

A.
Historical Statement

ON

Muslim Personal Law

BY

*Muslim Ulama, Modern Law Experts
and Intellectuals*

Published By:

Muslim Personal Law Committee

DARUL ULOOM

DEOBAND (U. P.)

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A Conference, representing the Ulama, scholars of Islamic Jurisprudence and Muslim intellectuals was held in the spacious library hall of Darul-uloom Deoband on 14th and 15th march at the invitation and under the presidentship of Maulana Qari mohd. Tayyab, Rector, Darul-uloom Deoband to consider the problem of Muslim Personal Law. After considering the problem in three successful meetings, the conference issued the following statement.

Mohd. Salim Qasimi

CONVENER

Muslim Personal Law Committee,
Darul-uloom, Deoband

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

In the name of Allah, the Compassionate the merciful

A conference of the Ulama, experts of Islamic law and Muslim intellectuals was held at Darul Uloom Deoband on 14th and 15th March 1972, at the invitation and under the chairmanship of Moulana Qari Mohd. Tayyab Sahib, Rector, Darul Uloom Deoband, to consider the issue of Muslim Personal law which has been a subject of controversy in India for quite some time. The conference had comprehensive discussion on, and gave serious thought to the constitutional, political, and juristic aspects of the problem for two days. The conference, as a result of long deliberations, expressed the following beliefs and feelings:—

1—Islam is a complete and accomplished religious code which comprehends the human life in its entirety and ensures well being and prosperity for every country and every age. The fundamental book of Islam is the Quran, and the most clear, comprehensive and authoritative interpretation and exposition of the Islamic system of life is the Sunnah of the Holy Prophet (peace be on him). The ancient Doctors of Islamic law and competent Jurists of Islam supplied the solution of the newly emerging situation and problems, not contained expressly in the Quran or the Sunnah, in the light of the fundamental doctrines and comprehensive principles derived from the Quran and the Sunnah and thus laid down the foundations of "Ijma" and "Qiyas." It is how the "Islamic Fiqah" came into being, whose sources are the Quran and the Sunnah and the "Ijma" and the "Qiyas," and the latter two being derived from the Quran and the Sunnah themselves.

2—This conference also believes that the Islamic Fiqh is a living and dynamic legal system which contains invaluable principles regarding consideration of pressing needs of time, recognition of usages and habits, elimination of undue hardship and accommodation of exigencies recognised by Islam. The law of Islam, thus, can never become static or stagnant.

3—The conference recognises it as a fact that after the fall of the Moghul Empire during the era of the East India Company and later under the British rule, the religious Communities inhabiting the country continued to enjoy the freedom of following their various religious laws in particular matters. It was recognised as a principle that in those particular matters the Muslims of India would be governed by the "Shariah" while the Hindus by the rules of their "Dharma Shastra." It was also made amply clear that local or tribal customs, contrary to the Shariah, would be held void. It is also undeniable that the Constitution of India guaranteed religious freedom and the application of the Muslim personal law continued.

4—This conference feels that the scope of the Muslim personal law and the matters governed by it are the direct concern of the religion of Islam and provide the basis of existence and continuity of the distinct identity and cultural individuality of the Muslim Community. Consequently any attempt to replace the Shariah (Muslim Personal Law) by a common Civil Code or to eliminate it gradually and step by step through indirect legislation would mean not only diverting the Muslims of their identity but also directly interfering into their religious matters in

contravention of the Constitutional guarantees regarding religious and cultural freedom. This conference deems it a duty to condemn this trend and is not prepared to endure it.

5—It is very unfortunate that a particular section in this country is trying to create an impression that the law of Islam is outdated, and cruel and on the basis of this unfounded allegation is preparing ground for the enforcement of un-Islamic family laws in the form of a Common Civil Code. In the opinion of this conference this trend should be condemned not only by the Ulama but also by the whole of the Muslim community as well as by every citizen having sense of justice.

6—This conference believes that the Islamic Fiqh is a living and dynamic system. Moreover, The Ulama of Islam have at their disposal the fundamental principles and basic doctrines deduced from the Quran and the Sunnah as well as the authoritative precepts of these derived doctrines. It is therefore always possible to calculate the scale of the exigencies recognised by the Shariah, to ascertain the degree of hardship which calls for elimination, to verify the place and importance of custom and usage which Islamic law could take note of and to realize the extent the rules of law are influenced by a corresponding

change in the circumstances. These are the very principles the doctors and experts of Islam have always employed in solving the problems in every age and it is on the basis of these that solution to every newly emerging problem could be furnished in the present times and real hardships eliminated.

7—In the present circumstances when codemnable machinations are being employed to denigrate the law of Islam, the Conference regards it as a solemn and primary duty of the Ulama to assemble and collectively think over the whole set of problems, carry out a comprehensive survey of the changed social circumstances and suggest proper solution in the light of the Islamic principles and doctrines to such problems as are creating real hardships in the society and the removal of which is necessitated by the Shariah itself. More-over, they should also reject and repute on rational basis such illusory problems which are the creation of un-Islamic concepts and mentality. In this way the Ulama would be discharging a duty which is particularly theirs.

Further more, this conference is alive to the pressing need of holding a bigger conference, representing all groups and every shade of opinion

among the Indian Muslims. The conference, therefore, requests the chairman to constitute a Preparation Committee for the proposed bigger conference so that it may be held as early as possible.

