

[EPW Home](#)[About Us](#)[For Contributors](#)[Subscribe](#)[Login](#)

Muslim Women: Historic Demand for Change

by

Jyoti Punwani

The question of triple talaq is once again in the news and has triggered a national debate. This is not as a reaction to a fatwa or a judgment, but because the issue has been raised by Muslim women and is also being discussed in the Supreme Court.

This debate has led to two unprecedented developments in September. The chairman of the Andhra Pradesh (AP) Minorities Commission, Abid Rasool Khan, announced to the press that he had written to the All India Muslim Personal Law Board (AIMPLB) to stop supporting triple talaq, a common form of divorce among Indian Sunni Muslims, by which a wife is instantly divorced if the husband says/writes “talaq” three times, even in her absence. If this was not done, said Khan, the board would be responsible for the eventual derecognition of Muslim Personal Law, paving the way for a uniform civil code (UCC).

Soon after this, the Public Complaint Centre run by Abdul Razzak Maniyar, a social worker, which for years has been resolving family disputes in the heart of Mumbai’s old Muslim neighbourhood, put up posters outside mosques. They warned that Muslim men resorting to triple talaq should be ready to be dragged to court, sent to jail and pay huge amounts of money to their wives.

These developments are historic because the two men taking a public stand against triple talaq are known in their community as conservative Muslims. The AP Minorities Commission chairman, a Congressman, believes that Muslim women s

should not enter dargahs. Maniyar believes that the ulema are the final word on personal law.

Genesis of the Controversy

It is important to trace how the current controversy began.

In October 2015, the Supreme Court bench of Justices Anil R Dave and Adarsh Kumar Goel was hearing a matter pertaining to Hindu women's rights under the Hindu Succession Act 2005. Lawyers arguing the case pointed out that Muslim women suffered discrimination too.

Immediately, the Court directed the filing of a public interest litigation (PIL) on the way Muslim women were being deprived of their constitutional fundamental rights by arbitrary divorce and polygamy under Muslim Personal Law.

In February 2016, the PIL, titled "Muslim Women's Quest for Equality," came up before a bench headed by the Chief Justice. While the Court asked the Attorney General to assist it in the matter, it also accepted the application of the Jamiat-Ulema-e-Hind (JeH) seeking to be made a party in the case. The JeH stated that Muslim Personal Law could not be challenged for violating fundamental rights, as it had not been passed by a legislature but was derived from the Quran; hence it did not fall under the definition of "law in force." The AIMPLB followed suit.

Meanwhile, another development had taken place.

In December 2015, a lawyer belonging to the Bharatiya Janata Party (BJP) filed a PIL in the Supreme Court asking for the enactment of a UCC. Chief Justice T S Thakur refused to entertain the PIL, saying that the Court's position had consistently been that the framing of an UCC was a matter for the legislature. He also questioned the petitioner's ostensible concern for the rights of Muslim women. No Muslim woman had "questioned triple talaq on the ground that (it) was discriminatory," pointed out the Chief Justice adding, "If a victim of triple talaq comes to the court and questions the validity of the ... procedure, we can surely examine the legality of triple talaq and find out whether it violated her fundamental rights."¹

Two months later, the first such woman approached the Court.

In her petition, 35-year-old Shayara Bano of Uttarakhand asked for the striking down of triple talaq, halala and polygamy under Muslim Personal Law as violative of the fundamental rights guaranteed in the Constitution. After 13 years in an abusive marriage, the petitioner had received a triple talaq by speedpost in her mat-

her husband if she first marries another man, consummates her marriage and then gets divorced by him.

In March, Nisa, a Kerala-based women's group headed by 60-year-old firebrand V P Zuhara, approached the Supreme Court with the same plea.

In May, 28-year-old Jaipur resident Afreen Rahman, who, like Shayara Bano, had received talaq by speedpost while at her mother's home after a 17-month marriage marked by physical abuse, approached the Supreme Court, with the help of the Bharatiya Muslim Mahila Andolan (BMMA). Her petition was tagged along with Shayara Bano's.

The BMMA, in its 2010 survey of 4,710 Muslim women across 10 states, had found that 88% of them wanted a ban on triple talaq. It too filed an application asking to be made a party in the case. So did 70-year-old Badar Sayeed, a former member of the legislative assembly (MLA) who was appointed in 2004 as Tamil Nadu's first woman additional advocate general.

In 1992, Sayeed had similarly impleaded herself in a petition filed by advocate Mohammed Jawad in the Madras High Court on behalf of his client, making the same demand against triple talaq. In 2002, while accepting the petitioner's arguments against triple talaq, the Court dismissed the petition saying only the legislature could fulfil the petitioner's demands (*A S Parveen Akthar v the Union of India*).² In 2013, Sayeed had filed a petition asking that the right to issue divorces be taken away from Kazis, and remain exclusively with courts.

In June, advocate Farah Faiz of the Rashtriya Swayamsevak Sangh (RSS)-affiliated Rashtrawadi Muslim Mahila Sangh, Lucknow, filed an application asking for codification of Muslim Personal Law.

In August, Ishrat Jahan of Kolkata became the third divorced woman to challenge the constitutional validity of triple talaq in the Supreme Court, asking whether as a Muslim divorcee, she could be deprived of her rights in the matrimonial home and custody of her children. She was divorced on the phone by her Dubai-based husband after 15 years of marriage.

Two other Muslim women's organisations may be impleaded in Shayara Bano's case: the Bebaak Collective, comprising many feminist groups, which believes triple talaq must be struck down as unconstitutional, and the Lucknow-based All India Muslim Women Personal Law Board. These petitions, along with the PIL generated on orders of the Supreme Court, are to be heard together.

The centre has also filed its affidavit, which says that triple talaq must go as violative of fundamental rights and that it is not an integral and essential part of Islam.

Women Who Demanded Change

This case is historic not because Muslim women have suddenly woken up. More than 30 years ago, in 1984, young Shehnaaz Shaikh, who headed Mumbai's first feminist Muslim group, Awaaz-e-Niswaan, moved the Supreme Court to challenge Muslim Personal Law as it violated her right to equality. A year later, in 1985, came the Supreme Court judgment in the Shah Bano case upholding the right of a Muslim divorcee to lifelong maintenance under Section 125 of the CrPC (Code of Criminal Procedure). But remarks about Prophet Mohammed in the judgment led to a countrywide campaign against it, forcing Shah Bano to repudiate her legal victory.

A new law, ironically named the Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed to keep Muslim divorcees out of the purview of Section 125 of the CrPC. This was done to contain the anger in some sections of the Muslim clergy. In the same year, the then Prime Minister, Rajiv Gandhi allowed the locks of the 16th century Babri Masjid in Ayodhya to be opened as a gesture to appease Hindu sentiments. After a violent campaign led by the RSS, the Babri Masjid was demolished on 6 December 1992, leading to widespread riots across India. In the face of this situation, Shehnaaz Shaikh withdrew her petition as she did not think the time was right to get courts to intervene in the personal laws of an already ravaged community.

No Longer Alone

Both Shah Bano and Shehnaaz Shaikh were lone fighters. Today, no Muslim woman will be left alone to challenge Muslim Personal Law, as evidenced from the range of women who have approached the Supreme Court. That is one reason the current fight is historic.

Muslim women have always been staunch opponents of triple talaq and polygamy. A survey conducted by this writer among Muslim divorcees during the Shah Bano controversy, showed that every one of the poor divorcees who trudged to court regularly, fighting for maintenance under Section 125 of the CrPC, wanted triple talaq to be abolished. Why is it so easy for us to be divorced and not Hindu women, they asked? Why cannot we have the same law as Hindus? Polygamy too, w

ly after the husband's second marriage, or the discovery that he was already married. The tragedy was that neither their leaders, nor the government, had asked poor Muslim divorcees their opinion before passing a law that would affect them the most.

Since then, women have opposed triple talaq and polygamy whenever a fatwa or a judgment has brought the issue to the fore. In 1993, the Ahle-Hadees sect issued a fatwa saying that triple talaq was an invalid form of divorce, and must be considered equivalent to a single pronouncement of talaq, hence revocable. Muslims across the board demanded that the Ahle-Hadees fatwa be considered the norm, and triple talaq be abolished. Former minister and Islamic scholar Rafiq Zakaria urged Muslim members of parliament to get a law enacted based on the Ahle-Hadees fatwa, and hoped that the Supreme Court would uphold this fatwa. The All India Women's Conference issued an ultimatum to the AIMPLB to accept the fatwa or they would go to the government to get it accepted. Uzma Naheed, a devout Muslim fighter for women's rights, who would later join the AIMPLB, urged it to punish men who pronounced triple talaq by getting their property attached. The AIMPLB, however, remained unmoved, saying it would not accept the Ahle-Hadees fatwa even if it were made a law. The JeH also rejected the fatwa.

In 1994, Justice H N Tilhari of the Haryana High Court, while hearing a property matter, ruled that the triple talaq given to the wife was invalid because it violated the Constitution. He recommended that Muslim Personal Law be codified in accordance with the Constitution.

Such was the ulema's fury at this judgment that scholars such as Asghar Ali Engineer, who had been at the forefront of a demand for codification, worried about the consequences of another Shah Bano-type agitation in the post-Babri Masjid demolition atmosphere. Women activists too pleaded that the community be left alone to work out reforms in its laws.

Yet, there were voices that unequivocally welcomed the judgment. One was that of Kamila Tyabji, founder of Women's India Trust. And again, there were ordinary Muslim divorcees, who felt the judgment validated their faith in courts. "We know we will get justice from judges, not maulanas," they told this writer.

In 2001, the Supreme Court upheld the constitutional validity of the Muslim Women's Act, 1986, which had been challenged as soon as it was passed, for depriving Muslim divorcees of rights available to other divorcees. The apex court ruled that the meaning of the words "fair and reasonable provision and maintenance" to

meant an amount of money that would maintain her through life. Although AIM PLB members were furious that the apex court had stood the intent of the act on its head, they remained silent. After all, this was a law drafted by the board itself. More importantly, a BJP-led coalition was in power.

The BJP is in power today on its own, and has made no bones about its desire to enact a UCC. Indeed, days before the October 2015 direction by the Supreme Court on a PIL against Muslim Personal Law, another Supreme Court bench, hearing a matter concerning divorce under Christian law, had asked why the government did not implement a UCC.

Not just the ulema, but even some feminists worry that the petitions in the Supreme Court may lead to a UCC, which, under a BJP regime, can only mean the bulldozing of all minority religious laws. These feminists point out that the Supreme Court has already held triple talaq as invalid in its *Shamim Ara v State of UP (Uttar Pradesh)* judgment of 2002. Divorced Muslim women have also been getting justice under laws such as the Muslim Women's Act and the Protection of Women from Domestic Violence Act, 2005. They also point out that despite a ban on polygamy, Hindu men continue to remarry without the second wife getting the status of a wife. So why ask for a ban on triple talaq or polygamy? Why invite external interference in the personal laws of a community already under siege by a communal government?

Two questions arise from these positions: First, can judgments have the same force as a law and second, do Muslim women not count as part of the community?

A New Generation

Since Shah Bano, a new generation of Muslim women has come up, educated, and self-confident in asserting their Muslim identity, studying their religious texts or challenging their religious leaders. Earlier, individual women expressed reservations about their personal law only when asked by the media. Today, women are interacting among themselves, forming organisations, and proclaiming their opinions through the media to their male leaders and the state. If today Muslim women are approaching the highest court to change their personal laws, it is because decades of trying to get their religious leaders to do so has failed.

Muslims felt an urgent need for reform after the Babri Masjid demolition in 1992 and the riots that followed. But these had to be internal reforms, without the intervention of a hostile state. A drive for education was coupled with the drawing up

Is facing Muslim women: triple talaq and polygamy. These nikahnamas prescribe the Quranic method of talaq that is preceded by arbitration and punishments for husbands who violated this. They also made polygamy difficult.

One such nikahnama, drawn up by Muslims in Mumbai in 1994, was approved by Aligarh's Fiqh Academy (comprising Islamic jurists). But the AIMPLB refused to endorse it. Under pressure from conservative women, it came up with its own nikahnama in 2005. But this merely advised men to follow the Quranic method of talaq, without prescribing any punishments for those who did not. The board did not even bother to publicise this nikahnama in the community.

Several people tried dialogue with the AIMPLB. The late Asghar Ali Engineer, for instance, invited them more than once to discuss codification of Muslim Personal Law. But instead of a discussion, each time there was only a thundering assertion: "We will not allow any change in our Shariah." Ironically, it was the AIMPLB that had changed the sharia by getting the Muslim Women's Act, 1986 enacted.

There is one institution that could help Muslim women, the Urdu media. But it continues to support the board as it did in Shah Bano's time.

Many Muslims regard the board as just another non-governmental organisation with no authority to represent the community. In fact, they feel embarrassed by the way Islam is projected by it. The latest embarrassment is the board's affidavit in the Supreme Court in the current case.

This writer's interactions with the board's members and supporters over the last 30 years establish that its affidavit says nothing new. The board sees marriage as an institution for men. Polygamy is necessitated by the male sexual drive, or the lack of children (always the woman's fault). But modern women do not want to be second wives, hence the necessity of triple talaq. The first wife can be divorced in a trice, with a paltry mehr and three months' maintenance, thereby forcing her to be dependent on other men—her father and brothers, or her second husband. Giving her lifelong maintenance could encourage her to go astray, they argue. When asked if she did not deserve anything for having spent her life building up the home, a senior board member replied: "We don't pay service charges in Islam."

In the view of such board members, any attempt to hold the husband accountable is an impediment to marriage itself. Men would then shun marriage, as was happening in the West thanks to women's liberation. Or, husbands would simply kill their wives as Hindus do.

This level of misogyny is shocking, but not for poor Muslim women who have had to deal with maulana-headed jamaats. “Don’t tell us to go to jamaats,” they told me during Shah Bano’s time. “The court is our jamaat.” When the board condemned the Tilhari judgment as anti-sharia, the women retorted: “We know how these ulema treat their women; tell them to follow the Shariah themselves first.”

The irony is that these illiterate women, whom the ulema refuse to even acknowledge, know that the Quran does not view marriage the way the ulema do. Indeed, our secular courts have shown a better understanding of the Quran than the AIMPLB. As many Muslim scholars and activists point out, it is Muslim Personal Law in India, and the AIMPLB, that are against the Quran, because they allow triple talaq, halala and unconditional polygamy. Also, both Shayara Bano’s and the BMM A’s petitions point out that triple talaq is not just unconstitutional, but also violates Quranic injunctions.

While none of the petitions ask for a UCC, we cannot overlook the fact that the state would have to enforce a law banning triple talaq and/or polygamy. Minorities everywhere fear state interference in religious affairs.

Board members dismiss triple talaq as a non-issue hyped by a Muslim-bashing media. But from hardliner Syed Shahabuddin to the Mehmood-ur-Rehman Committee 2008 (set up to examine the status of Muslims in Maharashtra), to the All-India Sunni Ulema Council, everyone has asked that triple talaq be abolished.

So, how long should Muslim women wait?

It has been an article of faith for those fighting for change in Muslim Personal Law, that such change can come only when Muslim women collectively ask for it. That moment has come. Muslim women across the country are asking for their rights as a community, not as individual sufferers. If anyone is responsible for “external interference in Muslim religious laws,” it is not the women, but Muslim religious and political leaders who refuse to listen to these women.

Notes

1 <http://timesofindia.indiatimes.com/india/Supreme-Court-leaves-uniform-ci...>, 8 Dec 2015.

2 <https://indiankanoon.org/doc/835249/>.

Jyoti Punwani (jyoti.punwani@gmail.com) is a Mumbai-based journalist. This article was originally published as a “Commentary” in EPW on 15 Oct 2016.

Vol. 52, Issue No. 34, 26 Aug, 2017