

Why the Muslim Personal Law Board Refuses to Learn Any Lessons

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The national conference of the AIMPLB in Bhopal was an occasion to do some soul searching for this so called custodian of Islamic Sharia in India. It could have provided them the opportunity to call for some kind of introspection about the state of Muslim personal law in India and why it lags behind other communities in terms of being gender just. There could have been deliberations on why recently Muslims in India have come to have a bad name and why their religion is being termed as backward. Alas, all this was not on the radar of the AIMPLB. Rather what we got was the same old story of how the state was trying to interfere with the sacred nature of Muslim personal law and how it was threatening the constitutional freedoms guaranteed to the Muslim community.

There are two fundamental problems with the argument of the AIMPLB. Firstly, the sharia is not sacred in the sense that it is not the word of Allah. The sharia (literally meaning the path) has evolved over the centuries and there have been many interpretations to a particular religious problem. The very existence of four law schools within Islamic world is proof that different interpretations of scriptures were held valid not only in different points of time but also in different places at the same time. This elasticity within Islamic law was the reason why it could evolve with the changing times and incorporate various contemporary social and political changes. After all, the law of marriage has been reformed in many countries, including some of the orthodox Muslim ones. No one has criticised them of tampering with the sacred nature of Islamic sharia. Rather, people have welcomed the move and argued that it shows that Islam, like any other religion, can change with the times. The problem with the AIMPLB is that it thinks that Islam as a religion cannot and should not change. Not just the Quran, but even the juridical pronouncements of some Mullah is considered sacred by them. This is clearly erroneous and a product of a faulty reasoning which equates sacredness with the community. Actually, truth and rights are not the concern of AIMPLB; rather it is the community which in turn is very narrowly defined as consisting of scholars having a similar opinion. Clearly then, nothing positive can come out of such a body as was witnessed during the recent Bhopal conference.

The second problem in the argument of the AIMPLB is related to the first. After claiming that Islam is unchanging, they project the same argument on the constitution

arguing that it is the constitutions which has granted them religious freedom. Partly this is true. But what the AIMPLB forgets is that the constitution also is continuously interpreted and it cannot be read to justify practices which are clearly at variance with the cherished goals of the constitution. Clearly the Supreme Court did find that the practice of triple talaq was inherently discriminatory towards Muslim women and therefore it was struck down. The way forward for the AIMPLB should have been to debate which other laws can be read as discriminatory towards women and initiate reforms within the community. Rather the concern for the AIMPLB is just the opposite: it wants to study the SC judgment to see whether it contradicts the sharia in any way!

Despite the SC verdict, the AIMPLB still clings to its view that though triple talaq is sinful but yet it is valid in the eyes of Islamic law. None other than Mahmood Madani endorsed such a view soon after the verdict. Thus it is clear that the AIMPLB does not take even the Supreme Court and its decision seriously and opens itself to the charge that actually it does not believe in India's constitutional democracy. Had there been a different political climate, the AIMPLB would surely have filed for a review petition. They have themselves argued that since the judge has changed, filing a review petition might throw up other practices like polygamy, nikah halala, etc. into the limelight and they fear that there might be another adverse ruling for them. Thus it is entirely clear that in their hearts they have not accepted the judgment of the Supreme Court and that they still think that there is nothing wrong with the Muslim personal law. In short they have not derived any lessons from their defeat. The problem is that one does not require the AIMPLB to open the agenda of reforms on issues like polygamy and nikah halala. Anyone can approach the courts for this purpose. Muslim women organizations are already planning to do so. The Board will again try to meddle into this only to be soundly defeated by constitutional logic. Wont it be better that the Board itself gives a clarion call for reforming and outlawing these practices. But given the history of the Board, this is too much to expect from them.

In the calculation of AIMPLB, the call of reforming Muslim personal law is largely driven by urban educated Muslim women. The large majority of Indian men and women are with the Board and this assessment may be right. Since they do not want to upset the existing balance of power between men and women, the AIMPLB will never take a stance on upsetting that balance. Even a reasonable demand like the abolition of triple talaq was met with stiff resistance from the Board. The AIMPLB therefore does not exist for the cause of Islam, rather they exist solely to maintain the balance of patriarchy which obtains in the

Muslim society. Until they sense that this balance is changing, they are not going to change their stance. However, things have changed a little now. There are organizations now working on the ground who are ready to approach courts for this purpose. This is something new as in the past these organizations were not there and many so called progressive left organizations refused to take the line of reforms through judicial intervention. Today Muslim women have come out of the shadows of the organized left and are challenging the system themselves. Thus even if the AIMPLB has popular support, it amounts to nothing as the courts hopefully do not work on the logic of popular support.

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