



THE DEVELOPMENT AND IMPACT OF ANGLO MUHAMMADAN LAW IN COLONIAL INDIA

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Abstract

The Anglo Muhammadan law speaks to an idiosyncrasy inside the current setting of relative law, attributable to its triple nature of Muslim individual law, impact by the Common law, and having a place with the more extensive Indian general set of laws. In any case, despite its peculiarity, it speaks to a field of study which is regularly ignored. This exposition endeavors, in any event somewhat, to reveal insight upon it. In any case, the article gives a recorded outline of the development of Anglo-Muhammadan law, focusing on the principle transformations and advancements presented by the British and their unavoidable legal, social and religious consequences. The current exposition in any case, delineates, also, that, in spite of an amazing drive towards consistency encouraged by the overarching framework, the Anglo muhammadan law. The paper manages the peculiar outcomes of the evolution of this branch of law.

Keywords: The Anglo Muhammadon Law, Common Law, Muslim, British, India.



Introduction

The present essay deals with the issue of Anglo Muhammad a law. Namely the body of laws based on Islamic law but reshaped and reinvented by British jurists which was initially applied to Indian Muslims in colonial courts till Subcontinent, s partition. The first part of the paper focuses on Islam, its legal tenets and sources of law, an avoidable premise in order to grasp the extent of the Anglo Muhammadan Law; while the second part describes its historical development, providing the British administrators; point of view, and its fundamentals together with its consequences on traditional Islamic law and India, s legal system (Borroni, & Seghesio, 2014).

The Anglo-Muhammadan refers to the “branch of personal law” that British administrators applied “to those who belonged to Muslim religion in accordance with principles of their own school or sub school.” As a personal law, Muhammadan law belongs to private law, and deals with and regulates individuals’ personal matters, namely those issues which directly concern their personality, arising from their family and the environment in which they have been raised; therefore they can also be called family laws (Sinha, 2006).

The Islamic notion of law, as opposed the one developed within the Western tradition (Civil and Common alike), lies in its source of validity. In fact, in the latter, the legislator or the judge (in traditional Common law systems) are the supreme lawmakers: whereas, the Sharia is the 'Right way of religion'. Islam is grounded on the unique sovereignty of God as the only law-giver, so the entire legislation must comply with his will and, as it drives from him, it ought to be considered as immutable as God (Borroni, & Seghesio, 2014).

According to Islamic tradition, Muslim law was not offered to men ready-made, but it rather had to be "built", by relying on its acknowledged sources, namely the Quran and Sunna. In fact, Islamic jurisprudence arose from the interpretation of these two texts made by learned people, the 'scholars' (ulama), who derived rules suitable to regulate people’s life from these sources. One of the strongest accusations made against British rules was that they misinterpreted the Sharia, owing to their disregard for the traditional ijtiḥad (Borroni, & Seghesio, 2014), this is the science of interpretation applied to Muslim holy texts and based on the principle that custom and interpretation may complement God; s laws, provided the consistency of the former with the latter, and as long as in the Quran in the sunna no provision exist regarding the matter at issue (Borroni & Seghesio, 2014).



As above stated, Islamic law, through being Divine in nature, is the result of man's commitment to its interpretation so as to widen the scope of God's directions in order to cover also the regulation of such commitments which had not been addressed neither the Allah's commandments nor in the traditions of the Prophet. For this purpose, Islamic jurists have shaped the science of fiqh on the basis of the Sharia sources, so as to establish what is lawful and what is not, what is actually permitted and what is forbidden (Rashid, 1988). Which means that the fiqh is deemed part of the secular law, namely it represents the law enforced by legal authorities (Sinha, 2006).

The Development of Anglo Muhammadan Law

The British rule in India began in the eighteenth century. The Principle objective of the early colonization time frame was to acquire the greatest conceivable income from the settlement with the most extreme consumption off their political and military ends. This was in line the base use of their own political and military assets (Borroni & Seghesio, 2014). This was in accordance with the underlying British presence in the subcontinent, as it began under the authority of the East India Company (Borroni, & Seghesio, 2014), whose object was for sure the abuse of the indigenous resources and trading activities. To accomplish these objectives the Company expected to adjust and endure numerous parts of the precolonial Indian culture, just as depending upon the collaboration of local go-betweens and native police powers, to keep up the successful authority over the country without turning to a wide utilization of military power (Anderson, 1993). Along these lines, the British managers decoded to "practice power by adjusting to the shapes of the pre-pilgrim political framework, including by adjusting to the forms of the pre-frontier political framework, including law (Anderson, 1993, p.4-5). The former political framework was, as expressed over, the Mughal Empire, whose Emperor were Muslims, who religiously belongs to Hanafi School. Hence "the Hanafi law was [then] managed till the foundation of British rule (Jhabvala, 1977).

The British at first endured the utilization of Sharia for the guest interests in question. Notwithstanding, after some time, this approach changed, inferable from the progressive union of the British force in India. Among them, as indicated by the Hastings Plan of 1772 (Borroni, & Seghesio, 2014), another frontier law court framework was set up. Such arrangement set "a chain of command of common and criminal courts [...] accuse of the assignment of applying native legitimate standards" in issues such a marriage, legacy, position and other strict uses. They found a multiethnic culture, described by the concurrence of strict gatherings and by a solid political and lawful discontinuity. Often, even inside a similar local area a wide range of practices won and various nearby specialists were followed. In such conditions British rulers were confronted with a



genuine control issue, deteriorated by their initial demeanor towards the organization of the settlement, for example their endeavor to administer it with the base exertion and inclusion, while, simultaneously, attempt to acquire the most benefit from it (Borroni, & Seghesio, 2014). Therefore, British overseers needed to consider a powerful answer for tackle such issue, which significantly lay in acquiring "basic, solid, and sensibly exact comprehends of native public activity without forfeiting extraordinary work and capital. Following from this the execution of such arrangement offered ascend to the Anglo-Muhammadan statute, which was basically founded on "legitimate suspicions just as officials, interpretations, course readings, codifications, and new lawful advancements (Borroni, & Seghesio, 2014).

Bases of Anglo Muhammadan Law

English rulers established the production of the Anglo-Muhammadan law on some fundamental presumptions which were, nonetheless, deceptive and which reflected their profound absence of information about the native society. As per the previously mentioned Hastings Plan, local laws could be joined into "the British-based legitimate establishments without fundamentally trading off the uprightness of by the same token". Beginning from this mistaken presupposition, British managers explored the local general sets of laws, and, with respect to Indian Muslims, the authority of Sharia. By and by, because of the unpredictability of these laws and to the British requirement for a basic and one-size-fits-all legitimate methodology, they decreased the Shariah to "a bunch of pretty much homogenous lawful principles (Anderson, 1993)."

Based on such assumption, British principles made a further: to be specific, they decided to depend upon certain conventional and customary Islamic writings, treating it as officially lawful, and applying them more generally and thoroughly than it was ever done in the pre-colonial period. Subsequently they straightforwardly applied the Quran just as the other lawful writings, (for example, Al-Hidaya), which, the opposite, were ordinarily deciphered and converted into legitimate arrangements and the training by the authority of the Qadi. In fact British executives contended the priority of the text over its interpretation, in view of the supposition that solitary old legitimate writings could offer a solid information on the Indian legal framework. In any case, they did not have the legitimate comprehension of the social climate to which the laws ought to have been customized, and this, in the long run, brought about their impolite application (Borroni, & Seghesio, 2014).

Getting back to the Colonial court framework, the Hastings Plan set up that it should have been founded on the British model as respects methodology and settling, yet should



likewise have involved the presence of local law officials, "maulvis and pundit", in a consultative capacity (Borroni, & Seghesio, 2014).

With specific respect to Maulvis, their capacity comprised in responding to the courts' inquiries (which were normally defined in a theoretical way, with no significant subtleties of the real case) as respects explicit Islamic law matters by methods for a fatwa, or a legitimate understanding, which was then unbendingly applied by British appointed authorities to settle the related case. As such, the legitimate guideline drawn by the Maulvis from the conditions of the current case was hypothetical with the goal that it very well may be executed on appointed authorities' decision (and prudence) to mediate likewise later cases. In any case, the Maulvis would regularly differ on a specific legal issue, attributable to juridical carefulness in applying the Shariah standards which the Islamic legal hypothesis had ever took into consideration. Such variety of conclusions as to lawful issues was unsuitable to British adjudicators as it didn't accommodate their legal structure and their inflexible text based methodology; subsequently, Maulvis, along with savants, turned out to be increasingly more doubted and in the end avoided from frontier courts (Borroni & Seghesio, 2014).

A while later, as in the late nineteenth century the pioneer power combined its position and expanded its capacity to successfully deal with native opposition, British effect on the India general set of laws was not, at this point limited to the appropriation of Common law fundamentals such as the such as the doctrine of binding precedent as the principle of equity), yet rather brought about the replacement of laws of British source for huge bits of the Anglo Muhammadan law. Indeed, the adjustment of the Sharia for the British laws can be explicitly followed back to the constitution of the third law commission in 1861, which passed six establishments, which "by and large supplanted the standards of the Sharia in their particular fields (Rashid, 1988)."

To get access towards local legitimate sources, the following measure embraced by the British executives comprised in deciphering native laws and lawful sources into English in order to empower British appointed authorities to independently decipher and apply them. Moreover impacted by Bentham, who upheld for codification, in 1835 the British set up the primary Indian law Commission entrusted with forming as broad collection of rules enlivened by the British model in spite of the fact that they restricted their association to those fields they were especially inspired by, for example, equity and business exercises. The principal reading material, distributed in 1825, was an assortment of fatwa by W. H. MacNaghten, which additionally contained his speculation with respect to the different lawful issues rising up out of those lawful translations. Thus, the Sharia, as it rose up out of such messages, was a long way from its customary thought:



rather it turned into "a fixed collection of permanent principles past the domain of understanding and legal watchfulness. es of Anglo Muhammadan Law (Borroni, & Seghesio, 2014).

Main Innovation of Britishers

Alongside previously mentioned changes achieved by British overseers to the pre-colonial legal system, the improvement of the Anglo-Muhammadan law was additionally joined with the presentation of new legitimate advancements, for example, regulatory strategies and techniques for request (Anderson, 1993, 17). The colonial edifice required data with respect to locals; public activity happenings, rehearses, and so on; thusly, normalized strategies for information assortment were actualized: information were sorted and arranged to ease there course all through the settlement just as in England. Furthermore, other regulatory apparatuses were presented, for example standard reports and the utilization of printed structures for the region organization. Those were unavoidable to effectively lead over a particularly tremendous and different country, however they didn't influence common subjects (Anderson, 1993, 17).

Nonetheless, a few changes affected average folks; one of these, presented in the field of lawful system and which end up being progressive, was "the utilization of documentation in issues of law and proof". Indeed, under Sharia legitimate tenet, 'just the verbally expressed declaration of an ethically solid observer permissible as proof before the court (Anderson, 1993, 91). In actuality, in the precolonial framework the utilization of archives was permitted yet didn't hold any legitimacy as far as legitimate proof under the steady gaze of the courts. The British presented the act of interpreting the observer's statement into the legitimacy of the oral declaration was at first kept up, as time passed by, and in consonance with the standard pattern of textual supremacy within the Anglo-Muhammadan Law, testimony messages turned into the legitimately restricting proof. It is important the broad dependence on composed lawful messages likewise satisfied a subtler reason: the requirement for narrative proof from one perspective, and, on the other, the boundless utilization of normalized structures in region organization and deals, combined with the extremely far reaching ignorance among the nearby populace, were outfitted towards making lawful foundations unavailable to the most piece of the locals, just as denying them the chance of improving their monetary or social condition inside the lawful system given by the colonial power (Jhabvala, 1977).

The last vital contrast between the Sharia and the Anglo-Muhammadan law, which should be focused, lies in the wellsprings of law. While the significant wellsprings of the previous are the Quran, the sunnah and the hadith, the ijmaa and the qiyas, the last



perceives, notwithstanding those, the accompanying four sources: 1) the traditions and uses, 2) the legal choices, 3) the enactment and 4) the standard of equity, value and great soul (Jhabvala, 1977).

Standard laws are viewed as substantial based on the rule that the local area completely can't be mixed up; and, despite the fact that they were not recognized by the levelheaded Islamic lawful hypothesis, the supposition of legitimacy of the traditions and uses, going back to Prophet, s time, settles upon his notability about them, which has then been distinguished as their inferred acknowledgment (Borroni, & Seghesio, 2014).

As respects legal choices, these can't be really viewed as wellsprings of law, in any case, as they assumed a significant part all through the improvement of the Anglo-Muhammadn law, they are viewed as solid and legitimate lawful feelings in the arbitration of cases. Additionally, the case law coming about because of the transfer inside the Anglo-Muhammadan Law of the convention of restricting point of reference, is still generally recognize in India (Rashid, 1988).

Consequences

There were a few results of the Anglicization of Sharia

First, the abrogation of Qadis disregarded the Sharia prescription, as "just a Muslim, having explicit capabilities could be a qadi, or judge, to choose cases under the Shariah". Such explicit characteristics concerned the qadi's information and fitness with respect to Islamic confidence completely just as his own contribution in the choice of a case, for as a rehearsing Muslim he would profoundly influenced by the result of the debate (Borroni, & Seghesio, 2014).

Second, from the past focuses there determines the ensuing legal distortion of the Sharia which occurred all through the frontier period and is, somewhat still present today. Truth be told, British appointed authorities were associated with the supposed "legal adventurism" (Rashid, 1988, 147). They ignored the given guidelines of translation of the Shariah just as the significance of the warning capacity of local officials and researchers, disregarding 'they're not exactly sufficient information on the Shariah', a mentality which prompted legal confusion, (Rashid, 1988, 149).

Third, the pioneer court framework depended upon British adjudicators, yet additionally upon Indian instructed in British appointed authorities, yet in addition upon Indians taught in British law. Indeed, British heads empowered the Indian first class, to be specific, those meager few, who could bear the cost of advanced training to go to English



law courses in India or in England. Subsequently, the native general sets of laws lost their supremacy and were supplanted by the investigation of the European ones. Subsequently, the British as well as the learned Indians too were at times uninformed of the Islamic statute, a pattern which has considered the progressive modification of the understanding and the requirement of the Islamic law to the benefit of the Anglo Muhammadan law (Anderson, 1993).

The impacts of expansionism frequently outlive the genuine time of pilgrim rule, as much of the time the controlled country, when autonomous, ended up reshaped and adjusted from inside by the deliberate changes made by the frontier power. Through just about two centuries of pilgrim rule, British managers had presented and set up a powerful managerial and legal framework, which clearly filled the pioneer need of looking after control, however which were in the long run left as inheritance to the recently liberated country as introductory help and base for state organization (Borroni, & Seghesio, 2014). The British had attempted to sort and disentangle the variety innate in the Indian culture and these progressions didn't only stay an outside wellspring of impact, yet they were by one way or another interiorized by Indians.

Quite possibly the most striking of advancements achieved by this marvel is spoken to by "the ascent of another sort of scripturalist Islam". As effectively portrayed above, British executives decided to depend upon old style Islamic lawful messages and follow them carefully whether or not they were viewed as restricting wellsprings of law (Anderson, 1993).

The incredible variety inside the Islamic people group was likewise made light of by the British who attempted to force standard principles to all Muslims. This made numerous issues pioneer courts, which were confronted with the utilization of a fixed individual law framework when settling questions in regards to parties, who were rather used to represented by various individual courses of action. Notwithstanding those issues, such disentanglement gave, nonetheless, a significant lawful system. In reality, the Indians, all be hesitantly, needed to adjust to this new lawful setting to defend, just as upgrade, their financial, social and strict status inside the pilgrim State. Inferable from the requirements cause by this legitimate classification, the lone route for nearby networks to keep a specific level of self-rule or political advantages was to follow the new social structure presented by the British. In fact, "the quest for political partners encouraged the development of new alliances dependent on, in addition to other things, Muslim character (Anderson, 1993)."



Finally another variant of Islam created in India during the last frontier time frame around the possibility of Muslim way of life rather than the provincial guideline; a similar scriptualist and more conventional methodology encouraged by the British towards Islamic writings and the unmistakable quality they provided for the misrepresentation of the Muslim people group, cultivated the Muslim enemy of colonialist battle (Borroni & Seghesio, 2014).

Conclusion

The Anglo-Muhammadan law shows up significantly not the same as the Sharia; and, much more thus, it very well may be viewed as an autonomous framework, "a cross breed law, vigorously affected by English standards of law, with rules acquired from various unfamiliar overall sets of laws", or at the end of the day, a change of the Sharia to align it with the pilgrim standards of law (Borroni & Seghesio, 2014).

This framework can be viewed as an unconventional kind of cross breed framework, for it isn't comprised of, at least two, political parts, yet it is a blended framework that worries explicitly the abstract circle of individual issues. Beginning from the mid nineteenth century, British appointed authorities drew the Sharia nearer to the British custom, yet methods for general Common law standards to arbitrate the current case. Accordingly, the administrative arrangement relieved the extraordinary divergences inside the Muslim people group, by completely supplanting portions of the Sharia Act (Borroni, & Seghesio, 2014).



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