

The Voices Within: Muslim women and Personal Law

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Abstract

Muslim Personal Law in India has been a contested topic of debate and has been discussed in the public domain for a long time. All India Muslim Personal Law Board has been a key stakeholder in this conversation and has been in dialogue with the State, whether Judiciary or the Legislature. In the public debate, many Muslim Intellectuals have also joined the debate but Muslim women are missing in all these conversations. This paper argues that it is important that the voices of Muslim women are heard in this debate. Muslim women have been trying to carve out a space for themselves in this male-dominated discourse. The present paper tries to explore the role of Muslim women in the debate on Personal Law in India.

Keywords: Muslim women, Personal Law, Islam, Gender

Introduction

The way in which Muslim law is practised in India leaves Muslim women without many of their legal rights. The application of Muslim law in India is ambiguous and obscure, to say the least. There is no codified law that deals with matters of divorce, polygamy, alimony, custody of children, right to property, etc. for Muslim women. This leaves them at the disposal of ‘patriarchal’ religious clergy, who more often than not rule in favour of Muslim men, in the name of honour of the community. The debate on personal law needs to shift from the terrain of courts, legislatures, religious forums and clerics to the women themselves, who suffer the wrath of these laws. It is no more supposed to be an issue of honour for the Muslims to preserve the personal laws in the name of religious protection. The women no longer listen from behind the ‘*purdah*’, a veil that separates them from the public space literally and figuratively, about the issues that affect their life, marriage, children, their right to property and inheritance. They are coming out of this shell and speaking for themselves, on their own. Their outlooks on laws that regulate their life needs to be heard and to be echoed in the public.

Justin Jones (2010) approaches the subject of Muslim Personal Law from the viewpoint of purely as an Inner-Muslim dialogue. Muslim Personal Law, in effect, has become a platform for ongoing dispute and contestation within Indian Islam itself. Taking this debate forward, in this paper, I will attempt to emphasize the voice of women who are trying to engage with the state, the religious clergy and within themselves, on the issue of personal laws, and focus on these voices within the community. It will contemplate the organizations that are working with the women, primarily focusing on the Bhartiya Muslim Mahila Andolan (BMMA), formed in 2007 in Mumbai, working with Muslim women in India across 15 states.

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State of Muslim Personal Law in India

Muslim Personal Law is the existing legal system in India that allows Muslims to be directed by a version of religious law in personal and family matters, which can be administered in family courts, in this case, *Shariah* courts, *Jamaats*, *qazi*, etc. Muslim personal law, as it exists in India is piecemeal and incompetent. There has not been any attempt to codify it in India, as it has happened in other Islamic countries. Muslim clerics are hesitant to take any step towards codification of their Personal law in India as they believe it to be divine. We have enough evidence to prove that Muslim personal law in India is not a divine law that they are trying to preserve. Though based on Islamic texts, it is a colonial Anglo-Mohammadan law (Engineer 2009) practised before independence, which has been altered by many judicial precedents and legislative enactments, ironically initiated by the *ulemas*, Muslim scholars recognized as having knowledge of Islamic law. (Solanki 2011)

Vrinda Narain (2001) has explained, in a historical overview, how the development of personal law in India has been about demarcating the political identity of the community, rather than addressing the problem of Muslim women. In the name of personal law for Muslims, there are three pieces of legislation:

The Shariat Application Act, 1937: It was passed by the colonial British government to govern Muslims under a unified Shariat law, as against many different customary laws prevailing among Muslims in India which were creating problems for the administrative efficiency of the British government. The act ruled that Muslims would be governed by their Personal law, but it did not state what the content of personal law is, or would be. (Qazi, Sharma 2016) This ambiguity leaves it open to interpretation by different sects among Muslims and their subdivisions. So, a Sunni cleric in Delhi can have a different interpretation of Shariat than a Shia cleric in Delhi, or can also be different than a Sunni cleric in West Bengal. The other problem is the existence of divergence of customary practices across Muslim communities in India, due to non-uniform diffusion and spread of Islam in India, and the merging of customary Hindu practices that were retained by communities after conversion. (Ibid)

The Dissolution of Muslim Marriages Act, 1939: This act was passed with the objective “to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie”. When we look at the background of enactment of this act, it was the frequent incidence of the conversion of Muslim women to other religions, especially Christianity for seeking a divorce that led to the enactment of this law. The *Ulemas* issued a fatwa supporting the non-dissolution of marriage because of the wife’s apostasy. (Hussain 2015)

As Muslim women had no recourse to divorce under Muslim law, to get out of a rotten marriage, they used to convert to Christianity to make the marriage void. The courts in British India had held in several cases that the apostasy of a married Muslim woman dissolves her marriage. To reverse this trend of conversion to Christianity among Muslim women, and keep them in the Islamic fold, Maulana Ashraf Ali Thanvi issued a treatise entitled *Al-hilat un-Najiza li'l-Halitat al-'Ajiza* (The Successful Legal Stratagem for Helpless Wives) in 1933 to “provide a more direct route of salvation for women who become so desperate and distraught that they are forced to leave Islam in order to escape their marital situations” (Khan 2008)

A bill was introduced in the central assembly in 1936, based on these inputs and was passed in 1939 as ‘The Dissolution of Muslim Marriages Act, 1939’. The act lays down grounds on which a Muslim woman can seek divorce from her husband. The Act, though a good beginning, was insufficient as it only dealt with divorce and was indistinct on the question of maintenance, inheritance, etc. Sabiha Husain (2015) assesses how these two acts were seen more of maintaining community identity and showing numerical strength for political gains than protecting and rights of Muslim women. She finds that the question of community/religious identity overrode the question of gender identity and women’s rights. Though both the Acts were apparently in the interests of women, they retained male privilege in matters like divorce and inheritance.

The Muslim Women (Protection of Rights on Divorce) Act, 1986: The act was enacted by the Rajiv Gandhi government, in response to the supreme court’s judgement in favour of Shah Bano, a woman who had filed a petition for seeking maintenance from her husband, under section 125 of CrPC which allows for maintenance for wives. The Supreme court decided in her favour which led to protest by Muslim clerics, who believed it as interference in their religion. The government responded by enacting this law. It was passed with the aim “to protect the rights of Muslim women who have been divorced by, or have obtained a divorce from their husbands” by exempting them from the purview of Section 125 CrPC, which deals with the question of maintenance of divorced women, irrespective of religion. It stated that a husband is entitled to pay maintenance to his wife during the period of her *iddat*, the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man.

In the absence of a codified personal for law Muslims, various customary laws and rituals are being practised among the Muslims, that do not align with either the Quranic injunctions or the constitutional ethos. There are some practices, which are more demeaning and insulting for Muslim women than any other, those are the practice of triple *talaq* and the *halala*.

Since January 2007, in the course of their work, BMMA has come across thousands of cases of oral *talaq*, which has rendered women deprived, with nothing in sight. They have

been hearing numerous accounts of “women being rendered homeless overnight along with their children as their husbands chose to unilaterally say *talaq talaq talaq*” in one go and part with their wives. What is more bewildering is the ease with which this practice is followed by Muslim men, and *talaq* being communicated through message, email or relatives, and sometimes even the wife is informed by the local *jamat* (group congregation) or the *qazi* (judge ruling in accordance with Islamic religious law, having jurisdiction over all legal matters involving Muslims), that she has been divorced.

In most of these cases, the husband is informed by an understanding of Islam which allows him to pronounce oral *talaq*, a form of divorce by the husband's enunciation of the word ‘talaq’ thrice, this constituting a formal repudiation of his wife, which is supposed by common people to be given in Islam. As per the Quranic tenets, there is a basis for this custom, but there is a provision for 90 days of discussion, dialogue and arbitration before *talaq* is validated. (Soman, Niaz 2015b)

Noor Zaheer (2015), in her book “Denied by Allah” has penned the grievances of women who have suffered the brunt of oral *talaq*, combined with the evil practice of *halala*, when the husband realises his mistake and wants to get back with his wife. It is a practice where a woman is made to consummate *nikah*, i.e. marriage with another man to go back to her former husband. Against this backdrop, there were several attempts, by Muslim women’s organizations like All India Muslim Women’s Personal Law Board (AIMWPLB) and BMMA, to petition the state to codify the personal law for Muslims. AIMWPLB sent a letter to the President to initiate a law providing rights to Muslim women, based on Shariat. (Qazi, Sharma 2016)

BMMA went a step ahead and created a draft titled “The Muslim Marriage and Divorce Act” in 2014 that addressed issues concerning the age of marriage, *Mehr*, maintenance, custody of children and sought a total ban on polygamy, oral, unilateral and triple divorce. It was circulated to the National Commission for Women, the National Human Rights Commission, the National Minorities Commission and other stakeholders in the state. BMMA believes that the absence of a codified personal law is detrimental to the Muslim woman, who is denied the rights that she has been granted by Quran, as well as the constitutional rights provided by the state. (Soman, Niaz 2015a; Qazi, Sharma 2016).

Muslim women are apprehensive of local *Shariah* courts, but many of them approach them via their male relatives. As for the family courts and other legal structures of the state, the time and money required to approach them are usually redundant with the Muslim women, most of them being financially dependent on their male counterparts. Poor economic situation and lack of resources required to approach the courts, hinder the process of justice for them. (Soman, Niaz 2015a) As per the survey done by BMMA, Muslim women want the state to intervene and the *qazis* to function within the structures of the state to ensure justice to women.

The codification of Muslim personal law is to be seen as the step towards gender justice and equality for Muslim women in India. Unless there is a codification of the personal law and is passed by the parliament, there are meant to be different interpretations that will continue to be against the welfare of Muslim women.

Muslim women on Personal Law

The issue of personal law and the rights of Muslim women had become a ball game between the state and the All India Muslim Personal Law Board (AIMPLB), a body comprising of *ulemas* representing various schools of thought which lobbies with the state to protect Muslim personal law. The lack of Muslim women's voices during the Shah Bano debate highlighted the absence of these women in the larger women's movement. (Kirmani 2009a) The situation is gradually changing with the rise of groups like BMMA and other Muslim-women led networks in the urban centres across the country, filling the void of the alternative voice countering the hegemony of AIMPLB and capturing national attention by participating in the debates on the rights of Muslim women.

The Muslim women have been identified with the notion of purdah, polygamy and personal laws, who were seen as flagbearers of honour of the community, representing oppressed, victimized and voiceless Muslim women. (Kirmani 2009a) They were seen as a homogenous category as a minority within a minority. The Hindu right, in their clamour for the UCC, presents Muslim women as passive victims. Varghese (2015) demonstrates how Shah Bano was constructed as a victimized woman who needs to be saved, by the Bhartiya Janata Party(BJP) and the Muslim clergy. BJP, now the ruling party, has always had an antagonistic relationship with the Muslim community.

She states how Shah Bano, who approached the court to get justice, had an agency of her own, as a citizen of the country, as a wife who was wronged by her husband and a mother responsible for her children. The Muslim clergy constructed her as a Muslim woman, vanishing her other identities, who is seen as an embodiment of Islamic values. They were successful in their attempt, as we see in the letter where she rejects the Supreme Court's judgement in her favour, by identifying as a Muslim woman who could not accept anything contrary to Islamic laws. AIMPLB and larger Muslim clergy were successful in "saving" her, and also their religion by controlling her. The BJP, in their project of "one nation", presented Shah Bano as a victim, who needs to be saved and her community cannot do so. This was a chance for the BJP to taint the Muslim community and prove that they can be a better saviour of Muslim women, than them. She was reduced as a mere pawn in the hands of BJP and AIMPLB, as just a victim, and all her agency was taken away.

The Muslim women are still seen by the state and the representatives of the community as a category of women who needs to be protected. Within this narrative of protection offered by the state as well as the AIMPLB and other religious authorities, there is no space for the agency of these women themselves. These women, since the last decade,

have started to deconstruct the category through raising their voice, collectively as well as individually, as parts of networks and organizations. They have posed a challenge to the construct of oppressed Muslim women, articulating themselves and participating in the debates concerning their issues (Kirmani 2011). They have started to create an alternative space for themselves, formulating an alternative voice against the unanimous reign of AIMPLB on the question of personal law, as well as working on wider issues of education, employment, marginalization, discrimination and communal violence. They have broken the myth of passive victimhood of Muslim women and have presented themselves as entities eager to capture space and power within the political spectrum (Kirmani 2009b).

BMMA has tried to create a mechanism for gender justice in family and marriage, filling the void of legal vacuum for Muslim women within the community. They have also formulated a draft family law and a model *Nikahnama*, an enforceable written marriage contract wherein the consent of the parties and other terms and conditions of marriage are stipulated and signed by both parties, *qazi* as well as four witnesses, two from each party of either sex, with gender just contracts. But their most important contribution is establishing women's *Shariah* courts in a few states where the organization is active. The *Shariah* courts to date were controlled by male clergy and were biased towards patriarchal interests. BMMA established *Shariah* courts dealing with issues of marital discord and divorce, as well as property-related issues. They aim to deliver justice to Muslim women, without cherishing any bias against men, as per the equal rights provided by the Quran.

Moving a step ahead, they announced the creation of “Women Qazi Training Institute”, a centre for Islamic learning and theology. As part of the curriculum for women *qazis*, a batch of 30 women started their training in Jaipur in February 2016, which will include learnings on theology, history of Islam, Constitution of India, principles and values of Islam, schools of jurisprudence etc. The instances of triple *talaq* and *halal* are happening due to ignorance about *Quranic* injunctions among the people, and its validation by a majority of *qazis* in India, who are male. These *qazis* are not only authorised to solemnise marriages but also to validate divorce. Coming into the fore of women *qazis* would prove to be a stumbling block for these practices, who will not validate such practices, which are not substantiated by Quran.

By doing so, they have attacked and challenged the basis of male domination in personal law, and created a space for themselves within the male bastion of theology, and are now competent enough to interpret the teachings of the Quran, in a women-friendly and just manner. They have become a part of the intensifying movement of Islamic feminism across the globe, who are trying to interpret religion from the perspective of women and trying to reclaim their own space within the religious domain.

The Way Ahead

Since the last two decades, there has been an upsurge of religious feminists in different parts of the globe. There has been a rise of Islamic feminists all over, partially due to an increase in the number of women scholars of religion and in response to stereotyping by the west and patriarchal distortion within religion. It has helped in expanding the space of debate in Islam and also provided practical ways of securing rights for women (Kirmani 2011).

Sylvia Vatuk (2008) describes an 'Islamic feminist' movement in India, dedicated to the struggle for achieving gender equity within the religious domain referring to the authority of the Quran, under the aegis of Muslim personal law. They demand rights, that they believe are enshrined in the Quran for them, that is often denied to them. They have vociferously accused the religious clergy of interpreting Quran in light of patriarchal traditions and are continuously asserting their right to read the Quran for themselves and interpret it through a feminist lens. They are seen as part of the tendency among Muslim women all over the world, where they are studying the canonical texts of their religion seriously and challenging the patriarchal interpretation of Islamic laws, and questioning the production of Islamic knowledge throughout history. (Sikand 2005)

There are other groups, within Muslim women and in the wider women's movement, that believe in gender-just laws within the secular principles and wants to have these laws for all women, irrespective of religious identity. But the question of religion is primary to a Muslim woman. They don't see religion as constraining but as a marker of their identity (Hashim 1999). If we are to take her out of this identity, out of her religious customs, she will lose her sense of belonging and will not be able to identify with laws that are devoid of religious basis. It is important to understand that a neutral gender-just law for all women is ideal, and should be seen as a long-term goal. It may or may not be achieved in future. But we need to move forward. And the first step towards that ideal would be to have rights for these women, within their religious fold, through a progressive and feministic interpretation of Islamic laws. The question is how do we assimilate Muslim women's issues into the broader framework of rights discourse and, at the same time, safeguard their religious and cultural identity provided under the Constitution (Hussain 2015).

Many would not agree about taking recourse to religious texts which are believed to be inherently discriminatory to women and are seen as responsible for the deteriorated condition of women. But, at least in the case of the Quran, some rights have been provided for women. Whereas the other sources of Islamic law, such as the *hadith*, the *sunna* and the *shariah* are interpretations of the life and tradition of prophet Mohammed, written down after his lifetime. And these interpretations were dominated by men who have relegated women to an unequal status within Islam. And the situation can change when women start reading and reinterpreting these provisions and challenge the monopoly of male theologians.

Muslim women activists across the globe, have made sincere efforts to reinterpret the Islamic sources, primarily the Quran, in the light of equal rights for women. Feminist theologians are using these reinterpretations to challenge and amend civil legal codes. Iman Hashim (1999) has argued that there are significant reasons why feminists might benefit from drawing upon Islam when attempting to address the particular subordination of Muslim women. The Qur'an lays down significant rights for women, of which they are often unaware, but which can be drawn upon to address and improve their circumstances. This is not the only way to improve the situation of Muslim women, but it is to be seen as a step forward. It is a process in which we are moving forward, at least in granting basic rights to Muslim women who are aggressively asking for it. We are moving out of the deadlock that was formed between the state and Muslim clerics on the opposition of personal law and the Uniform civil code, and at the same also an alternative space is being created by the category of Muslim women for themselves.

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