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## All India Muslim Personal Law Board – Leading the third Mullhas’ war against reform in Muslim Personal Laws

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At a time when there is a spurt in the intellectual debates on Muslim Personal Laws and when the whole country particularly the Muslim women are eagerly waiting for the outcome of the day to day hearing of Supreme Court hearing of a case on triple talaq from May 11, remarks of Allahabad High Court on May 9 should be of interest.

The High Court said that “talaq by a Muslim husband to his wife cannot be made in a manner which may infringe her fundamental rights guaranteed under Article 14 and 21 of part III of the Constitution”. This should ideally provide an opportunity for the enlightened Muslims to mobilise the community and fight for justice in the ongoing Mullahs War against reform in Muslim Personal Laws. It is in the interest of the country that the enlightened Muslims succeed this time.

This is urgent and of immense help to the community as the Muslim orthodoxy led by All India Muslim Personal Law Board (AIMPLB) is leading once again a third Mullhas’ war to resist any reform in Muslim Personal Laws. It has even challenged the Supreme Court for interfering in the religious rights of Muslims!

### **Mullahs’ Wars to Control the Community:**

Carrying forward the legacy of Islamist priestly class following their failure during Sepoy mutiny in 1857 and launching sustained movements like Deoband, Aligarh, Nadwa, Ahl-e-Hadith, Jamaat-e-Ulema-Hind, Tabliq Jamaat and Jamaat-e-Islami, the Mullahs are again on the war

path. Their interest appears to be solely to maintain their power over the community.

Buoyed up by their victory in the first battle in early seventies of the last century against the Government's initiative for reform in the Muslim Personal Laws and formation of AIMPLB and followed in the second battle in Shahbano case in mid eighties, the Mullhas of post-Independent India now seem to be determined to ensure that there is no reform in Muslim Personal Laws. But this time, in the third war, the Mullahs are being challenged by an ongoing Muslim feminist movement and added to this is a positive stand taken by the NDA government on this issue.

In a function in honour of Kannada philosopher Basaveswara on April 29, Prime Minister Narendra Modi urged the Muslims to end the practice of triple talaq and said, "I am sure enlightened people will also emerge from among Muslims and come forward to end this practice liberating our Muslim daughters and mothers from the scourge. I am sure enlightened Muslims will take this responsibility upon themselves." Again, the Prime Minister while responding to a 25-member delegation of Muslim leaders under the umbrella of Jamiat Ulema-e-Hind told that "the Muslim community should not allow the issue of triple talaq to be politicised and urge the delegation to take the responsibility for initiating reform in this regard".

Judging from past experience it is still doubtful whether the 'enlightened' Muslims and the members of delegation referred to would lend their ears to the sane advice of the Prime Minister and join the feminists within the community to defeat the Mulhas and the AIMPLB who are against any ban on triple talaq.

### **History:**

History of Muslim orthodoxy resisting any reform in Muslim Personal Laws dates back to the Constituent Assembly debate when the Muslim members strongly resisted any reform in the Islamic personal laws. Unfortunately, the then political leadership of the country accepted the medieval voices of these members and allowed the issue to fester. Perhaps the government expected that over a period, enlightened Muslims would come forward and rationalise the personal laws of Muslims in tune with the developing the modern environment. However, it was not to be. Both the community and the political leadership for different reasons ignored this vital issue.

### **Muslim Politics- Post Independence:**

In fact, despite frequent debates on reform in Muslim Personal Laws since Independence, this unresolved issue remained an important ingredient of Muslim politics in post-colonial India. The Muslim Personal Law (Shariat) Application Act 1937 and Dissolution of Muslim Marriage Act 1939 were enacted by the British for political reasons.

Asaf A. A. Fyzee, a noted Muslim writer and internationally known authority on Islamic jurisprudence maintained, 'Islam, in its orthodox

interpretation has lost the resilience needed for adaptation to modern thought and modern life.' (A Modern Approach to Islam, 1963, p.105.) He was the first Muslim Indian courageous enough to contend that Muslim law in India is not based on the Shariat but was introduced by the British for political reasons.'(M.R.A. Baig, The Muslim Dilemma, 1974, p.20).

Over post-Independence years, the Mullahs linked the issue of Personal Law with religio-cultural identity of Muslims along with other issues like the so called Babri Masjid, Urdu, minority character of Aligarh Muslim University, family planning, the right to prayer in archaeologically protected mosques, madrasa education, Waqf , the haj subsidy etc.. Any attempt to rationalise these issues was always viewed by the Islamic radicals as a danger to the identity of the community. Though such issues may not have much relevance to the modern concepts, as well as their spiritual relevance, their politicisation by self-seeking Islamic priestly class under the support of 'secular' politicians often resulted in political quibbling causing irreparable damage to the Indian society and unity of the country.

### **Are Islamic Laws Immutable? the view of the Scholars and experience in other countries:**

The argument of Muslim fundamentalists that Islamic laws are immutable—is not based on sound logic. In fact, a number of Islamic countries made certain reforms in Shariat to meet the changing social environment. 'As many as twenty-two Arab countries and some eighteen non-Arab Muslim countries have systems of personal law that have been codified and reformed in variety of ways.' (Tahir Mahmood, 'Personal Law in Islamic Countries', 1987. Quoted in Gerald James Larsen, ed., Religion and Personal Law in Secular India, p.2.)

Muslim majority countries like Morocco, Tunisia, Syria, Turkey and Iran took up measures to prohibit polygamy, which shows that there is enough scope for transformation of Muslim Personal Laws. 'Turkey, Cyprus, Tunisia, Algeria, Iraq and Iran do not give a Muslim husband right to divorce his wife unilaterally. A Muslim husband seeking divorce from his wife must apply to the court of law.'(H.A. Gani, Muslim Politics and National Integration, 1978, p.115).

Encouraged with the changing attitude of a number of Muslim majority countries towards the Shariat, the Union Cabinet appointed a committee comprising of Muslim leaders like Humayun Kabir, Hafiz Muhammad Ibrahim, Muzaffar Hussain and Jamia Vice Chancellor Mohammad Mujib in 1963 for suggesting reforms in the Muslim Personal Laws. The issue also figured at the International Congress of Orientalists in Delhi in 1964.

The initiative of the government stirred a countrywide debate on the subject. Some liberal Muslim intellectuals also suggested reforms in Muslim Personal Laws as was done in a number of Islamic countries. Tahir Ahmad, then Associate Professor at Indian Law Institute, carried out a survey on the state of Muslim Personal Law in twenty countries and found that Shariat was not applied uniformly in all these countries. Fyzee maintained: 'The law of divorce, whatever its utility was during the past was so interpreted that it has become the one sided oppression in the hands of the husband-and almost everywhere Muslims are making efforts to bring the law in accordance with modern ideas of social justice.'

Begum Sharifa Tayabji in her presidential speech in the Maharashtra State women conference (Pune, 27 December 1971) maintained, 'the Muslim personal law as practised under the Shariat Act had brought untold miseries to Muslim women should be discarded forthwith in favour of a common civil code'. She added, 'if Rasul Allah is to appear in person before us he would roll his head in shame over our performance. ... M.C.Chagla said, 'in secular India, everyone should have equal rights and polygamy should be abolished'. (H.A.Gani, Muslim Politics and National Integration, 1978, pp.94-95).

Similar views were expressed by Justice Y. V. Chandrachud, who said, 'one law of marriage for all would be an important step towards national integration' (Ibid.). 'Islamic personal law runs contrary to the modern notions of human rights. Its anomalies are obvious to anyone except Muslim males.' (Hamid Dalwai, Muslim Politics in India, 1969, p.87.).

According to Rafique Zakaria, 'Muslim Personal Law is strictly not based on the Quran; it is a bunch of interpretations and traditions compiled by a group of Maulawis at the instance of Lord Macaulay.' (Rafique Zakaria, The Widening Divide, 1995, p.234). Asghar Ali Engineer, a writer of repute observed, 'Today the Muslim leadership in India has converted the question of change in Muslim Personal Law primarily to their political advantage. It would be wrong to argue that Muslim Personal Law is not immutable as it is divine.' He further said, 'Maulana Abul Kalam Azad in his commentary on the holy Quran makes distinction between Din (essence of religion) and Shariat (Islamic legal code, rituals etc); only the former is immutable while the latter is not.' (A. A. Engineer, Indian Muslims, 1985, p.288.).

Thus, the observations of the enlightened Muslim intellectuals justified the transformation of Muslim society and its Personal Law. However, in the absence of any unified and assertive role, their voice remained muted against the high pitched strike of Muslim extremists, whose war cry of 'Islam is in danger' in the clergy-controlled Muslim society in India carried the day. Sad to say that the politicians at the helm of affairs went along with the view and did not want to touch it, though for different reasons. **It was the cursed vote bank politics that carried the day.**

Contrary to the rational views of Muslim intellectuals and the initiative of the Government for reform in Muslim Personal Laws, the Islamic orthodoxy particularly, the association of Deobandi Ulema namely Jamiat Ulema-e-Hind and Jamaat-e-Islami Hind reacted sharply pleading that change in Muslim Personal Law was tantamount to infringement of the religious rights of the followers of Islam. (Mushirul Hasan, Legacy

of a Divided Nation, 1997, p.248).

The Working Committee of JUH, which is often projected as an organisation of nationalist Muslims in its resolution in April 1970 maintained: 'The Muslims consider the personal law to be an essential part of their religion and stand therefore for status quo.'(H. A. Gani, Muslim Politics and National Integration, 1978, pp.94-95). They went to the extent of declaring that any change would amount to an attempt to Hinduise Muslims. (what an outrageous statement!)

### **The First War of the Mullahs and the formation of the AIMPLB:**

Taking the issue as a conspiracy of the government to subvert Shariah, the Muslim orthodoxy organised a wide range of seminars and conventions in early seventies, aggressively opposing the move, and thus forced the government and the committee constituted in 1963 to leave the issue in cold storage. Darul-Uloom Deoband organised a two-day (27-28 December 27-28 1972) convention at Mumbai and unanimously decided to form All India Muslim Personal Law Board (AIMPLB), which was formally founded on 7 April 1973 at Hyderabad with Maulana Taiyab Qasmi and Maulana Syed Shah Minatullah Rahmani as founder president and secretary respectively.

The formation of AIMPLB was the first victory of Muslim orthodoxy in post Independent India not only over the enlightened opinion in the community but also over the government which succumbed to the pressure. Since then AIMPLB has also become an institution under the control of Islamists, who have used it as a tool for exploiting the government and the Muslim masses for their self-seeking political interests and tried to maintain that 'they are a state within a state and a society within a society'.

### **The Second War and the Shah Bano Case:**

Ironically, instead of honouring the saner voice of enlightened Muslim scholars, the government led by Rajiv Gandhi again succumbed to the pressure of the voice of Mullahs who successfully commanded their second battle by organising countrywide aggressive protests against the verdict of Supreme Court in the Shah Bano case in 1985 and amended the constitution to pass the Muslim Women Bill. Rajiv Gandhi did not even allow Arif Mohammad Khan, Minister of State in his cabinet to speak against the Bill, which was passed to undo the Supreme Court verdict. This second victory of Muslim orthodoxy was a signal that Mullahs power in India was stronger than that of the government.

There is no place of intermediaries for rapport between the Muslims and Allah but emergence of AIMPLB as self appointed custodian of Islamic Laws under the control of a group of Islamists was only to strengthen their power in a non-Muslim majority democratic country. There is no legal sanction for Sharia courts run by the Mullahs and there is no binding on the community to follow their decisions but AIMPLB has been attempting to legitimise them.

The formation of AIMPLB as a platform of Muslim orthodoxy for playing communal politics and keeping the community aloof from the

progressive march of the nation was a major hurdle for the Muslim masses to think independently beyond the mosque and madrasa. So much so, it played a major role in denial of Muslim women of their Constitutional and Quranic rights of gender equality by resisting reform in Islamic Personal Law. It ignored even Several Islamic scholars' writings on Quranic injunction on gender justice and is now all set to resist the ongoing movement from within the community for reform in Muslim personal Laws and has even challenged the Supreme Court for interfering in the religious rights of Muslims.

Muslim masses would be glad if their personal laws were altered to conform to the modern concept of justice but unfortunately they are helplessly caught between the slogans of secularism and communalism as their liberal leaders fail to initiate any genuine move to awaken them from slumber. Their failure to face the challenge of the radicals and break the power of Mullahs has given a free hand to the AIMPLB to resist any initiative for reform in Muslim Personal Laws.

Prof Tahir Mahmood, former Chairman of the National Commission for Minorities and also an internationally recognised expert on Muslim Law in an interview on May 05, 2015 said, "There is absolutely nothing, not even a word, in the Indian Constitution protecting the personal law of any community, nor exempting it from the jurisdiction of Parliament or state Assemblies or any higher courts. Frankly, I want the Board to be abolished. **Its members are paranoid and they speak rubbish.** Every time the Supreme Court delivers a judgement, the Board members say it is interfering with Shariat. They are doing disservice to the community. They have succeeded in making the community believe that Muslim Personal Law means the Quran and that there is no difference between the two, and that both are divine." ( <https://scroll.in/.../ban-triple-talaq-and-abolish-muslim-personal-law-b...> [1] 5, 2015) .

Mohsin Raza, sole Muslim Minister in U. P. Government also demanded ban on AIMPLB describing it as an unconstitutional entity for supporting triple talaq.

**In this Third war on the issue of "triple talaq"- the Mullahs should not be allowed to succeed:**

In view of the complexity of the problem, the only ray of hope lies in the honest and unified efforts of liberal Muslims. Without a strong assertive Muslim leadership in the nationalist and secularist Indian tradition and launching an active movement for democratic liberalism to free the Indian Muslims from their medieval psyche, is the answer now. **The need of the hour is to de-politicise all the Muslim issues, which are detrimental to national integration.** Let the issue of doing away of the triple talaq be the starting point.

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