

Women living under muslim laws
النساء في ظل قوانين المسلمين
Femmes sous lois musulmanes

DOSSIER 20

July 1998

**Indian Islam and Reform Movements
in Post-Independence India**

Asghar Ali Engineer

We have to take stock of various developments which took place in India in last fifty years of our independence. It is also important to take stock of developments among Muslims in this period, especially with reference to reform movements in Indian Islam.

India opted to be a secular country and this decision had several repercussions. Right at the stage of constitution making there were debates about uniform civil code. There were heated discussions. Muslim members opposed adoption of uniform civil code. Ultimately a compromised was accepted. It was decided to put it under Directive Principles of the Constitution and in the meanwhile personal laws of all the communities will apply.

This was done at the intervention of Jawaherlal Nehru. The top leadership of the Indian National Congress including Gandhiji and Nehru had given assurances to the leaders of Jami'at-ul-'Ulama-i-Hind that no Islamic laws will be abolished after independence. It is important to note that the orthodox 'Ulama led by Maulana Husain Ahmad Madani had vehemently opposed two nation theory¹ and fully supported the cause of composite nationalism. Maulana Husain Ahmad Madani, a theologian of great eminence, was particularly in the forefront of opposing the two-nation theory and he had successfully countered it on theological grounds.

They had assured the Muslims that they need have no apprehensions about freedom of religion in India after independence. They will be free to follow their religion and its laws.

It was because of this that the leaders of freedom movement ultimately put uniform civil code among the directive principles. Had it been imposed right then, it not only would have been against the assurances given to the 'Ulama, it would also have given handle to the supporters of two nation theory that Islam is not free in India. Thus the view that uniform civil code could have been implemented while framing the constitution ignores these aspects of the problem. In fact it was as difficult to implement it then as now, though for different reasons.

Not enforcing uniform civil code then was quite reassuring for the Muslims. It is important to note that partition was great tragedy for Indian Muslims for several reasons. It not only divided their families but it also caused migration of cream of their society to Pakistan, specially from U.P. [Uttar Pradesh]. Thus the Muslims almost lost their middle class intelligentsia to Pakistan leaving behind poor and illiterate Muslims completely under the influence of conservative theologians. The Muslims in India have still not recovered from this tragedy. To create new intelligentsia and a strong middle class will take quite some time. The process has begun but it is far too slow. All the available data clearly show that Muslims are far behind others both in the field of education and economic progress. This surely does not augur well for reform movement. It needs educated and economically secure middle class for advocacy of modern reforms.

¹ Two nation theory held that the Muslims of India constituted a nation apart, and that India therefore should be divided into two nations: one for Muslims, another for Hindus and other religious groups.

The pre-independence period when Muslims had strong middle class produced several eminent reformers. Sir Syed Ahmad Khan was first among them. He developed a systematic methodology of re-interpreting the Qur'an and his insights were of great help to bring about change in the outlook of Muslims. Several other reformers like Justice Ameer Ali, Nawab Muhsinul Mulk, Maulvi Khudabakhsh and others followed him. In fact Maulvi Khuda Bakhsh suggested several measures to bring about reforms in Muslim personal law. Another eminent thinker and reformer was Maulvi Mumtaz Ali Khan who wrote a book *Huququn Niswan* (Rights of Women). In fact his ideas about rights of women in Islam were so radical that even Sir Syed advised him not to publish his book. But the Maulvi did publish it.

Thus it is not true that Indian Islam did not produce reformers. In pre-independence India even conservative 'Ulama like Syed Suleman Nadvi and Maulana Ashraf Thanvi took initiative to usher in some necessary reforms. Maulana Ashraf Thanvi even wrote a book in Urdu to suggest some measures strictly within the framework of Shari'a to help women especially in cases like child marriage, option of puberty, disappearance of husband for a long time etc. And it was on the initiative of these 'Ulama that the 'Dissolution of Muslim Marriages Act' was passed in 1939 which gave great relief to those women whose husbands had disappeared without a trace. In Hanafi law the waiting period is 90 years in case of disappearance of a husband which was more than a natural age of a woman India. It was reduced to four years as per Maliki School.

However, in the post-independence period this initiative for reforms was lost for reasons listed above. The 'Ulama who came on the scene after those who had participated in the freedom struggle had no mass base and were quite unsure of their prestige. Not only this, some of them began to politicise these issues in order to promote their own interests. Also, as time wore on the politics of religious, caste and regional identities became more and more important.

In mid sixties a Lohiaite socialist² from Maharashtra Hamid Dalvai launched a campaign for enforcement of uniform civil code.³ He also declared himself to be a non-believer and also maintained that Muslims are basically fanatics and rigid and would never change. Such extreme positions on the part of Hamid Dalvai did great disservice for the cause of reforms. His campaign was totally misconceived and helped the conservatives to adopt more rigid position. They launched a counter-campaign and convinced Muslims that there was a 'conspiracy' to destroy Islam. It was in response to Mr. Dalvai's campaign for uniform civil code that the Muslim Personal Law Board was formed in the mid sixties which became a bulwark against any change or reform in Muslim personal law.

It is important to note here that any movement for reforms, if it has to succeed, should be firstly within the frame-work of religious scripture and, secondly, the reformer should be persuasive and use proper strategies to convince his fellow-religionists. Raja Rammohan Roy, for example, was a great scholar of Hindu religion and quoted from Vedas to prove that there was no concept of sati⁴ in it and that it should be discontinued in order to uphold original teachings of Hinduism. Sir Syed, Maulvi Mumtaz Ali Khan, Maulvi Khuda Bakhsh and others of their ilk, also adopted similar strategies. They wanted to bring reforms within the framework of Islam. However, Hamid Dalvai, being a non-believer, completely disregarded religious sensibilities of Muslims and mounted an attack on Islamic laws. It became totally counterproductive and rigidified positions. Any movement for genuine reform in Muslim personal law became more problematic. In such an atmosphere even a scholar of Islam and a legalist like A.A.A. Fyzee found it difficult to argue for reforms.

It is interesting to note that Pakistan went ahead with the necessary reforms in Muslim personal

² Refers to socialist ideas associated with the Indian Nationalist Ram Manohar Lohia.

³ In this context, he refers to a uniform code of laws that would be applicable to all Indian citizens irrespective of their religious affiliation.

⁴ *Sati*, a practice associated with the self-immolation of a widow on her husband's funeral pyre, was campaigned against by social reformers in the 19th century and banned by the British. Hindu fundamentalist groups are now trying to reinstate the practice in India in the name of tradition.

law. [President] Ayub Khan appointed a committee to recommend reforms which consisted both of modernists and the 'Ulama. The committee recommended necessary reforms after taking opinion of people through questionnaire and Ayub Khan implemented them through a presidential ordinance in 1962 ignoring a dissenting note by one of the 'Ulamas. Even [President] Zia-ul-Haq could not dispel this ordinance during his hey days of fundamentalism.

This became possible in Pakistan as it had a strong middle class to advocate reforms and also Muslims were in overwhelming majority and there the theory of conspiracy against Islam could not work. In all Muslim countries from Indonesia to Algeria reforms have been effected. The Qur'anic laws are quite favourable and empowering for women but since medieval ages these Qur'anic injunctions have been interpreted in a way to perpetuate male domination. For this purpose even some controversial hadith were used superseding the Qur'an. Thus proper interpretation of these Qur'anic provisions can greatly help in giving women their much needed rights. And this is precisely what has been done in most of the Muslim countries.

In India increasing communalisation of politics made it even more difficult to usher in reforms in Muslim society. The communalisation reached its peak during the eighties when series of major communal riots took place making Muslims more and more insecure. It was during this period that the controversial Supreme Court Judgement on maintenance was delivered popularly known as the Shah Bano judgement.⁵

The members of Muslim personal law board and other Muslim leaders reacted sharply against this judgement and launched a massive movement against it. Unfortunately, one of the more otherwise sober Muslim leader and president of Muslim personal law board even likened this movement to the Khilafat Movement⁶ during early twenties. The Shah Bano movement was a great mistake. Such an aggressive attitude towards a reformative measure was not called for. It only hardened the majority communalism and caused greater harm to Muslims.

The Shah Bano movement dashed all hopes for reform in Muslim personal law. Perhaps the Supreme Court judgement came at a wrong time. By mid-eighties the Muslims were feeling intensely insecure due to major communal riots at Moradabad (1980), Biharshariff (1981), Baroda and Meerut (1982), Neili, Assam (1983), Bhivandi-Mumbai (1984) and Ahmedabad (1985). The opportunist leaders exploited this intense feeling of insecurity among Muslims to oppose the Supreme Court judgement. It was certainly not against the Qur'anic spirit though delivered under the provision of a secular law.

Now the political atmosphere has considerably changed. There is perceptible improvement in communal situation. Even the politicians find it difficult to get enthusiastic response from people on communal issues. The BJP [Bharatiya Janata Party] also has failed to get any response on emotional issues like construction of temple. Also, women's movement in all communities is gaining strength though still there are formidable problems. There is also a move among a section of Muslim women to devise a nikahnama i.e. stipulating conditions against triple divorce and polygamy in the marriage contract. Such a nikahnama in fact has already been prepared with the help of legal experts in Mumbai [formerly known as Bombay].

Also, a group of Muslim intelligentsia has prepared a draft bill for setting up Muslim family councils at state and district levels which stipulate necessary reforms. These are constructive measures but have yet to gather necessary thrust. The attitude is still sheepish. Muslim women are still not taking the much needed initiative. The personal law board, on the other hand, consists of highly orthodox people. It will agree to any reform until it comes under great pressure. So far it has turned down all requests for reforms.

⁵ In 1986, the Supreme Court upheld the award of a maintenance payment under the provisions of the secular Criminal Procedure Code, 1974 to a divorced Muslim woman known as Shah Bano.

⁶ The Khilafat Movement was a mass social movement launched by Indian nationalists to contest the removal by the British of the Caliph in Turkey. This local movement, directed against the British, was conducted in the name of international solidarity.

But one need not despair. Reforms cannot be postponed for long. The provision for triple divorce must go and polygamy should be either abolished or severely restricted. It should also be noted that in every society contradictory trends of orthodoxy and religious reforms exist. It depends on balance of social forces which trend will have upper hand. The balance of forces can be tilted in favour of reforms if there is will.

Acknowledgements: This article was first printed as Indian Islam and Reform Movements in Post-Independence India, (Mumbai: Centre for Study of Society and Secularism) August 1997, pp. 3 and is reprinted with the permission of the author.

Centre for Study of Society and Secularism
Irene Cottage, 2nd Floor, 4th Road,
Santacruz (East), Mumbai - 400055
India

* The footnotes were introduced by the editors of this journal and were not part of the original article.