

MUSLIM IDENTITY AND WOMEN'S RIGHTS IN COLONIAL INDIA

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ABSTRACT

The British rule in India (1757-1947) significantly influenced the legal, social, and religious life of Muslims, particularly through the establishment and enforcement of Muslim personal laws. The identity of Indian Muslims became closely tied to these laws, which governed crucial aspects of life such as marriage, divorce, inheritance, and religious endowments (Waqf). Under colonial rule, the legal framework known as Anglo-Muhammadan law sought to integrate Islamic principles with British legal traditions. However, this system was not a pure application of Sharia but rather a hybrid model that incorporated local customs and British judicial interpretations. As a result, the legal structure introduced by the British altered traditional Muslim practices, sometimes reinforcing pre-existing patriarchal norms while simultaneously standardizing certain religious regulations across different regions of India. This legal codification played a key role in shaping the collective identity of Indian Muslims, as personal law became a marker of religious autonomy in a colonial state that otherwise sought to impose uniform governance.

One of the most profound effects of colonial legal reforms was on Muslim women, particularly in areas concerning divorce and inheritance rights. While the British sought to protect religious customs by enforcing Sharia-based laws, their interpretations often perpetuated gender inequalities rather than mitigating them. For instance, the codification of personal laws solidified male dominance in matters of divorce, where men had unilateral rights to dissolve a marriage through *Talaq*, whereas women faced numerous legal and social obstacles. Similarly, inheritance laws, as enforced under colonial rule, continued to favor male heirs, limiting women's financial independence and reinforcing traditional gender hierarchies. While some legal reforms, such as the Shariat Application Act of 1937, aimed to standardize Islamic law by eliminating local customary practices, they often failed to address issues of gender justice. Consequently, colonial legal interventions not only transformed the legal landscape for Muslims but also had lasting implications for Muslim women, whose rights and social standing remained constrained under the restructured legal framework.

KEYWORDS: colonialism, Muslim identity, personal law, Anglo-Muhammadan law, women's rights.

INTRODUCTION

When the British established their rule in India, they brought significant changes in Indian society. The British introduced the rule of law to facilitate colonial rule in India. Among them, the concept of personal laws is the main one. Thus, the British made their rule easier in India by implementing most of the western oriented laws in India. The British laid emphasis on Muslim personal law, Hindu personal law, Christian personal law, Parsi personal law and so on. This development led to the development of an element of separate 'identity' among Indians. They included Muslims under a specific legal framework and encouraged them to give more importance to religion-based factors, cutting across regional customs. This act of the British forced the Muslims to become a part of their separate identity. It is necessary to understand this development in detail. And the consequences of this development within the Muslim community need to be noted. Accomplishing these two tasks is the next step of this write-up.

COLONIAL INTERFERENCE IN MUSLIM PERSONAL LAW:

To administer Islamic law during the pre-colonial period in India, local rulers appointed Qazi's (Islamic judges) to administer sharia based on Hanafi Islamic jurisprudence. Local practices influenced the application of sharia, allowing for flexibility and community-based interpretation. But colonialism intervened in Islamic law, codifying and tightening its application through the concept of "personal law." It has changed the flexible and adaptive nature of Sharia law.¹ Thus, when the British took over and established control in India, they tried to develop a unified and rational legal system. However, to avoid opposition from religious communities, they adopted a policy of non-interference in religious matters. As a result of this policy, colonialism began to codify the personal laws of Muslims and Hindus independently. Following are some of the stages of change in Muslim laws due to such colonial intervention.

In 1772, the British codified Muslim personal law under the legal reforms of Warren Hastings. Family matters such as marriage, inheritance and religious endowments dealt with by the Qazi courts were placed under the supervision of British judges who had limited understanding of Islamic law.² This reduced local autonomy in Islamic law. The British

¹ Anderson, Michael R. 1993 "Islamic Law and the Colonial Encounter in British India." Curzon Press Ltd.

² Anderson, Michael R. 1993 "Islamic Law and the Colonial Encounter in British India." Curzon Press Ltd.

also translated texts such as the *Hidaya* (Hanafi law manual) into English, which formed the basis for court rulings. This led to the formation of a hybrid legal system called "Anglo-Muhammadan law," where British judges interpreted Islamic principles through a Western legal framework. This process led to distortions in Islamic jurisprudence in India. The British tried to create a uniform legal system by codifying personal laws. This codification reduced the flexibility and adoptability of sharia, bringing austerity and condensation to rituals such as divorce and inheritance undermined the applicability of Islamic jurisprudence.

Adherence to the Sharia is mandatory. Concerted efforts were made to ensure that Muslims in all parts of India observed personal laws. It can be understood that due to these important factors, there was a feeling among Muslims that the laws and practices of their religion were different from other customs and practices. The emergence of political institutions and the expansion of political participation in the late 19th century, on the other hand, began to have a dense effect on Muslim reformists. One of the Muslim leaders, Muhammad Ali Jinnah, who wanted to reform the Shariat law as the British had revised and implemented it in the way they wanted, wanted to include local-based laws in the Shariat law and reform efforts on Muslim laws. But Maulvis and Muslim leaders were vehemently opposed, arguing that they were anti-Islamic and that British judges had no business in the laws of the Islamic religion, which was limited to the process of Muslim personal law.

Through this process, Maulvis and Muslim leaders started to gain more control over Muslim laws. At the same time, Muslim reformers worked to strengthen the Islamic religious identity among Muslims. Later, during the debates in the Constituent Assembly, Muslim representatives opposed the state's interference in their personal laws.

It is important to note that this idea of religious identity was shaped by the British. They divided colonial history into "Hindu," "Muslim," and "British" parts. By turning Islamic principles into Anglo-Muhammadan law, the British changed how Muslims were seen legally, socially, and politically in India.

This British action created a separate legal identity for Muslims and encouraged divisions between communities. It also became the starting point for later discussions about religious freedom and the idea of a uniform civil code in independent India.

The British codification of personal laws changed India's social and religious systems. Its impact can still be seen in India's legal and political structures today.

Through this, the maulvis and Muslim leaders began to gain control over Muslim laws. Along with this, the Muslim reformers strengthened the identity of the Islamic religion among the Muslims. Later, even in the Constituent Assembly, the representatives of Muslims opposed the interference of the state in their personal law. It should be noted that identity is a part of the history constructed by the colonisers by dividing the colonial history into "Hindu," "Muslim" and "British" histories. By codifying and reinforcing Islamic principles in Anglo-Muhammadan law, British rule redefined the legal, social, and political status of Muslims in India. This intervention by the British is said to have fostered a communal divide and created a distinct legal identity. It laid the foundation for post-independence debates on religious autonomy and a uniform civil code. The codification of personal laws by the British eventually transformed the socio-religious structure of India and its foundation on the Indian legal and political status can still be seen.

PERSONAL LAW AND IDENTITY POLITICS DURING COLONIALISM:

Thus, it may be noted that 'Shariat' was one of the most important personal laws enacted by the British. The personal laws enacted by the British in India had a change and more rigid than the laws of the pre-British Mughal period. During the rule of Islam, disputes arising in the society were resolved according to the traditional practices of the region.³ It is clear that shariat was not merely followed as part of the mandatory law of their practice. To note a few references to support this argument, rulers in periods such as the Delhi Sultanate, the Mughal Empire and other Islamic dynasties in South Asia generally adopted local customs into administrative systems, even though they generally implemented Sharia-based laws. Though the law books of the Muslim community like *fatwa-e-Alam-giri* have been among us for many centuries, it cannot be historically said that on the basis of such laws, the whole of India or the entire Muslim community was ruled by any monarchy. It may be noted that the Mappile Muslims in South India, the Memon Muslims of Western India, and many Muslim groups in Rajasthan and Punjab followed the prevailing local special marriage and succession. But many organizations opposed these as anti-Muslim, saying they were extremely backward, especially unequal with regard to women.⁴ This made it mandatory for Muslims in India, whether they liked it or not, to follow the personal law, Shariat. Moreover, in all parts of India, concerted efforts were made to ensure that Muslims followed personal laws. It can be understood that these important factors created a sense of isolation among the Muslims that their religious laws and practices were different from other customs and practices.

³ Chaitra MS, Shanmukha A. 2023. *Samaana Nagarika Samhite*. Rashtrakutthana Press, Bangalore.

⁴ Chaitra MS, Shanmukha A. 2023. *Samaana Nagarika Samhite*. Rashtrakutthana Press, Bangalore.

On the other hand, the emergence of political institutions and the expansion of political participation in the late 19th century began to have a profound impact on Muslim reformers. Leaders like Muhammad Ali Jinnah, one of the Muslim leaders who wanted to reform sharia law as the British revised and enforced it in the way they wanted, wanted efforts to include locally based laws in sharia law and reform Muslim laws. But clerics and Muslim leaders protested vehemently, arguing that they were anti-Islamic and that British judges had no work in the laws of Islamic religion, which was limited to the process of Muslim personal law. Through this, the maulvis and Muslim leaders began to gain control over the Muslim laws. With this, the Muslim reformers strengthened the identity of Islamic religion among the Muslims.⁵ Later in the Constituent Assembly also, representatives of Muslims opposed state interference in their personal law. It should be noted that identity is thus part of the history constructed by the colonialists, and colonial history is divided into "Hindu", "Muslim" and "British" history.⁶ By codifying and consolidating Islamic principles into Anglo-Muhammadan law, British rule redefined the legal, social and political status of Muslims in India. It is said that this intervention of the British created a distinct legal identity and fostered communal divisions. It laid the foundation for post-independence discussions on the autonomy of religion and the Uniform Civil Code. The codification of British personal laws ultimately transformed the socio-religious structure of India and can be seen to have its foundation on Indian legal and political conditions even today.

On the whole, it may be noted that the British laws worked hard to create a sense of identity among Indians, especially Muslims, in all spheres of separate, cultural, political and other spheres. It is said that this intervention of the British created a distinct legal identity and fostered communal divisions. It laid the foundation for post-independence discussions on the autonomy of religion and the Uniform Civil Code. The codification of British personal laws ultimately transformed the socio-religious structure of India and can be seen to have its foundation on Indian legal and political conditions even today. In addition, the Shariat laws enacted by the British gave more power to men in marriage, divorce and succession as they had a largely traditional outlook. That means women did not have enough opportunity to fight for their rights. As a result, the rise of male dominance among Muslims and the tendency to control women has led to many changes within the Muslim community.

PERSONAL LAW AND MUSLIM WOMEN

Those who follow Islam must follow the Shariat. The British made Shariat, the Muslim personal law, compulsory throughout India, arguing that it was derived from the Quran, the original or core scripture of Islam. Inspired by this, many Islamic organizations also called for the observance of Muslim personal law. This has had a huge impact on Indian Muslims and Muslim women.

The Shariat enacted by the British had more male dependent laws. This deprived woman of facilities based on social status. Women were confined to their homes and forced to follow a strict purdah system. Polygamy in Shariat law became more prevalent. These rules turned out to be an alternative part of the exploitation of women. Women were cheated with men taking a one-sided stand in matters like marriage, divorce, inheritance. The very existence of women was in a way deplorable due to many such rigid practices. Muslim women were deprived of education during the British colonial rule. There were social and religious restrictions on women's education. Most Muslim women were confined to religious education in madrassas. The study of religious texts and the Arabic or Persian language was the main subject of the lesson. The Muslim community rejected the British model of schools, considering them dangerous to religious ideas. Although Muslim women were involved in education during the British period, educational progress was limited due to religious, cultural and social barriers.

Sir Syed Ahmed Khan was in favour of the veil (Purdah) worn by Muslim women and believed that women should receive education only in their homes. Like other Muslims, Sir Syed felt that it was wrong to allow Muslim women because they could mingle with other girls of all classes, castes and creeds. This, he argued, would destroy their civilization.⁷ Due to these reasons, the educational status of Muslim women was at a low level during the British period. But in course of time some Muslim intellectuals and political leaders came forward to give impetus to women's education. Muslim women were not politically active. But he participated in the freedom struggle. It is true that Muslim women participated in the revolt of 1857. But then they don't get a chance to speak freely and express their views. On the one hand, the lack of support from the Congress, on the other hand, the lack of a voice for women in the Personal Law Board, which was set up around 1939, has also become a problem. Overall, the fact that the Muslim women of the colony were prevented from speaking freely about gender, relationships, prejudices as a pro-women voice and marriage, divorce, inheritance were all framed in terms of the application of personal law / Shariat law, making them more vulnerable to exploitation by men.⁸ In contrast, the Muslim Law Board is developing its own set

⁵ Chaitra MS, Shanmukha A. 2023. Samaana Nagarika Samhite . Rashtrakutthana Press, Bangalore.

⁶Assadi Muzaffar. 2017. Asmite Rajakarana mattu Moola Boothavada Kelavu Chinthanegalu. Ladai Prakashana.Gadag.

⁷ Sajida Shabbir. Struggle for Muslim Women's Rights in British India (1857 – 1947).

⁸ Assadi Muzaffar. 2017. Identity politics and some ideas of fundamentalism. Ladai Prakashana.Gadag.

of rules even as Muslim women protest through their own organisations. It can be seen here that the Shariat gives more recognition to male-oriented laws and ignores the problem of women.

A group of Muslim women developed the authentic nikah nama (marriage contract) and urged the Personal Law Board to adopt it. But the Board did not adopt it and developed its own nikah nama. But this did not satisfy the women. Asghar Ali is an engineer. 2009 (page 148)

Thus, Muslim women in India faced miserable conditions under British rule. In order to change the government and the patriarchal social structure, Muslim women can be seen lagging behind without being identified in any important areas.

CONCLUSION

The British began the process of enacting European-style laws to assert administrative supremacy in India. Hindu personal law, Muslim personal law and Christian personal law were divided on the basis of religion. Even though India was ruled by the Mughals before that, the British-style compulsory laws were not made to rule the Indians. It may be noted that such a legal system led to the development of separate political, social and legal identity among Indians, especially Muslims. It also affects Muslim women. Personal law, such as that enacted by the British, is seen as favouring more male-dominated laws and not favouring the pro-women aspects. As a result, women were socially and educationally excluded. Overall, the British gave importance to only religion-based life among Muslims, who lived with Indian regional customs and religious practices, and subjected women to exploitation.

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