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Debating Muslim Law after Shah Bano – the Model Nikahnama Initiative: A Suneetha

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Guest Post by A SUNEETHA continuing the discussion on Uniform Civil Code on Kafila. (http://kafila.org/2014/10/01/uniform-civil-code-state-of-the-debate-in-2014/)

In popular imagination Muslim women's unequal position in marriage is symbolized by cases such as Shah Bano or Imrana. It is understood this is the result of the religion-based Muslim personal law and the rigid control of women by the community in general and ulema in particular. Not many are aware that the same religion-based marriage law also offers tools for changing Muslim women's position in marriage. In the last ten years, an ordinary document that every Muslim couple signs at the time of marriage – nikahnama or marriage contract – has assumed such a role. It has been innovatively used to initiate discussions and push for changes in the community's thinking about the Muslim women's position in marriage. In these efforts, a large number of "religious" and "non-religious" Muslim groups got into a conversation and set off a consensus-building process on the issue of a Muslim woman's "entitlements".

This discussion assumes importance in the context of the ongoing debate on UCC. The debate on the UCC entered a new phase when, unhappy with the removal of Muslim women from the ambit of S 125 Crpc that guarantees all divorced women a minimum maintenance and the promulgation of a separate provision for divorced Muslim women called Muslim Women's Maintenance Act 1986, many women's groups renewed their demand for a UCC in 1990. Such a Code, it was hoped, would bring marital equality to women of all religions. When the Bharatiya Janata Party hijacked this demand to castigate Muslim men, (as if Hindu men were free of misogynist and patriarchal behaviour), such a hope was irretrievably lost. In the post-Babri Masjid demolition period, when there were pogroms against the Muslim communities, such a law would have found it impossible to garner support from the Muslims, especially if it were made by the BJP dominated Parliament. As anyone familiar with law knows, a consensus is important for law-making so that it is accepted and followed. But the changed situation of unparalleled parliamentary dominance of BJP brings newer challenges to all those working on issues of gender justice in all communities.

Muslim women were caught in this unenviable position since the 1990s – of having to address their own situation – under-age marriages, non-payment of mehr, arbitrary talaq, cruelty in marriage, maintenance after talaq, multiple marriages of men, resistance to women's employment etc. while taking care that the Muslim men are not vilified further. What did they do? In 1995, a group of Muslim women in Mumbai, led by Uzma Naheed, chose the most important but most taken for granted document in Muslim marriage and decided to propose changes in it – a new model nikahanama. Nikahnama being a valid legal document, such changes would have far-reaching consequences.

What is a nikahnama? It is a simple document that contains guidelines instructing the couple about the spirit in which they should conduct themselves in marriage, details of gifts exchanged and personal details as well as obligations of the couple, under the Shariat. Uzma Naheed et al expanded the guidelines and introduced a little-known Islamic practice of – additional conditions in the Shariat obligations. Their model nikahnama stipulated that the husband should not inflict physical harm nor wrongfully confine the wife nor indulge in any other inhuman behavior; leave the wife in her natal home for extended period of time, use abusive language in instances of marital tiff, should not accept dowry and should not utter triple talaq or talaq in isolation. In case of differences the couple should try to resolve them through arbitrators. The new conditions

were – that the husband would need the permission of wife to contract a second marriage; that in case of talaq or second marriage, mehr (the gift that husband gives to the wife at the time of marriage, connoting her worth to him) be doubled; that the mehr would not be 'forgiven' by the wife; that the wife's due share in husband's property be ensured as well as her right to reside in matrimonial home in case of divorce. This was submitted to the All India Muslim Personal Law Board which was a body of ulema of different firqa – Sunni, Shia, Barelwi, Deobandi etc. If it got the approval of the Board, then, Muslims of all persuasions can emulate it.

The AIMPLB, in turn, sent it for discussion to several madrassas in the country seeking their opinions on the validity of the nikahnama. 54 ulema – students and teachers (of Imarat-e-Sharia of Bihar, Islamic Fiqha Academy, Delhi, Imarat Sharia Phulwari, Dar ul Ulloom, Hyderabad, Dar ul Ullom Sabeel-us-Salaam, Hyderabad) included – submitted their opinions which were then compiled in the form of a book – Ishtirat Fin Nikah that was published by Islamic Fiqh Academy, New Delhi. Many of the ulema expressed their unhappiness about the state of Muslim marriage – the wrong practices of triple talaq, of Muslim women giving up mehr, and their general state of disempowerment in the current times.

Is a conditional nikahnama the right way to correct all these ills? This was the question that they deliberated upon. Traditions of interpretation drawn from all schools of fiqha – Hanafi, Hanbali, Shafai and Maliki were used to discuss its validity. Standing out from among the varied opinions were those of senior and reformist ulema such as Moulana Saifulla Rahmani and Moulana Mujahidul Islam Qasmi. They argued that existing Hanafi tradition, most followed in the subcontinent, should be supplemented by the other traditions such as Maliki or Hanbali when there is a need. Approving the idea of a conditional nikahnama, they suggested some minor changes in 1997.

Unfortunately, the Board, mired in its sectarian quarrels, delayed the release of the approved document till 2005. Its approved nikahnama deleted the mandatory clauses regarding triple talaq; replaced them with a simple caution against it and retained clauses regarding mehr in kind, prohibition on dowry and against violence. But it introduced something new: a conservative code of conduct for women such as they should not step out without the permission of the husband etc.

Disagreeing with the Board on the tone, tenor and the content of the nikahnama, two new Boards, the Muslim Women's Personal Law Board and Shia Personal Law Board were formed and framed two new nikahnama, which were released in 2006 and 2008 respectively. The Shia Board's nikahnama was introduced after its approval from Ayatollah Sistaini of Iran. Claiming to stress the well-being of women, it incorporated the provision of *khula* (women initiated divorce), strictures against preventing the wife's progress in education and employment, and provision of alimony to the divorced wife too, the last on the ground of "humanitarianism."

The Women's Board's nikahnama (in Hindi and Urdu) takes the pedagogic intent of the nikahnama quite seriously and includes an elaborated code of conduct for the couple: that the Qazi should be well-versed in Shariat, explain the nikahnama to them, that marriage should not be forced, that the marriage of under-age men and women should be avoided as they lack the knowledge about rights and obligations in marriage, that the pardoning of mehr should be done willingly by women and not by deception or wrong interpretation of Quran. It also lays out in detail a modern husband's proper conduct, including ways in which he could help with housework. It stipulates proper procedures of giving and avoiding talaq and khula.

All the Boards, while releasing the nikahnama, asserted that it was agreed upon by the members, that it would safeguard the interests of Muslim women, and that it was not obligatory but voluntary on the community. The differences in the positions come through in the code of conduct and conditions sections. Except the Muslim Personal Law Board's nikahnama, the rest clearly stipulate against the triple talaq and spell out the desirable way of talaq. Nearly all of them encourage Muslim men and women to resolve their disputes through arbitrators and Darul Qaza.

At this juncture, we can pause and ask if any of these is implemented and if so, to what extent. An individual woman's ability to get her own conditions into the nikahnama or get what is written, existing research indicates, depends on the social milieu, community ethos and especially on the history of any re-form movement in that area. Organizations such as Bharatiya Muslim Mahila Andolan that have come up to defend Muslim women's rights in the last decade have used their own gender-just nikahnama in hundreds of marriages that they conduct. Young Bohra Muslim men in Gujarat have adopted the nikahnama approved by the Muslim Personal Law Board in their marriages.

Occupying a socio-legal terrain, which distinguishes it from the largely state-directed initiatives of reforming Muslim Personal Law, it has also prevented the consolidation of conservative Muslim opinion against the state, resumed the (contested) conversation among "religious" and "secular" domains on marriage practices, and even enabled a continuation of a discussion on "secular" feminists' concerns such as dowry and destitution of married women due to desertion. Islamic and secular idioms got inextricably mixed up, whereby dowry got re-framed as un-Islamic (rather than illegal) and mehr as the "right" of Muslim women!

The real significance of the nikahnama debate, as such, lies elsewhere: in the space that Muslim women have carved for themselves through this initiative and its role in resuming the traffic between "religious" and "secular" spaces on issues of gender after Shah Bano. By initiating the nikahnama debate on the grounds of sharia, Muslim women have been able to enter the male-dominant terrain of the "religious community" and disrupt the stereotype of Muslim women as victims of community patriarchy. In pushing the "Islamic" tradition for reform and succeeding to an extent, they have disrupted the prevailing secular narrative of the unchanging and regressive Islamic tradition. Nikahnama has the possibility for extensive reach not only to popularise correct practices and strictures against bad practices but also to draw the community (especially elders in the form of arbitrators, the darul qaza) into such an exercise.

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MODEL NIKAHNAMA **SHAH BANO** **UNIFORM CIVIL CODE**

One thought on "Debating Muslim Law after Shah Bano – the Model Nikahnama Initiative: A Suneetha"

1. **Mohammed Wasiuddin Dadni** says:
   09/05/2016 AT 1:29 PM
   Triple talaq is an innovation(biddat) not mentioned in holy Quran, hated by prophet of Islam, was revoked by prophet of Islam, when a person resorted to triple talaq during the life time of prophet of Islam, it is against women, because Islam was the only religion which granted respect to women and elevated their status by giving various rights, even property rights way back in seventh century A.D.,
   Dowry is un-islamic and illegal wide dowry prohibition act 1961.
   Mahr is QN absolute right of a Muslim woman, and there is no maximum ceiling laid down, whereas the minimum should be calculated based on the present equivalent of the mahr paid by the prophet of Islam or his companions, and it should be prompt dower, not deferred dower, because prophet of Islam paid it promptly, instantly. It is a sign to honour the woman who leaves behind every body in her family, to become a spouse.
   Talaq al Tafweez (delegated talaq) should be popularised, and the delegated right should be granted by the husband to the wife at the time of nikah which shall be exercised by the wife on contingent conditions agreed mutually, at the time of nikah, this is Islamic, hence it is not a favour but made as a right.
   Nikah contract should include, 1.nikah nama, 2. Ikhrar nama, 3. Hidayath nama (which shall contain the conditions, such as talaq ahsan and talaq hasan, appointing arbitrators before talaq to reconcile and resolve the dispute, maintenance in the light of danial latifi case, shamim ara case etc. These days even ulema are reconciled towards the above guidelines except a few maulvis of barelvi sect, due to their ignorance and wrong beliefs and misguided interpretation of the tenets.