that public institutions lent moneys to the respondent company and the single judge held that since a forum to consider the grievances made out is provided under the Companies Act, resort to Article 226 should be discouraged. In appeal, the Division Bench entertained the appeal on the ground that the acts of the company involving issue held as follows:

> The only ground for intervention appears to be public interest. We fail to see what public interest is involved in disputes of the kind referred to in the writ petition. They basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company. Its shareholding is very closely held. The only other factor referred to in the writ petition to invoke the doctrine of so called public interest is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose. We are distressed to find that the well reasoned judgment of the single Judge was interfered with in a casual manner. The impugned judgment rests on fragile foundations and reads more like an *ipse dixit*.
>
> The appeal was allowed with costs.

7. It is submitted that these judgements discussed reveal that the courts are very cautious in granting any relief on the concept of public interest. If any relief should be granted, the issue must involve a common benefit, interest, the well-being of the society or the particular class of people, who form the subject matter of public interest must show some concern, pecuniary or otherwise.

Thus, the Court/CLB grants reliefs based on this concept only on established facts affecting public interest but not on vague analogies.

IS MUSLIM PERSONAL LAW SUSCEPTIBLE TO MODERN WORLD REFORMS ?

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In the recent past, a great deal of controversy has exploded all over the world about the ways to be adopted to bring in certain reforms in Muslim Personal Law. Modernisation of the Muslim Personal Law has been the subject of a lively debate between the pro-reform progressive sections and the anti-reform traditional forces. This sensitized issue refrain the Governments from legislating on the Muslim Personal Law areas on the ground of political exigency and democratic viability. To analyse the various permissible means and devices; that are not contrary to the basic teachings of Islam as adapted by some progressive states both secular and Islamic; it becomes inevitable to mention the four sources of Islamic Law in brief.

Sources of Islamic Law :

According to the fundamentals of the science of Islamic jurisprudence, there are four sources from which the whole Islamic law is derived. The *Quran*, the *Sunna*,

Ijma and *Qiyas* are recognised at present day as the foundation of Islamic law [*Fazal Karim v. Moula Bux, (1891) 18 IA 59*]. The first two sources are recognised as absolute arguments, whereas the rest are obtained by exercise of reason [*Syed Ahmed Akbarabadi, 'How to Effect Changes in Islamic Law' in Tahir Mahmood (Ed.), Islamic Law in Modern India, (1972), p. 114*].

(i) The Quran [*The Ippissima Verba of God, or the Verba die as revealed through Prophet*] consists of 114 small and big chapters. As stated by the Quran itself, the verses are of two kinds. They are, (a) verses which are fundamental and of established and, as such, foundation of the book, and (b) the verses which bear allegorical meaning. This implies that interpretation of the verses of the second category may be different from man to man, but no interpretation should be contrary to what has been laid down in the fundamental verses.

(ii) The *Sunna* is the beaten path; a combination of traditional customary law and the recorded *Hadiths* or sayings of the Prophet with respect to traditions or practices which were required recommended, permitted, disapproved or forbidden [*Stephen Hicks, C. "The Fuqaha and Islamic Law", 30 A.J.C.L., (1980) p. 1 at 4*]. The *Sunna* is indirect revelation and its main task is to explain and elucidate, what has been said in the *Quran*. No *Sunna* will be acceptable which, in content or spirit, stands opposed to a plain statement of the *Quran.*

(iii) The *ijma* are the consensus of opinion of the Muslim nation as to the expressions of the law issued by the *ulema* and *fugaha* [*Scholars and Jurists or Legal Scholars*] according to the general principles of the *Quran* and *Sunna*. The requirement for *ijma* vary from country to country and among the four schools. [*The Hanafi School, The Maliki School, The Shafi School and the Hanbali School; see Paras Diwan, Muslim Law in Modern India, (1977) at pp. 19-23*].

(iv) *Qiyas* means the analogical deduction from the above primary sources represents the last source of Islamic law.

According to *Shafi* school analogy (*Qiyas*) is of two kinds :

(a) if the case in question is similar to the original meaning of the precedent, and

(b) if the case is similar to several precedents, then one which is most closely resembled the case at hand is chosen.

Analogy and Consensus : (Method of Interpretation)

While preforming the task of interpreting and applying the fundamental sources (the *Quran* and the *Sunna*) or Islamic law, the jurists-theologians developed the later two sources of the law. Consensus was the agreement of Muslim jurists on any particular principle of law that could be based on the two fundamental sources. A principle found in the Quran or the Sunna or settled by *ijma*, applicable to a particular case could be extended by the jurists to another similar case, or its opposite applied in contrary condition through analogical deduction. [*Mahamassani, 'Philosophy of Jurisprudence in Islam', translated by Farhat J. Ziadeh (1961) pp. 15-35*].

The method of analogy, when applied to divergent cases by several jurists gave rise to three other principles of legislation [*Tahir Mahmood (Ed.), Family Law Reforms in the Muslim World', (1972) p. 10*]. First is

istihsan which means juristic preference, which permitted the setting aside of analogy in favour of a principle based on the *Quran*, or the Sunna or settled by juristic consensus. Second, *al masalih al mursala* was tantamount to the modern doctrine of public interest. And the third, *isdid lal*, stood for the application of logic in the formulation of legal principles.

In the Quran there are only some eighty verses dealing with law as such. The understanding of the *Quranic* law give rise to a scholarly application of the *Shariah* and laid foundations of permanent edifice of Islamic law. The jurists recovered the traditions and traced their authenticity and in the process made it fit to their times. There were doctrinal differences of details in single law and the compilations. This division of interpretation was tolerated within the authority of the law [*Coulson, N., 'A History of Islamic Law' (1978), p.107*]. The rule of *pacta sunt servanda* is one of the fundamental principles of Islamic law. [*Joseph Schacht, 'Islamic Law in Contemporary States' 8 AJCL 133 at p.139 (1959)*].

Developments in Muslim Legal System:

Details of Muslim legal system were worked out by the jurist-theologians. This legal system developed by Arab jurists was adopted throughout the length and breadth of the Muslim world.

The intercontinental expansion of the Ottoman Empire in Asia, Africa and Europe and the influence of Mughals in the Indian sub-continent strengthened the prevalency of Islamic laws in all these parts of the globe. The repercussions of the two Worlds Wars, fall of the Ottoman Empire and abolition of the Caliphate, in Turkey, Colonial expansion of the Great Britain and France, the social reform movements in Egypt, Iran and Indonesia, independence and partition of the Indian sub-continent and numerous other events of history led to revolutionary changes in the jurisdiction and scope of the traditional law of Islam. By the end of the medieval ages, the Islamic legal system stood the stress and strain of political vicissitudes and socio-economic upheavals in several parts of the world. History then underwent a momentous change. Subject after subject was gradually excluded from the purview of the traditional Islamic law in several parts of the Muslim world. Eventually the scope of Islamic law was considerably narrowed down. Modern codes of civil and criminal laws were enacted in many countries, inhabited or ruled by Muslims. Consequently, there are only a few countries at present, *e.g.*, Saudi Arabia, (*Article 506 : The Fundamental Law of the Hejaz, 1926*) where all civil, criminal and revenue laws, as originally developed by the Muslim jurists during the early days of Islam, have survived.

The status of Islamic law, thus stands relegated, except in a few countries, to a law of personal status (*ahwal al-shakhsiya*) or a law of family rights (*huquq al-alia)* [*While the first term is used in Syria, Iraq, Tunisia, Morocco and Algeria, the second is prevalent in Jordan and Lebanon*]. Both these terms, as used in different parts of the Muslim world, cover matters including marriage, divorce, rights and obligations relating to maintenance, legitimacy, guardianship and intestate and testamentary succession and can be regarded as substitutes for family law [*In India and Pakistan, those parts of Islamic law, including gifts, wakfs and pre-emption, which have remained applicable to Muslims, are called Muslim Personal Law*].

Muslim family law in the Modern World:

No uniform answer is possible, to the question whether Muslims belonging to various nations continue to be governed by

the Islamic family law. In a few countries Islamic law has been totally wiped out (for *e.g.,* Turkey). On the contrary, a large number of countries have preserved its various traditional forms (*e.g.,* Saudi Arabia). [*Saudi Arabia, the two Yemens, Behrain and Kuwait*]. Whereas some of them have recently reformed many of its principles [*For example Egypt, Syria, Iran, India and Pakistan*] "If each sect has its own rule according to Mohammedan Law" say their Lordships of Privy Council [*Rajah Deedar Hussein v. Ranee Zuhooroon Nisa,* (1841) 2 M.I.A. 441 at 447] "that rule should be followed with respect of that sect". Every sect does possess its own books, and the books of another sect are generally not recognised as of binding authority [*Akbarally Adamji Peerbhoy v. Mahomedally Adamji Peerbhoy,* AIR 1933 Bom. 551].

According to the family law presently followed by Muslims of various countries; it may be classified into three different groups.

A. The Countries where Traditional Family Law is followed :

The traditional or classical family law of Islam remains unchanged and uncodified till the present day in the prominent centres in the Arab world, Asia [*Afghanistan and the Maldive Sultanate*] and Africa [*Chad, the Gambia, Guinea, Mali, Mauritania, Niger, Senegal and Somalia*]. And in Europe, Greece and Yugoslavia are under a treaty obligation to take "all necessary measures in relation to Moslems to enable questions of family law personal status to be regulated in accordance with Moslem usage" [*Article 14: 'The Treaty of Severes' signed by Greece in 1920. Article 10: 'The Minorities Treaty' signed by Yogoslavia in the same year.*] In these countries Islam is the predominant or State religion, so naturally they could preserve the various traditional forms of uncodified Muslim law as locally followed. In Thailand and Burma, where Muslims are in Minority are exempted from certain reforms introduced into their family law and allowed to follow their traditional family law. [*Supra Note 8*]

B. The Countries where secular Family Law is followed :

In a few countries Muslims are now governed by the local general enactments relating to family law and succession, which they share with other local citizens professing different religions. These are the countries where Islamic Family Law has been completely abandoned and replaced by the modern statute law applicable to all citizens irrespective of their religion. In most of them, revolutions significantly affecting religious life of the citizens have taken place in the recent past. In Turkey and Albania, where Islamic law has completely abandoned and where civil codes based on certain Western laws were adopted [*The source of Turkish Civil Code, 1926, was the Civil Code of Switzerland, 1912 as adopted in certain matters to Islamic principles*].

In Zanzibar, a constituent unit in Tanzania, a uniform marriage law has been enacted and in Kenya a new law of marriage has been adopted. The Muslim law of marriage in these countries, stands replaced by new codified laws, whereas other part of Islamic law continue to be applicable to the local Muslim citizens. However, the newly enacted marriage laws of these countries do not conflict with the basic principles of Islamic Family law. In Philippines and the Soviet Union [*In the six Central Asian Republics of the Soviet Union the Islamic law was gradually abandoned after the Bolshevik Revolution of 1917*] people now are governed by secular family law having general application.

C. Countries which have reformed Islamic Family Law :

Based on locally prevalent schools of Muslim law, some substantive or regulatory reforms or both, have been introduced into Muslim Family law during the recent years. These reforms are made through the adaptation and enforcement of the principles and based on the juristic opinions.

In India, some reforms relating to married women's right to dissolution of marriage by the Court were introduced. [*Section 2 of Dissolution of Muslim Marriages Act, 1939*] In most of these countries, the reforms have been achieved partly by amending the substantive law [*Reforms of these nature were first introduced in Turkey in 1917, Lebenon in 1917, Egypt between 1920 and 1940, which were followed by Sudan, Jordan, Syria, Morocco, Algeria, Iraq and Iran*]. But in some countries many aspects of family law, for instance, divorce by husband, have been reformed by imposing certain regulatory measures leaving the substantive principles intact [IN PAKISTAN THE NEWLY ENFORCED REFORMS ARE OF REGULATORY NATURE].

In some countries of the South and South East Asia [*Bruini, Malaysia, Indonesia, Singapore and Ceylon*], the family law of Muslims has been substantially reformed. This reformed comprehensive law do not affect the substantive provisions of the Muslim family law as locally applied. They, however, include several regulatory measures aimed at preventing the misuse of certain institutions, *viz*., polygamy and divorce. There were enactments dealing with inheritance and will [*The Egyptian Law No. 77 of 1943*] and reforms relating to marriage and divorce differ from country to country [*There is difference in Family Law of Lebnon, Jordan, Algeria, Iran, Malaysia, Brunei, Indonesia and Ceylon*].

Reforms in Muslim Personal (Shariat) Law :

According to Anderson-

> "These reforms in the sphere of family law provide at once a mirror of social change in the Muslim World; a meaning of the progress of modernism in Islam where law and theology always go hand in hand; and a fascinating example of how a nominally immutable law can in fact be modified in practice. [*Anderson, J.N.D., 'The significance of Islamic Law in the world today', 9 A.J.C.L. 187 at p.191 (1960)*].

How and on what juristic basis, these reforms effected? This faced the reformers with fundamental problems of considerable intricacy because of the conflicting interests, in the sphere of family law, putting Turkey on one hand the *Sharia* on the other. They solved it by reasoning four main expedient devices.

1. The First Device :

By adopting procedural device the reforms could deny attempt to change the substantive law and yet profoundly affect its application. It consisted in decrease and enactments which precluded the Courts from entertaining litigation in certain specified circumstances. An admirable example of this device is provided by the measures adopted in Egypt [*Law No. 56 of 1928, AT the time of marriage, men and women must have completed their eighteenth and sixteenth year of age respectively. A marriage in violation of this rule, although not invalid per se, will not be registered*] to restrict the evils of child marriage. Such a marriage will not be recognised by the Court for the purpose of granting any relief, except in a claim relating to legitimacy of issues [*Article : 99, Egyptian Civil Code, 1931*].

2. The Second Device :

This is based on the maxim that the 'Ruler not only has the right to confine, but also to define, the jurisdiction of his Courts and thus direct whether to follow the

dominant opinion in their own school of law in every particular, or to apply such other reputable opinion as may seen more conducive to the public welfare [*Supra Note 30*]. As orthodox Islam has divided into four distinct schools each differing in innumerable points from the other, each acknowledging the orthodoxy of all four. Under such circumstances the individual Muslim has enjoyed a certain latitude as to which of the conflicting opinion of the past he should follow. But the Judges and juri-consults were denied any corresponding freedom in their public capacity and have been regarded as 'bound to follow' the dominant view of their particular school [*Joseph Schacht, 'An Introduction to Islamic Law' (1964) pp. 28 and 57*].

As a result, the Sharia law as it is applied by the Courts has been extensively incorporated in a series of legislative enactments. These enactments based not on the dominant opinion of any single school, but rather on the electic choice of justice opinions whichever is most suited to modern life. The majority of the reforms in Muslim family law found their juristic jurisdiction in this electic choice.

3. The Third Device :

This device was to go back to the original sources of the law and give a new interpretation - or at least a new application. This resulted in a new approach to the 'verse of polygamy' and one of the verses governing divorce in the Quran, in countries like Syria [*Articles 17 and 85 to 112; The Syrian Law of Personal Status, 1953*]. Tunisia [*Articles 18 and 31(a) read with Article 40; The Tunisian Code of Personal Status, 1956*], and Morocco. [*Articles 30(1) and (2) and 48 to 60*; *The Moroccan Code of Personal Status, 1958*]. In these countries an attempt was made to protect a wife against her husband's unilateral right of divorce. The Courts were empowered to provide with judicial compensation to the divorced wife. This provision rests on the principle of judicial enforcement to the Quranic command. Earlier much restricted interpretations were given by *Hanafis*.

4. The Fourth Device :

This device was the promulgation of administrative regulations [*Regulations were issued in Egypt regarding the registration of marriages and conclusion of marriage contract; Law No. 56 of 1923*], which might be regarded as additional, but not essentially contrary to the sacred law. These administrative regulations were not limited to the category of those matters which were "legally indifferent" according to the sacred law. On the contrary, act, omission, or conditions which the Sharia might be said to have enjoined or prohibited, but which were previously left to the sanction of the religion were now made incumbent by temporal Islamic legislation [*Supra Note 10 at p.147 : 'Temporal Islamic Legislations' means to pervade modern secular laws on matters which have long since laid outside the scope of traditional Islamic law with an Islamic spirit*] which the Courts would enforce.

The reforms introduced in the recent past, in the Islamic Family Law of various countries are based on one or other juristic opinion available in any of the schools of Islamic law. Only in exceptional cases different methods of reforms adopted. The techniques [*Supra Note 9, pp. 182-211*] through which these reforms have been so far achieved are:

1. Takhayyur :

This technique of reforms has been used in three different forms, namely :

(a) an electic choice between the corresponding legal principles of the various schools of Muslim law;

(b) enforcement of one of the conflicting solutions provided by various jurists

to controversial cases; in suppression of all other solutions; and

(c) preference of an absolute or lesser known opinion over a generally accepted principle.

2. Talfiq :

This means evolution of a new legal rule by combining two conflicting juristic views on the same problem or by blending certain parts of two or more such views.

3. Siyasa Shriya :

Under this principle the State can abandon a principle of the traditional law not by express suppression but by directing its Courts that they shall not entertain any case based on such a principle. In the course of time such principle becomes absolute.

4. Ijtihad :

Under the doctrine of Ijtihad the settled legal principles may be re-interpreted by the jurists in accordance with the changed social conditions in any country at any point of time.

Conclusion :

Evaluation of this study clearly shows that in many countries the Muslim Family Law has been either totally or partly changed in accordance with the spirit of age. This also shows that there is a wide scope to reform those suitable laws by adopting one or other techniques.

Lastly, it is to be noted that any law is subject to change in accordance with time and changing conditions of society, and Muslim law is not an exception. The history of Islamic jurisprudence and the practice of theologians show that Islamic law has always been flexible and adaptable, in order to meet the legitimate and genuine requirements of the people at a given time and under specific conditions and circumstances. No one can say that change of every kind would be acceptable to any personal law. For the purpose of reconsideration of any principle of Muslim law, one has to make sure that:

(a) the change in issue is not contrary to the basic teachings of Islam,

(b) the change is really in the interest of the society, leading to its welfare, happiness and prosperity, and

(c) the change will have no evil repercussions in the near or distant future.

If these three principles are satisfied, one can proceed to effect the required change.

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