

COMMENT

Anglo-Mohammedan Law

Muslim Personal Law has been under severe attack for long for more than one reason. While the saffron club advocated a uniform civil code in place of the existing Muslim Personal Law, secular forces too found in it gender bias in favour of men. But few people know the historical background against which the law was evolved in the first place.

In fact it was called Anglo-Mohammedan law before independence but was renamed as Muslim Personal Law after independence.

The British Government, after it seized power from the Mughals, established its own courts, which also heard cases pertaining to Muslim marriage, divorce, inheritance etc. In most of these courts there were either British or non-Muslim judges who did not know Shari'ah law or if even Muslim judges heard these cases, most of them were trained in British laws.

What these judges did was to consult *Hidayah*, written by Mirghayani, a Hanafi scholar, and translated into English by Mr Hamilton. Often they also consulted some Maulavi before delivering the judgment. Since the cases were heard in these British courts, the procedural law followed was English law and substantive law was based on *Hidayah*, it came to be known as Anglo-Mohammedan law.

The judgments in these cases delivered by higher courts became precedents for subsequent cases and thus whole corpus of law came into existence based on these judgments which came to be known as Anglo-Mohammedan law and renamed as Muslim Personal Law as calling it Anglo-Mohammedan law was now rather embarrassing. Thus to call it Shari'ah law would be a misnomer.

Unfortunately what Muslim Personal Law Board is defending is not divine law but Anglo-Mohammedan law known by another name. It is unjust in many respects to women and clerics try to rationalize these injustices in the name of Islam.

In all Muslim countries too traditional laws have been amended to bring them closer to Qur'an and sunnah thus giving more rights to women as in the Qur'an. In Turkey too what came to be known as *Tanzeemat*, was based on different provisions favouring women taken from different schools of Sunni law like Hanafi, Shafi'I, Maliki, Hanbali etc. In India too, the Dissolution of Muslim Marriage of 1939 was based on Maliki School as in Hanfl law a woman has to wait for 90 years if her husband disappears without a trace.

Rethinking Muslim personal law as prevalent in India is certainly not to violate divine injunctions as often maintained by some people but to bring in much closer to divine injunctions i.e. to infuse in them really divine spirit. □□□ [contributed]