

Only the constitution

Muslim women must count on its guarantees, not readings of religion.

Written by Razia Patel | Published: September 9, 2016



Muslims are failing to assert the real essence of Islam, which is very progressive as far as the rights of women are concerned.

Syeda Hameed has written an article titled ‘Just keep the faith’ (IE, August 30) regarding the Mumbai High Court’s judgement allowing the entry of women into the Haji Ali dargah. The main argument in this article can be summarised thus: Islam, as a religion, provides enough progressive reasons to allow women to enter the mazar, which could have been used to support the decision, but the judgement invokes articles of the Indian constitution while supporting the logic behind the verdict. In her own words, she is “pained” to see this.

According to her, Muslims are failing to assert the real essence of Islam, which is very progressive as far as the rights of women are concerned. This logic, if extended, leads to the conclusion that all the issues of Muslim women should be resolved within “Islam” and there is no need to go to constitutional courts .

One can choose whether or not to go to courts of law to get justice, but once you opt to go there, you must bear in mind that the courts are established to safeguard the fundamental rights provided by the constitution and not according to any religion.

The philosophy in this article, in essence, emphasises that “our religion” provides all the freedom and values of equality to women and the masses should be taken back to “real” religious values. However, it must be noted that the ground realities are very different. The common Muslim woman has suffered hugely from religious traditions and dictates and has resorted to Indian courts to seek justice even if she happened to be alone in this struggle. For

all such people who seek justice, thanks to the visionary makers of our constitutions like B.R. Ambedkar and others, it is only the Indian Constitution that has proven to be helpful. The constitution has been the sole support for them so far.

Undoubtedly, there are lacunae in the existing system — such as delays and high costs — which need to be addressed. Instead of fighting for these, we see that some women’s NGOs like the Bharatiya Muslim Mahila Andolan, following the same logic as Syeda Hameed, have been engaged in opening sharia courts for women and training women qazis all over the country. While conducting a nationwide survey for a national fellowship, I had asked women “Insaaf kahan se chahiye? Jamaat se ya court se?” (Where do you want justice from? Religion or the courts?) In reply, most of the women very clearly stated “Court se”.

With regard to the point about the “real interpretation of Islam”, in reality, there are various strong, deep-rooted religious institutions and authorities with national and international sanction, who have been conferred with the right to interpret the religion. Such authorities are so strong within the community that the interpretations by other so-called progressive social academics do not make any impact. On the other hand, the Indian Constitution provides a legitimate state supported framework for deprived communities and individuals to assert their struggle for human rights.

Based on these values and rights enshrined in the constitution, many other exploited groups in India have fought for their rights and have been successful in most cases. However, in the case of Muslim women who seek justice from courts of law, intellectuals are pushing them back to religion repeatedly. The same phenomenon is observed with initiatives like sharia courts and mahila qazis. In 1986, Shah Bano fought in a court of law to assert her right to receive maintenance. The government of the time crushed this effort by changing the constitution following the demands of religious leaders.

The path of women’s liberation is through the values enshrined in the Indian Constitution. It is unfortunate that rather than leading the community towards absolute human rights, intellectuals are making the situation for the community worse by resorting to the logic of a religious framework.

After Independence, the Indian masses have experienced liberation by adopting a progressive constitution in 1949 that proclaims the values of equality and justice. Since then, all Indian communities have embarked on their struggle to assert the same. Muslims too are entitled to enjoy this citizenship with equal rights. Religious frameworks are always subjected to many conflicting interpretations and Muslim women cannot risk the chance that only the progressive interpretation will prevail. The only guarantee for her is the clear provisions of the constitution safeguarding her rights. We all need to insist on adhering to the constitutional framework, instead, as a guideline for future struggle.

The writer is head of the minority cell at the centre for educational studies in Indian Institute of Education, Pune

This article was published in the Indian Express and the original link can be found [here](#).