

## INAUGURAL ADDRESS

*M. Mujeeb*

I ASSURE you that I did my best to prove that I was not worthy of the honour bestowed on me of inaugurating this seminar. I am not only an ignoramus in matters of law, I make even a very poor sort of client, with my propensity to confuse law with absolute standards of honesty, truth and justice. The little I know of Muslim law derives from a repugnance, that has grown with time, against the theology which confuses law with ethical and spiritual values. But those who insisted that I inaugurate this seminar were scholars and, while I believe that a citizen might, under circumstances, evade official orders, regard for the wishes of scholars is unconditional. So I agreed, and I am grateful for the honour. But I hope you will forgive me if I am guilty of irrelevance or of statements that do not satisfy a lawyer's sense of precision.

I have been concerned, as a student of Indian Muslim history, with the range and operativeness of the *Shari'a*<sup>1</sup> and have been amazed at the consistency with which Muslims have claimed adherence to it in principle and disregarded it in practice. Rulers took advantage of it in every way they could to promote their political ends, and the official representatives of the *Shari'a* did everything they could to support them, to the extent even of some of them holding that rulers were answerable to God, only for any contravention of the *Shari'a*, provided, of course, that they did not forbid others to obey its commands and were properly strict in maintaining the distinction between *imān* and *kufr*, true belief and unbelief. As the secular officers of the ruler had to obey him, they too, would enjoy the same exemption. Among the mass of the people we must distinguish between those who belonged to a class like landlords, or to a professional community, like the Memons or the weavers, and those who were not so affiliated. The former followed custom, even in matters of personal law, particularly inheritance, and the latter generally the *Shari'a*. My father, as a landowner could not give his daughters a share in the landed property of the family and had to create a private trust. Landlords in the Punjab insisted on

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1. Pronounced in Urdu as *Shari'at* this term signifies, in the context of the present book, the Muslim personal law—*Ed.*

following custom and not the *Shari'a* in matters of inheritance. Members of trading communities do not allow the division of their assets among heirs. The upholders of the sanctity and immutability of the *Shari'a* seem to have come to their help. As late as the early years of the 19th century Shah Abdul Aziz said that though a daughter was entitled to get her share of inheritance according to the *Shari'a* she could, out of love for her brothers, forgo her claim. This love would, of course, be taken for granted. A similar subterfuge prevented the remarriage of widows in spite of clear injunctions of the *Shari'a*. A widow could, out of regard for the prestige of her family, not insist that another husband should be found for her.

The remedy for all misinterpretations of the *Shari'a* lay in education, not only of those whose function it was to expound and apply it in practice, but also of those whose rights and duties, liberties and restrictions were defined by the *Shari'a*. Education in their religion in the real sense, however, the Muslims continually evaded, for fear that it might qualify and induce them to think for themselves. For those intending to become *'ulamā'*, or exponents of the law and its application as judges, education consisted in mugging up a number of text-books which were mostly commentaries on commentaries on what were themselves secondary sources. It seems the *Qur'an* itself was never read as a whole by those knowing Arabic with the intention to discover something previous scholars might have missed. The claim to have made a discovery would have been condemned as an attempt at innovation. There were, indeed, reformers who challenged the prevailing *Hanafi* interpretation, but I do not know of any reformer, apart from Sayyid Ahmad Khan, the founder of the college which later became the Aligarh Muslim University, who repudiated the principle of adherence and interpreted the *Qur'an* for himself.

After 1858, with the gradual acceptance of English education by the Muslims, the situation changed. Upholders of the *Shari'a* had been willing to make compromises with kings and courtiers; now they were willing to make compromises with the educated middle classes. As the poet Akbar Allahabadi said :

You can wear your socks and shoes,  
And make love to Miss D'Souz;  
If only you fast and pray,  
You can live and love as you choose.

But the educated were not satisfied with this. They wanted to become civilized in the modern sense, even though the same poet pointed out what this would lead to :

To the civilized—home is a curse;  
They live all their life in hotels,  
And die in the arms of a nurse.

He also warned them that, because of their oriental nature, being civilized was no guarantee against rejection by the even more civilized beloved. He had learnt it by experience, it seems :

She saw my eyes bedewed and gave her curls a shake.  
'I see, 'tis the canal department—my mistake.

Education has expanded much further since poet Akbar's time but so far as the Muslims are concerned, it has not gone deep enough. And religious education in any real sense has not, I would say, even been begun. But certain fixed ideas remain. If a poll were taken the vast majority would be in favour of adherence to the *Shari'a* and against any tampering with it by anybody on any grounds. Though in practice there may be less adherence than there was twenty-five years ago, the *Shari'a* itself must be defended at all costs. There is a reason for this. Muslims consider the *Shari'a* to be synonymous with their physical and spiritual identity, with all that contributes to their maintenance as a distinct community, with its specific cultural and religious character, and any criticism of the *Shari'a* is, therefore, taken as an attack on the body as well as the spirit of the Muslim community.

In fact, if Muslim lawyers studied the *Shari'a* for itself and not only with reference to particular cases, they would find that it provides remedies against its own injunctions if they prove irksome, and has even authorised the utilization of subterfuges. One of the most eminent theologians of the sixteenth century, Abdullah Sultanpuri, evaded the payment of *zakāt*, the welfare tax, which is obligatory on all except destitute Muslims. He was able to do this because *zakāt* is payable only on property which has been in a Muslim's possession for eleven months, and he and his wife transferred their property to each other by turns before it had been with either party for eleven months. It is not necessary or advisable to raise the question whether the *Shari'a* is or is not immutable. It is not the *Shari'a* that is in need of reform but Muslims who are in need of education. They must be educated to understand the *Shari'a*, to know the true nature and extent of their rights and duties, their privileges and obligations. As the *Qur'an* is the ultimate authority in all matters, they must study the *Qur'an*.

I really mean what I say. The *Qur'an* has been and continues to be studied only for confirmation of what is laid down in the law-books. The law-books themselves are collections of opinions and what Muslims have followed are the opinions selected as most valid by one of the orthodox schools. Education could take them back to the *Qur'an*, back to the general principles which govern its specific injunctions, back to the repeated command to think, and to the realization that the responsibility for his actions rests squarely on the shoulders of every individual Muslim, regardless of any theological opinion he chooses to follow. If he becomes

fully aware of his personal responsibility, the Muslim will, we can hope, seek guidance from all sources available to him and try to judge for himself.

In matters of personal law much could be done to help him by Muslim lawyers and by a state as secular and benevolent as ours. For instance, if the Muslim marriage is a contract, it could be made into a real contract in which both parties would be entitled to lay down their own terms, and infringements could be referred for adjudication to an ordinary court of law. There are precedents for such contracts. It would be completely in accordance with the *Shari'a* if this became the normal practice; and the state could then require all marriages, and not only those of Muslims, to be registered in the form of contracts. The *Qur'an* fixed the daughter's share as one-half of the son's share at a time when the daughter had no rights whatsoever and everything went to the son. Our lawyers could prove that it would be entirely in accordance with the intention of the *Qur'an* if the daughter and the son got equal shares. In matters of divorce the *Hanafi* law as it stands is most unjust to the wife, but all the rights to security after marriage could be protected by means of the marriage contract. Justice Krishna Iyer has delivered a judgment in a divorce case which I consider historic.<sup>2</sup>

There is already a revolt against traditional notions among educated Muslim men and, what is more significant, among educated Muslim women. There is also a fairly strong revivalist movement. The vast majority are those who just follow the current. It is with these that we have to deal, and they must be handled very tactfully, otherwise they will take offence or get panicky, and enable the prevailing narrow interpretations of Islamic doctrine to reassert themselves. Our secular state should not take sides. Those who define its policies should realize that by just being secular and providing for civil marriages they have given the forces in favour of change the chance to become operative. The free play of these forces will be obstructed if the state tried to impose its views or its policies directly. But much could be done indirectly. There has been no opposition from the Muslims against the law which forbids a government servant to have more than one wife. The law could be extended to cover those employed in institutions receiving government grants and further still to those dependent on government assistance in any form. But education, not only of the Muslims but of the people as a whole, must first prepare the ground for any such legislation, and this education must include specific instruction in the means and

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2. I explained the case to a senior lecturer in theology in the Jamia Millia and asked him whether he considered the judgment valid. He said it would be, if the judge were a Muslim. I told him that Justice Iyer had based his judgment on a precedent established by the Prophet, and spoken very highly of the law governing the Muslim marriage; in fact, a Muslim could not have said more. "Oh", he said, "then it's different."

methods whereby the individual citizens, in particular the women, can ensure that justice is done to them.

May I suggest in the end that the Indian Law Institute organize special studies of the legal aspects of the *Shari'a*? I can promise that such studies will be most interesting.

I have great pleasure in inaugurating this seminar.