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Why Flavia Agnes ends up on the same side as the anti-women Muslim Personal Law Board: Javed Anand

Contrary to her argument, the so-called concessions in the Board's affidavit to the apex court is a tactical move for survival and continued relevance.

by [Javed Anand](#)

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I am reminded of a friend who used to say, "*Bhaagte bhoot ko langoti sahi.*" He would then go on to translate his version of the popular Hindi saying as: "To a fleeing devil trying to hide his shame, a loin cloth would do."

The "[few positives for women](#)" that Flavia Agnes discovered in an affidavit recently filed by the All India Muslim Personal Law Board in the Supreme Court are just that.

Last week, the Jamiat Ulema-e-Hind launched a law institute to bring prominent muftis (experts in Islamic jurisprudence, or *fiqh*) and legal luminaries among Muslims together for the first time for a training course on Muslim Personal Law. At the inaugural of the institute, the highly-regarded Maulana Khalid Saifullah Rahmani, general secretary, Islamic Fiqh Academy, declared that “triple talaq is as essential for law as a toilet is for any home”.

Got it? A toilet is not a great place to go to, but when you need to quickly excrete the unwanted out of your system, flush it out of sight, where else? So also with an unwanted wife.

The toilet analogy found no mention in the Board’s current affidavit before the apex court. Perhaps it will in future affidavits or arguments. However, even as it is, the Board’s affidavit reeks of a medieval, misogynist mindset.

No concessions

The three “important takeaways” that Agnes nonetheless managed to extract from a document that stinks are as follows. One, in its affidavit, the Board, for the first time, publicly accepted the Supreme Court’s judgment in the Shamim Ara case wherein triple talaq or instant divorce was declared invalid. Two, the Board, also for the first time, conceded that a Muslim woman victim of domestic violence has the right to claim relief under the Protection of Women from Domestic Violence Act, 2005, a secular statute. Three, the Board at last “seems to have accepted” the judicial interpretation that the community-specific Muslim Women (Protection of Rights upon Divorce) Act entitled a Muslim woman to a fair and reasonable provision for her entire life, not only for three months as it had earlier argued in the Danial Latifi case.

Agnes would have us believe that these three important public concessions by the Board mark a huge religio-cultural leap towards gender justice by India’s Sunni ulema, or religious *scholars*. “The agency of the Muslim woman and her multiple choices, which are seldom highlighted, are captured in a nutshell in this affidavit,” wrote Agnes.

In an earlier [article](#) in *Scroll.in*, Agnes had made the same argument. And now that the Board has conceded crucial ground, where’s the point in Muslim women trooping back to the Supreme Court seeking an end to triple talaq, *nikah halala* (the stipulation that a divorced

Muslim woman cannot remarry her former husband until she marries and divorces another man after having sex with him), and polygamy?

On halala, Agnes wisely maintains a discreet silence since there is absolutely no space for manoeuvre here. On polygamy, she sees yet another “important takeaway” in the Board’s affidavit. Though she has problems with the “clumsy manner” in which the Board has argued the case for continuing polygamy, both are on the same page.

Polygamy vs bigamy

Muslim women, who have petitioned the Supreme Court, want polygamy to be declared unconstitutional, and banned along with triple talaq and halala. But the ulema want polygamy to stay as part of Muslim Personal Law. And so does Agnes, in a roundabout way. For the former, it is because the Quran so permits it. For Agnes, there is the “harsh ground reality” that the Hindu Marriage Act has hardly helped curb bigamy.

Agnes argues that because the “second wife” of a Muslim man is legally recognised, she has the “same status” as the first wife. Thus, Muslim women are far better placed than their Hindu sisters because having banned bigamy, the Hindu Marriage Act refuses recognition to the second wife. As a result, the Hindu second wife has no legal claim on her husband’s income or wealth and in case of separation, she is rendered destitute. Monogamy sounds good in principle, in line with the constitutional right to equality and non-discrimination. But in practice, barring bigamy renders the second wife highly vulnerable.

But what about the first wife? Is cash for sex what marriage is all about? These do not seem to register on Agnes’ radar. For others, including the United Nations Committee for the Elimination of Discrimination Against Women, polygamy is a matter of serious concern because of its consequences for women (first wife or second) and children within such marriages.

Yasmin Rehman, who has been researching polygamous practices in the UK for the past six years, [notes](#):

“The emotional and psychological impact of polygamy is significant with some women stating they felt they had somehow failed as a wife, others were burdened by the shame of being a first wife as they knew they were being pitied at one level and judged at another. The

hierarchy of wives and ensuing competition for the attention of their husbands places a huge strain on women. Polygamy drives down the age of women and girls, it also enables older men of wealth and status to gain sexual access to young women for marriage. I have gathered evidence of incidents of physical, psychological and sexual abuse directly linked to their polygamous marriages – either due to resisting it or the dynamics within these unions”.

Rehman quotes author Geraldine Brooks, who in her book, [*Nine Parts of Desire*](#), refers to polygamy as:

“...[T]he spectre that haunts every Muslim woman... The threat, possibility and fear that their present or future husband may take another wife is a reality for many Muslim women, and undoubtedly influences their perception and management of their relationships”.

Unlike Agnes, while Rehman believes that responding to polygamy requires much more than a mere ban on its practice, she is fully alive to the multiple consequences for women and children of this grossly discriminatory practice against women. It’s not just a question of money.

In keeping with Agnes’ monochromatic perspective on polygamy, one might as well ask: Why not demand that the personal law for Hindus be amended to legalise bigamy in order to bring the Hindu second wife on par with her Muslim counterpart? This Agnes cannot do for it would take her to the camp of right-wing Hindu men, who agonise over being denied the same right that Muslim men are free to enjoy: the right to multiple wives.

Who knows best?

We have a truly ironical situation here. Despite her disclaimers, her distancing herself from the internal contradictions in the Board’s affidavit, Agnes effectively ends up on the same side of the street as the male-oriented All India Muslim Personal Law Board.

On the other side of the street is an entire spectrum of Muslim women who individually and collectively have petitioned the Supreme Court. **Error! Hyperlink reference not valid.** (Uttarakhand), **Error! Hyperlink reference not valid.** (Rajasthan) [Ishrat Jahan](#) (West Bengal), **Error! Hyperlink reference not valid.** and the Bebaak Collective. The All India Muslim Women’s Personal Law Board, an organisation that years ago parted ways with its “anti-women” counterpart, is heading towards the apex court too.

Are we to believe then that Muslim women don't know what's good for them, but the All India Muslim Personal Law Board and Agnes do?

Contrary to how it appears to Agnes, the ulema in India have made no conceptual leap. The Board's affidavit is simply a tactical move for survival and continued relevance. Until Shayara Bano and following her, a host of Muslim women petitioned the Supreme Court, the ulema were content co-habiting in a live-and-let-live world. It was wise on their part to continue running their male-oriented *Darul Qazas* (Shariah courts), and maintain strategic silence while individual Muslim women approached the courts in search of justice. But what will happen to them and their institutions if the apex court rules that triple talaq, nikaah halala and polygamy are unconstitutional?

Clearly, it's time for the *ulema* to at least appear reasonable. The "important takeaways" from the Board's affidavit mean nothing more than the fact that it is now compelled to concede in writing what it in any case has been reconciled to for years. No one dared challenge verdict after verdict from the high courts and the Supreme Court declaring the triple talaq practice as invalid from a Quranic perspective. The takeaways are simply the *langoti* the Board needs to run away from the shame of their continuing denial of justice to Muslim women.