

Issues/Discussion Forum

The AIMPLB is Again Putting Muslims to Shame; This Time by Defending Nikah, Halala and Polygamy

- *Arshad Alam*

On a petition seeking invalidation of polygamy and *Nikah Halala*, the All India Muslim Personal Law Board sought to implead itself and argued that the petition be rejected. We shall come to the grounds on which the Board wants the petition to be quashed.

Certainly, there can be ulterior motives behind the petition. Also, since the petitioner is not from within the community, questions can be raised as to why the said petitioner is not campaigning for women's rights within his own community, which are also highly unequal.

However, it is equally pertinent to ask as to who the AIMPLB is to represent the 'interests' of Muslim community. Why does the Board feel that it is its duty to represent Indian Muslims? Has the Muslim community ever elected them to this responsible position? Do they even have the mandate to speak on behalf of Muslim community which constitutes a diverse array of opinions and even religious orientations? Do they have the right to speak on behalf of thousands of Muslim women and men who want to reform such personal law within their community? Certainly not. Then why is that the highest court of this country entertains them as if they are the custodians of Indian Muslims?

The AIMPLB is making two separate sets of objections to the current petition. Firstly, it is arguing that practices like polygamy and *Nikah Halala* are 'cultural' practices and as such they need to be protected because the constitution of India invests heavily on maintaining religious and cultural diversity. This is a clever piece of argument, but, as with many organizations quoting the constitution these days, does not sound convincing. Certainly the constitution does talk of maintaining religious, cultural and linguistic diversity. However, the constitution also talks of fundamental rights. When the AIMPLB talks of rights, it always talks of the rights of community, not that of the individual. The constitution on the other hand, talks of balancing the rights of the community with the individual.

But within the worldview of the AIMPLB, individual rights certainly do not exist. So if a Muslim woman objects to the practice of *Nikah Halala*, then she will be asked to shut up because the rights of the community (personal laws) are more important than her individual rights as a woman and as a citizen of this country. This is certainly a delicate legal balance but for those women who are trying to change the existing balance of power within the community, the answer has been clear since many years: till the time individual rights do not get primacy over community rights, no real reforms will happen within the community. The value of diversity certainly needs to be lauded but should this necessarily trump the rights of individual women?

It should also be pointed out that AIMPLB is conflating religion with culture. For convenience, it can be argued that all Muslims follow the same religion. But then we all know that there are fundamental difference in terms of theology and even the idea of the prophetic mission within Muslims themselves.

These differences are not just textual and polemical, but get into our very relationship towards fellow Muslims. If the religion itself is not monolithic, then how can culture be one and the same for all Indian Muslims? This is certainly a myth propagated by the AIMPLB wherein they are trying to argue that all Muslims follow the same culture. This is sociological nonsense. But then trying to fuse religion and culture is perhaps a bigger nonsense.

In making practices like *Nikah Halala* and polygamy a cultural issue, they are in fact arguing that all Muslims indulge in such practices. Nothing can be farther from truth and in arguing so, the Board is caricaturing Muslims as backward and regressive people. This certainly creates a perception that most Muslim indulge in such practices. The reality, on the other hand is that instances of polygamy are more within the Hindu community. Thanks to Muslim custodians like AIMPLB, we do not need right wing Hindus to paint us as regressive and uncivilized people. The Board is doing this task remarkably well.

The second argument which the AIMPLB is making is that the state has no business in pronouncing judgments on matters of personal law. It has argued that personal laws do not fall within the definition of 'law' because personal laws are based on scriptural sources, and as such they do not derive their legitimacy from secular legal jurisprudence. This is actually the repeat of the argument made during the Shah Bano affair. It seems that the Board has not learnt any lessons. If it is argued that Indian Muslims will not be governed by state's secular laws, then this certainly will antagonise other communities who have to follow the state law

in both secular and religious matters. This kind of Muslim exceptionalism has already proved to be counter-productive to the larger cause of Muslims in India.

It must also be pointed out that in matters of criminal law, the AIMPLB has no issue in accepting the secular law. But when it comes to issues wherein women and their rights are concerned, then they want primacy of religious laws over secular laws. This duplicity must be called out. But more importantly, what also needs to be said is that Muslim personal law is not divine and certainly only a small portion of it can be traced back to the scriptures. In large measure, the Sharia is man-made and has evolved through centuries of rational application of human mind. If the Sharia is indeed divine, one fails to understand how so many Muslim countries have been modifying it from time to time.

It needs to be said unequivocally that the practice of *Nikah Halala* is abhorrent. Muslim women and men have been raising their voices against this practice since many decades now. There are documented cases of how women have been subjugated through this practice, not just in India but even in the South Asian Muslim communities abroad. Similarly, Muslim women have been fighting against the practice of polygamy. Way back in the early 20th century, the All India Muslim Women's Conference, drafted a model Nikahnama and inserted therein a clause that if the husband takes another wife, then the extant marriage will be immediately annulled. More recently, the Bhartiya Muslim Mahila Andolan, has been organizing Muslim women and amplifying the hitherto suppressed voices of Muslim women. A sensitive Muslim organization would have listened to these voices and would have become the beacon of reform. However, we should not have any hopes of this kind from the AIMPLB.

(Arshad Alam is a columnist with NewAgeIslam.com)
