muslims but the entire native population outside the Maratha region — Matrimonial disputes were dealt with according to the law of the Quran or the Shastras as the case might be ; while “matters of contract and dealings between party and party” were left to be determined according to the fancy of the judge, which it became the fashion to describe as “justice, equity and good conscience”.<sup>6</sup>

#### 4. Recognition of Shia Law

As it is now well-known, the Muslims are divided into two main divisions, Sunnis and Shias. In India, the importance of the cleavage between Sunni and Shia began to attract attention in the third decade of the 19th century. The Privy Council in 1822 recognized the right of the Shias to their own law<sup>7</sup>. It may not be out of place here to state briefly the historical origin of the Shia School, and its cardinal differences with the Sunni School.

The origin of the schism was the election of Abu Bakar as the Caliph immediately on the death of the Prophet in 632 A.D. The Quariash tribe was divided into Omayyads and Hashimites, between whom there was no love lost. The Hashimites favoured the succession of Ali the son-in-law of the Prophet and claimed that he ought to have been chosen. The election of Abu Bakar, in their absence offended them. However, Ali immediately swore allegiance to Abu Bakar, Abu Bakar was succeeded by Omar and Osman, and Ali was at last elected as the fourth Caliph and was the head of the community for five years. After his death in 661 A.D., his son Hasan resigned in favour of Muavia, the founder of the Omayyad dynasty. Hussain, the second son of Ali revolted against Muavia's son, Yazid, but at Karbala Hussain died, fighting after pathetic privations and sufferings. It was from this time onwards that the fight between the Sunnis and the Shias became acute. The unhappy schism between the Sunni and the Shias which thus arose owing to secular causes ultimately led to a wide divergence in their juridical conceptions. The cleavage which originated with dynastic questions grew into a separation on doctrinal and legal points.

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6. Cf. Wilson, *Anglo Muhammadan Law*.

7. 2 M. I. A. 411. Rajah Deedar Horsein V. Rani Zuhooroonissas.

The fundamental difference between the Shiate and the Sunnite theology is their doctrine of *Imamat* developed by the former. According to Sunni doctrine, the leader of the Muslims at any given moment is the *Khalifa* or the Caliph, literally the 'Successor' of the Prophet. He is more of a temporal ruler than a religious chief; for in religious matters he has simply to follow the path of *shariat*. Of course, he is expected to possess certain qualifications; and if he is found unfit, he may be removed. The Caliphate was abolished after the Turkish Revolution in 1924; and the Sunnites have taken it with grace.

The concept of *Imam* (Leader) among the Shias, however, is totally different. Here temporal affairs take only a secondary place, the *Imam* is the final interpreter of law on earth. He is Leader, not by suffrage of people, but by divine right, because he is a descendent of the Prophet, rather of Ali. No *Hadis* is ordinarily accepted by the Shias unless related by an *Imam* descended from the Prophet.

## 5. Schools of Law

### a) School of Sunni Law

There are 4 recognized schools of Sunni Law. They are (1) The Hanafi School (2) The Maliki School (3) The Shafi School (4) The Hambali School. These schools take their name after the respective names of the founders. Each of the founders propounded his own exposition of the law. At the same time not only was there no antagonism between them, but each respected the ability and knowledge of the other teachers and they always refer to the other schools only with respect. The majority of the Sunnites in India are Hanafis. Two very authoratative texts of this school, the *Fatawa Alangiri* and the *Hedaya* were translated early in the last century, and are well-known in the Indian Courts. Of the other three schools of Sunnite law, Shafi alone has a considerable number of followers, in South India.

### b) The Shiates Schools

The *Ithna Ashari* (Jafari) Law is the system of law followed by the great majority of the Shiates in India. The most well-known text of the *Ithna Ashari* is the *Sharai ul Islam*, which is translated into English and published as the second part of Baillie's "Digest of Moohumudan Law". Imam Jafar-us-Sadiq is the founder of this School. Another Shia School, the *Ismailis* (Fatimides) are concentrated in



Western and Central India. The Daudi Bohras now follow the law of the *Ismailis* though they were mostly governed by the Hindu customs until lately.

c) *Legislation under the British*

An important legislation passed under the British rule was the Mussalman Wakf Act 1923 enforcing a large number of rules and regulations relating to management of *wakf* properties. Keeping account and audit of the wakf properties was thereby made obligatory. On the basis of this Act, several corresponding provincial Acts were also passed. The local Acts are now applicable along with the Central Wakf Act 1954.

d) *Shariat Act 1937*

It is the Shariat Act which consists of only six sections that regulates the application of Muslim personal law in India from 7th Oct. 1937. During the six decades between 1827, and 1887, Acts regulating the laws to be applied by the Civil Courts were enforced in most of the British Indian provinces. These Acts had recognized the supremacy of custom and usage over the rules of personal laws. This statutory recognition of custom and usage gave strength to the customary laws which had since long been adhered to, particularly in matters of succession, by certain sections of Indian Muslims. It was then, realized that the situation was in conflict with Islamic jurisprudence under which a Muslim was bound to accept Islamic personal laws and could not be permitted to adhere to a contrary custom or usage. Muslim leaders all over the country felt that the situation called for express legislation superseding custom with Islamic law.

Section 2 lists those matters which, among Indian Muslims shall be invariably governed by the Muslim personal law. The matter specified in the Section include: (a) intestate succession, special property females, gift, (b) marriage, various forms of dissolution of marriage, dower, guardianship, maintenance, (c) trusts, trust properties and wakfs. Section 2 excludes from its purview: (a) all questions relating to agricultural land (b) charities, charitable institutions and charitable and religious endowments. These were excluded because they happened to come within the legislative competence of the State legislatures. However most of the states have passed subsequently enactments making them

applicable to the respective State. The scope and purpose of Section 2 is to abrogate custom and usage in so far as these have displaced the rules of Muslim law. According to Section 3 of the Act the following additional matters also will be deemed as specified in Section 2 of the Shariat Act : a) adoption and b) wills and legacies, provided a person has made a declaration before the prescribed authority that he desires the benefit of the provisions of this section.

#### 6. Sources of Islamic Law a) *Sunni School*

The Shariat Act merely declares that in respect of the subjects enumerated therein "the Muslim Personal Law" shall be applicable where the parties are Muslims. As the law has not been codified, the question as to what is the basis and source of Muslim Personal Law assumes importance. The word 'Muslim' has not been defined in the Act. There are four sources of Islamic Law according to the Sunni School (i) The Quran (ii) Hadis or Sunnat (iii) Ijmaa and (iv) Quiyas.

i) *The Quran* : Muslims believe that the Quran was revealed to the Prophet (570-632 A.D.) by Gabriel during the last 23 years of his life. It contains about 6000 verses, but not more than 200 verses deal with legal principles, of which there are about 80 verses which deal with personal laws like inheritance, marriage, divorce etc. As the Quran is believed to be of Divine origin, there is no question of altering or modifying any of its tenets by any human agency or institution.

ii) *Sunna or Hadis* : Next to the Quran, the most important Islamic textual material is the *Sunna or Hadis* : the body of transmitted actions and sayings of the Prophet. They were first compiled in the early centuries of Islam. Different Schools accept the authority of different compilations. Among the Sunnis, the most accepted compilations are those of (a) Bukhari (b) Muslim (c) Ibn-e-Majah (d) Abu Dawood (e) Nasi and (f) Tirmadhi.

iii) *Ijmaa* : After the Quran and Sunna, the third source of Islamic law under the classical theory is *Ijmaa* (consensus of jurists). If highly qualified legal scholars of a generation agreed on a principle which was not contrary to the Quran or the *Hadis* it was deemed

to be binding on the followers of Islam. This was supported by the Hanafi doctrine that the provisions of law must change with the changing times and of the Malikis that new facts require new decisions. In developing Islamic law by consensus the doctrine of *ijthihad* was employed. It denotes the exercise of one's reason to deduce a rule of *Shariat*. Where a principle was silent to cover an individual case an independent effort had to be made and this is what is meant by *ijthihad*. It was open only to those who, on account of their erudition in the Quran, *Hadis*, legal learning, theology etc. were recognized as *Mujtahids*.

iv) *Quiyas* : It is the last source of Sunni law, and is of much lesser significance. "It consists in applying some text if the case can be demonstrated to be governed by the reason of the rule underlying it although the language may not apply. This is reasoning by analogy." *Quiyas* forms the principal point of difference among the four subdivisions or the Sunni School. The followers of Ahmed ibn Hambal are opposed to the acceptance of *Quiyas* as a source of law. The Shafis also are not very sympathetic to this branch of jurisprudence.

(b) *Shia School* :

Numan, the Fatimide jurist unequivocally declares that the Shia law is founded upon (i) the Quran (ii) the Sunna and (iii) the dictum of the Imams. They do not accept *Quiyas* as a source of law since they are of the view that *Imam* alone can enlarge the law. They do not give credence to a *hadis* unless it emanates from the household of the Prophet, particularly from that of Ali. They follow (a) al-Kafi and (b) Tahdhib-ul-Abham as most authentic of the collections. They restrict the scope of *ijmaa* by accepting only that consensus which emanated from the Prophet's immediate kith and kin.

## 7. The Dissolution of Muslim Marriage Act 1939

Next to the Shariat Act, the most important Muslim personal law enacted in British India was the Dissolution of Muslim Marriage Act, 1939. The reasons that led to the passing of this legislation are fully explained in the Statement of Objects and Reasons, in the following words;

"There is no provision in the Hanafi code of Muslim law enabling a married Muslim woman to obtain a decree from the court dissolving

her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her unprovided for and under certain other circumstances. The absence of such a provision has entailed unspeakable misery to innumerable Muslim women in British India. The Hanafi jurists, however, have clearly laid down that in cases in which the application of Hanafi law causes hardship, it is permissible to apply the provisions of Maliki, Shafii or Hanbali law. Acting on this principle the ulama have issued *fatwas* to the effect that in cases enumerated in clause 3, Part A of this Bill married Muslim woman may obtain a decree dissolving her marriage. One more point remains in connection with the dissolution of marriage. It is this: the courts in British India have held in a number of cases that the apostacy of a married Muslim Woman *ipso facto* dissolves her marriage... The *Ulama* have issued *fatwas* supporting non-dissolution of marriage by reason of wife's apostacy. The Muslim Community has again and again given expression to its supreme dissatisfaction with the view held by the courts..."

The Act empowers the Court to dissolve a marriage at the wife's request on the following grounds: a) her husband's disappearance, failure or neglect to provide maintenance or perform other marital obligations, imprisonment, protracted impotency, insanity, cruelty or affliction by leprosy or a venereal disease; b) the wife's right of 'option of puberty' if exercised in accordance with the conditions laid down in the Act; c) Any other ground recognized by Islamic law. The Act also provides that renunciation of Islam by a Muslim wife would not *ipso facto* dissolve her marriage unless a woman converted to Islam ceases to be a Muslim by reverting to her former religion.

#### 8. The Wakf Act, 1954

After the attainment of independence by India, the most important legislation affecting the Muslims was passing of the Central Wakfs Act, 1954 which has been enacted by Parliament to provide for the better administration and supervision of wakfs. It provides for the incorporation of a Board of Wakfs in every state.

#### 9. Codification of Muslim Personal Law

Of late, there has been a strong demand from many quarters for a codification of the Muslim Personal Law. There are on the other

hand, others who oppose this demand on the plea that any codification of the law will inevitably lead to innovation in religious laws which would adversely affect Islamic principles and cultural identity of the Muslims in India. According to me there is no substance for any such apprehension and for more reasons than one, codification is urgently required for the progress of the community. In spite of the passing of the Shariat Act as early as in 1937 customs and usage are still making inroads into the genuine principles of the Islamic law and curiously, many of them have been upheld by the courts. While all other religious communities in India have their own distinct codified laws, the Muslims are deprived of that benefit. These customary laws which abrogate the spirit of Islamic law should be abolished, and all Muslims of India, irrespective of their schools and regions must be governed by the Uniform Personal Code. It is rather distressing that even that little portion of the Muslim law which is now available in the form of statute-law is also not uniform throughout the country.

Moreover in addition to the Shariat Act, there are special laws applicable to particular sections of Muslims in India. It is surprising that even the Mapillas of Malabar who were the pioneers of the cause of uniformity in Islamic Laws retain their customary law relating to joint family properties! Again, at times there is a babel of voices among the judges due to conflicting interpretation of the Islamic texts made by different Muslim jurists and Scholars belonging to different schools. This often leads to embarrassing situations. As we all know it is because the Supreme Court, in its verdict in the well-known Shah Bano Case<sup>8</sup> relied upon an interpretation put upon a verse of the Holy Quran by one commentator<sup>9</sup> in opposition to the interpretation given by some others that a Pandora's Box happened to be open. This could have been avoided if there had been a codified law, the advantages of which are its certainty, simplicity and uniformity.

#### **10. Need for Reform**

In independent India the need for changes in the existing "Mohamedan law" especially in the sphere of marriage is being keenly felt.

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8. (1985) 2 SCC 556 — Mohamed Ahmed Khan Vs Shah Bano Begum.

9. Yusuf Ali's Translation of the Holy Quran, ii, 241 Washington, D.C. : Islamic Centre, 1978.

It is not the pure and genuine Muslim Law, but the distorted Mulla law that is being administered in India today by the courts. To take only a few instances, at present there is no law preventing a Muslim to marry more than one in any circumstance, whatsoever. This is due to the fact that without taking care to study the real meaning and spirit of the Islamic law some dubious interpretations have been put upon the verses giving permission for polygamy in certain exceptional circumstances. As the great jurist Ammi Ali has put it about a century ago, in his Muhammadan Law :

The conviction is gradually forcing itself on all sides in all Muslim communities, that polygamy is as much opposed to Islamic laws as it is to the general progress of civilized society and true culture. In consequence of this conviction a large and growing section of Islamists regard the practice of polygamy as positively unlawful.

However, the "Mohamedan Law" in India even today follows the same old Mulla-made law !

Similarly divorce. As the Prophet has declared, "divorce is the most detestable thing in the sight of God". Even though Muslim law permits divorce in certain exceptional circumstances, the husband must satisfy the court about the reasons for divorce. Again the Quran dictates that *talaq* (divorce) to be effective has to be pronounced at monthly intervals at the conclusion of monthly periods. The usual pronouncement of *talaq* thrice in one breath is contrary to Quranic dictates. More than a score of Islamic countries have now introduced significant legislative and administrative measures subjecting polygamy and divorce to different kinds of control and restriction. It is high time that we in India also take steps for a reform of Islamic law on the Quranic lines. Islamic law is not a static one, but dynamic and able to meet all exigencies. In matters in which there is no clear guidance either in the Quran or the Sunna, Islam has permitted *Ijthihad* and *Ijmaa* to cope with the problems. For this learned theologians, enthusiastic social reformers, eminent lawyers and erudite jurists shall all sit together, pick and choose the best and most suited provisions from different Islamic schools of thought and existing materials of Islamic law, and on the basis of the traditional law, evolve a common code for all Muslims in India.

### 11. Muslims and Uniform Civil Code

The fact cannot be gainsaid that most of the members of the Muslim community are opposed to the enactment of a common Civil Code for India as contemplated by Art. 44 of the Constitution. I feel that the views and sentiments of the Muslims have not been fully appreciated by others on this issue. The Muslims *bona fide* believe that Muslim law is principally based on the teachings of the Quran which according to them is the word of God as revealed to Prophet Mohamed. It is the bounden duty of a loyal Muslim to follow and observe the Quranic laws. They naturally apprehend that if a common Civil Code is enacted, there would be every likelihood of certain inroads into their personal law, contrary to the Quranic law. The guarantee of religious freedom is the corner-stone of our Constitution which has declared India to be a secular state. It ensures religious and cultural freedom for all, particularly the Minorities, of which the Muslims are the largest group. It will be a historical tragedy, if in the name of securing uniform Civil Code, India which has guaranteed every religious community right to freedom of conscience and the right freely to profess, practise and propagate their religion under Art, 25, tries to mutilate Muslim Personal Law. Let us not forget the fact that the genius of India consisting of manifold religious communities, languages and varieties of culture lies in 'unity in diversity'. The spirit of India has always been her capacity to treat all religions with equal respect and veneration, and to suffer every community to follow its own way of life. That is why when Art. 44 was introduced, Dr. Ambedkar, the main architect of our Constitution assured the Muslims that a uniform Civil Code shall never be imposed upon them against their will. This assurance has been generously repeated time and again by our National leaders including Pandit Jawharlal Nehru, Smt. Indira Gandhi and very recently by Shri Rajiv Gandhi. Let us appreciate the political wisdom of our leaders, and instead of frittering our energies for immediate implementation of a uniform Civil Code educate every person — be he a Hindu, a Mussalman, a Christian, a Parsee or a Sikh — that he is an Indian, and that inspite of all diversities of religions, cultures, languages, regions etc., there is a fundamental unity, which we must preserve at any cost.