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WOMEN NEWS



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SHAH BANO'S CASE AND ITS AFTERMATH

On April 23, 1985 the Supreme Court of India awarded life long maintenance to a divorced Muslim woman, Shah Bano. The judgement resulted in heated debates and demonstrations both for and against the judgement. Lawyers, women's groups, progressive people, Hindu and Muslim communal organisations - all reacted sharply. The debate on Muslim personal law that had started in January '84 after Shehnaaz Shaikh filed a petition in the Supreme Court challenging the constitutional validity of certain aspects of Muslim personal law such as polygamy, the unilateral pronouncement of Talaq, meher, inheritance and custody of children, has given way to a sharp polarisation of opinions leading to demonstrations, rallies, petitioning, signature campaigns and public meetings both for and against the Muslim personal law.

All this is happening in the context of a gradual but consistent awakening of Muslim women who are asserting their right to a dignified life. Today, 17 cases filed by Muslim divorcee women demanding maintenance are still awaiting judgement in the Supreme Court. In a small town of Gujarat 84 divorced women from one single community (Bohra Muslim) have applied for maintenance. Not only that, Shah Bano's husband and her stepsons who are fanatically opposing the Supreme Court's judgement are themselves fighting for maintenance of four Muslim divorcee women in the Indore Court. Muslim women elsewhere in the country are also challenging other aspects of Muslim personal law. In Pune, Aktarunnisa Syed, 37, has demanded that she be allowed to legally adopt her two-year old ward, Azim. In the Union territory of Goa, Ms Rashida Mazawwar, 26, is courageously campaigning to retain the application of the Uniform Civil Code there. She is supported by thousands of Goan Muslim women though Muslim religious leaders and conservative political forces tried to physically assault them and break up their public meetings by stone-throwing and rioting. But these tactics failed to break the spirit of the Goa Muslim Women's Association. Increasing number of Muslim women from Bombay, Ahmedabad, Surat and Kolhapur are knocking at the doors of the law courts for custody of their children which is not allowed under the existing Muslim personal law (Hanafi Law). The Talaq Pidit Mahila Sangathana, formed in Maharashtra and Gujarat, has attracted hundreds of poor and destitute Muslim women, many of them from small towns and villages. The long march of this organisation in support of Shah Bano met with a lot of resistance and physical violence from its opponents. The Sangathana was the first to come out openly in support of Shah Bano and to form 'Potgi Bachao' (save maintenance) Committee.

In spite of all the massive support, Shah Bano was forced to retract her stand. Even the Prime Minister of India, Mr. Rajiv Gandhi, declared last month that

the government would not interfere in the internal affairs of the Muslims. The government patronisingly states that the process of reforms must come from within. But the question is who 'represents' this 'within' - millions of Muslims women or Muslim elites and Muslim politicians thriving on Muslim votes ?

The issues arising from the conflicting pulls of community authority and individual rights are complex and baffling. Several doubts and questions pose themselves :-

Should one support the demand for reforms in the Muslim personal law or demand a uniform civil code ?

Is the demand for a uniform civil code raised by a section of Muslim women timely or premature ? Won't this demand alienate them from main stream Muslim life ? Won't it accentuate a sense of anxiety and loss of identity among Muslims who already perceive themselves as a persecuted minority ?

The demand for a uniform civil code is also raised by Hindu communal forces like the R.S.S., the Vishva Hindu Parishad and the Shiv Sena. By raising or supporting this demand (even when it is also raised by the Muslim women themselves) won't we be strengthening the hands of Hindu communal forces ? Won't we be equated with them ? These are perturbing and difficult questions. So it is extremely important to examine their pros and cons.

Whenever women's organisations such as the Forum Against Oppression of Women take up issues related to women from minority religious groups, they are asked not to intervene, on the ground that it is an internal matter of the minority community. Such attitudes amount to nothing but condoning violence or discrimination against the women of minority religions. All political parties who treat minority religious groups as vote banks also don't do anything. Even their elites and leaders have no time for the welfare of the women of their community. Hundreds of young teenage Muslim girls are married off to old and infirm Arabs, many of them are then forced into prostitution in the Gulf countries. But none of the muslim leaders have raised a hue and cry against it. A recent study on prostitution in Pune revealed that most of the Muslim prostitutes were victims of Talaq and because they were not supported by their family or in-laws they had to resort to prostitution as a living. Except for the Talaq Pidit Mahila Sangathana, no other agency or organisation has tried to help women victims of Talaq. It is also true that the dehumanising experiences of communal disharmony in India have made it very difficult for progressive groups to support the rights of Muslim women. Any attempt in this direction is branded as a threat to Muslim religious identity.

On one hand there are Hindu communal forces strongly demanding a uniform civil code. According to them because muslim men can marry four times they will produce many more children and soon out number the Hindus. This argument is dangerously misleading as statisticians have estimated that Muslims will constitute only 14% of the population by 2000 A.D.

Hindu communal forces have nothing to say about polygamy among Hindus, which though illegal, still flourishes.

On the other hand, Muslim communal forces vehemently oppose not only a uniform civil code but also reforms in the existing Muslim personal law. They also support all types of atrocities and discriminatory practices against women (in the name of 'the sanctity of the Shariat'), as demonstrated recently by their silence when Sulekha Beevi and Shahbanat of Kerala were treated so brutally by their local jamats. No major Muslim organisation spoke out against the cruelty to women.

Thus, Hindu fanatics who raise the slogan of 'Hindustan in danger' or the Muslim fanatics who raise the slogan of 'Islam in danger' are not really bothered about the welfare of Muslim and Hindu women. Both want to score points over each other. If the Greater Bombay Muslim Association mobilises 1000,000 Muslim for a 'Save Shariat' rally the Shiv Sena will mobilise 5000,000 sainiks for a 'Save Hindustan' rally.

There are many Muslim scholars who believe that reforms in Muslim personal law should be demanded. Taking inspiration from other Islamic countries like Turkey, Egypt, Iran, Iraq, Pakistan, Sudan and the Peoples Republic of Yemen which have made reforms in the Islamic personal laws (some have banned polygamy and the unilateral pronouncement of talaq). They have also demanded reforms and challenged the old and orthodox interpretation of the Koran. They feel that Islam does not oppress women and it is possible to enhance women's status without transgressing Islam.

Many progressive and democratic organisation such as the Peoples Union of Democratic Rights, the Indian Secular Society, and All India Women's Conference and the National Federation of Indian Women are asking for the enactment of a uniform civil code applicable to all citizens of India irrespective of their class, caste, religion, race and sex. They feel that all personal laws discriminate against women. Anyone having respect for fundamental human rights and moral values would oppose religious personal laws which are outdated and discriminatory towards women. All these personal laws

are prejudicial to women. None of the religious personal laws consider women as independent human beings in their own right but see women as dependent on their father, husband or son. Different religious groups have different rights for women. Hence the personal laws are unconstitutional because while the Constitution of India grants to all its citizens liberty, equality and justice, the personal laws work just in the opposite direction.

Against the argument that the demand for a common civil code will alienate the Muslim masses, its supporters say that their experience at the grass-roots shows that the mass of poor Muslim women are not opposed to the demand. Hundreds of Muslim parents whose daughters had to suffer because of the existing personal laws and hundreds of Muslims brothers whose sisters were divorced and not given any maintenance or meher, all support the demand for a uniform civil code. But against the muscle power of the mullahs and the politicians, their voice remains unheard. The supporters of a Uniform Civil Code also say that whenever we talk of progressive measure, some vested interests are bound to oppose them. Didn't reformers of the early twentieth century who advocated women's education, widow remarriage and asked for the abolition of child marriage, sati and female infanticide face strong resistance from the conservative lobby? Even when the Hindu Code Bill was passed, the conservative lobby was opposed to it as vehemently as Muslim conservatives now oppose reforms within their personal law.

But still there is a difference. The persecuted minority of India, namely the Muslims, feel threatened and insecure forcing most of them to defend the status quo with much more vehemence.

Amongst feminists also there are two opinions. Some support the demand for uniform civil code and some support the demand for reforms in the religious personal laws for tactical reasons. But their analysis is the same. The feminists feel that all personal laws and customary laws have been anti-women. None of them treat women as 'individuals', if the Muslim personal law discriminates against women so do the Hindu, the Parsi and the Christian personal laws. The Hindu Personal law considers the father to be the natural guardian of the children, does not give co-parcenary rights to daughters over ancestral property and does not allow a divorced woman an equal share of property, income and assets unless these are in joint names or were gifts before or at the time of the wedding. If a Parsi woman marries a non-Parsi, she loses her right to inherit property and a non-Parsi woman is entitled to only half her husband's property under Parsi Personal law. Christian personal law does not give equal rights to women in matters of divorce and right to inheritance. Hence the feminists feel that personal

laws are created and perpetuated in order to safeguard the interest of the men of the community. These days one hears of an increasing number of women from the Hindu, Parsi, Muslim and Christian communities challenging the legal validity of their personal laws. Following Shah Bano, Nazima Begum of Bhairampur village in Utranla tehsil of Gonda district also won maintenance of rupees 150/- per month in a legal battle. Tribal women of Singhbhoom (Bihar) and Dhulia (Maharashtra) have challenged the tribal customary law (that does not grant land rights to women) in the Supreme Court. Thus women's groups do not concentrate only on the Muslim personal law but on all religious personal laws.

Recently the Press Asia International Forum organised a seminar on the status of divorced Muslim women and eminent Muslim scholars, jurists, journalists, social workers and political leaders who participated in it expressed the need to safe guard the rights of helpless Muslim women. Some international efforts are already under way. The action committee of women living under Muslim law was formed in June, 1984 at the initiative of feminists from Algeria and Morocco. They declared "we oppose the way Islam is 'deliberately misinterpreted and used by men and the state to suppress the basic human rights of women even when these rights are guaranteed by the constitution of the country". Religion is used repeatedly by men and the state to uphold their own interests at the cost of the women. A committee has been constituted to create links between women in different countries under the same law in order to support each other's struggles. Our first action is to support the struggle of Shehnaaz Shaikh in India. We are calling for international solidarity in support of their struggle. Hundreds of Muslim women from Algeria, Morocco, Holland, England, Pakistan, Bangladesh, India, Tanzania, Iran, Belgium, Japan, Brazil, Spain, Costa Rica, Thailand have supported the struggle. Islamic personal law as well as customary laws are being seriously examined by the women's groups and committed and pro-women lawyers of Asia and Africa. Personal laws are going to be focus of this March 8, not only in India but in all the above mentioned countries.

- Ms. Vibhuti Patel