

Muslim Women's Views on Muslim Personal Law

NOORJEHAN SAFIA NIAZ, ZAKIA SOMAN

A survey of Muslim women and their views on Muslim personal law reveals that the women feel the rights enshrined in the Quran have not reached them; an overwhelming number of the women want personal law to be reformed. As it exists today, Muslim family law is piecemeal and disjointed and neither the community nor the government has tried to make it comprehensive.

The Sachar Committee¹ was established in 2005 to study the socio-economic condition of Indian Muslims. The findings of this committee showed how India's largest minority lagged behind educationally, economically and socially. The committee carried out extensive research, studying the conditions of the community in the run-up to its final report. However, the terms of reference of the Sachar Committee did not include a look at the socio-economic condition of Muslim women and their status vis-à-vis Muslim personal law. There has not been any data collection or evidence gathering by any government agency or social organisation that could be found in the public domain. The situation of Muslim women in matters of family and marriage remains an uncharted area that requires empirical probing in order to understand it and also to move towards gender-just solutions to the problems they face.

In 2013, the Bharatiya Muslim Mahila Andolan² conducted a national study on the Muslim women's condition as well as views on reforms in Muslim personal law. This article is based upon the key findings of this study.³

The objectives of the study were to study the conditions of Muslim women pertaining to issues of family law; to ascertain their views on Muslim family law and to develop evidence in support of codification of Muslim family law.

For the study, 4,710 Muslim women from the 10 states of Bihar, Gujarat, Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Odisha, Rajasthan, Tamil Nadu and West Bengal were contacted. A detailed interview schedule was prepared and community-based women activists trained to collect data did the data collection. This was done from July to December 2013 with an average of 470 women per state.

A number of questions pertaining to age of marriage, divorce, maintenance, custody of children, polygamy, property

ownership, etc, were posed to the women who gave very interesting answers. A couple of critical conclusions can be drawn from the answers given by the overwhelming majority of women: that the rights of women enshrined in the Quran have not reached women in reality, and that an overwhelming number of Muslim women demand reform in Muslim personal law as it obtains in India today.

Socio-economic Status

The socio-economic status of Muslim women that came up in the research established that Muslim women have a negligible share in formal employment. Out of the 4,710 respondents in this study, it was observed that an overwhelming 78.7% of the women were homemakers whereas only 7.9% worked in the organised sector and the remaining 13.4% worked in the unorganised sector. This emphasises the need for special measures, including budget allocations, towards inclusion of Muslim women in the workforce of the country. Governments and policy bodies must study this dimension and devise policies towards inclusion.

Low Income: The annual income of 73.1% of the families was below Rs 50,000, out of which 39.1% families earned less than Rs 35,000. Only 18.3% of the families had an annual income between Rs 50,000 and Rs 1 lakh and 8.6%, that is, 407 families had an annual income of over Rs 1 lakh indicating their overall poor economic condition. The Sachar Committee had established the high incidence of poverty amongst Muslims. Yet, nearly eight years since the Sachar Committee report, there is no sign of improvement.

Age: Of the 4,710 women surveyed, 15.5% were married below the age of 15 years, and 39.8% were married between the ages of 15–18 years. If these figures are combined, a good 55.3% were married before the age of 18 years. Only 10.6% got married over the age of 21 years which when combined with the above figures show that a large number of women are getting married and perhaps starting a family at a time when women from other communities are busy preparing for their graduation. One of the encouraging

Noorjehan Safia Niaz (Noorjehan.sn@gmail.com) and Zakia Soman (zakiasoman@gmail.com) are co-founders of the Bharatiya Muslim Mahila Andolan.

trends is that despite early marriage, 46.5% of the women surveyed had one or two children. Only 4.9% of the women had more than six children, 20.7% of the women had three children closely followed by 20.8% having four–six children while 7.1% women did not have children.

When asked about desirable age of marriage for girls, 75% of the respondents wanted it to be above 18 years for girls and 88% wanted boys to marry above the age of 21. It is important to note here that age of marriage is a key factor in the life cycle of a woman and her family.

Some conservative quarters insist on puberty as the right age for marriage. The meaning of puberty needs to be defined not just in terms of physical attributes but an overall mental and emotional development and maturity. Marriage is an important social relation that calls for mature handling of relatives and social responsibilities. Besides the ill-effects of pregnancy on adolescent girls' bodies, their ability to raise children needs to be considered too. The Quran encourages comprehensive and judicious understanding of various concepts, including puberty, and there is no bar on delving deeper into this. The clarity demonstrated about age of marriage by such a large number of respondents should guide this debate and not the rigid insistence on a narrow definition of the word puberty.

Sect: Only 4.1%, that is, 195 women surveyed belonged to the Shia sect, while 87.6% or 4,126 women belonged to the Sunni sect. The remaining 8.3%, that is, 389 women were not aware of their sect.

Caste: Of the women surveyed, 45%, that is, 2,156 belonged to high caste followed by 26.2%, that is, 1,235 to the Other Backward Class (OBC) and 5.2%, that is, 245 women to the Dalit and backward castes. There were 22.8% of women who did not know which caste they belonged to.

Jurisprudence: Just over half, or 55.5%, that is, 2,614 women interviewed were under the Sunni Jamaat, followed by 10% or 473 women under the Bareilvi, Deobandi, Wahabi and Ahle-Hadees were

at 5.4%, 4.1% and 4.4% respectively. Of the total surveyed women, 20.5%, that is, 967 did not know which jurisprudence they fell under. The data reinforces the fact that Muslims in India are not a monolith and there is a clear diversity in terms of beliefs and practices. It also brings out the existence of a caste system within Muslims.

Domestic Violence: This study brings out the fact that 53.2% of the surveyed women have faced domestic violence. An overwhelming 82% women said they did not have any property in their name and 83.9% women confirmed that their current residence was not in their name. They did not own any property despite ownership of property being a Quranic right.

Dispute Resolution Mechanism: Over half or 53.2% women reported having faced domestic violence at some point in their lives. Most women said they go to the family followed by police and then to social organisations or non-governmental organisations to complain about their domestic issues. Only 1.4% women reported having gone to a *qazi* or *Darul Qaza*. An overwhelming 95.5% women had not heard about the All India Muslim Personal Law Board (AIMPLB).

Mehr: *Mehr* is an important Quranic right given to a Muslim woman that she can demand from her groom. It can be in the form of cash or any other form such as gold, property, etc, and it should be given to her at the time of marriage. Our findings suggest that this important affirmative measure favouring women has been diluted in practice. More than 40% women had received less than Rs 1,000 as *mehr* while 44% women did not receive *mehr* at all. Most respondents were not aware of the empowering provisions about *mehr* and that it is their right to decide the amount. The majority or 85.7% women wanted *mehr* to be given at the time of marriage while 83.9% of respondents wanted equivalent of the annual income of the husband to be the minimum *mehr* amount.

Polygamy: An overwhelming majority of women surveyed, 91.7% or 4,320 women,

spoke out against polygamy saying that a Muslim man should not be allowed to have another wife during the subsistence of the first marriage. On being probed further, 72.9%, thought that polygamy should not be allowed even if the first wife consented. While 2,959 women said that polygamy should not be allowed even if the first wife was ill, 2,983 women felt that polygamy should not be allowed even if the first wife could not conceive. Husbands should not be allowed to take widows as second wives was the view of 2,949 women. On being asked if men should be allowed multiple marriages to balance out the sex ratio, 83.4%, that is, 3,929 women said that the husband should not be given the permission for a second marriage irrespective of the ratio of women to men.

The views of ordinary Muslim women on polygamy are very clear; they do not want it under any circumstances.

Divorce: Of the 525 divorced women, 65.9% were divorced orally and 78% women were divorced unilaterally. The study indicates that an overwhelming 88.3%, or 4,159 women, want the legal divorce method to be the *talaq-e-ahsan* method spread over a period of 90 days and involving negotiation and avoiding unilateralism on the side of the husband. An overwhelming 92.1% wanted a total ban on oral/unilateral divorce, 93% women wanted arbitration process to be mandatory before divorce and 72.3% wanted the arbitration process to last between three to six months. Also, 88.5% women wanted the *qazi* who sends notice of oral divorce to be punished by law. On custody of children, 88.9% of respondents wanted the mother to retain the custody while 95.6% wanted ex-husbands to pay for children's maintenance even if they were in the wife's custody. The deciding factor for custody, in the view of 92.7% of the women, was consent and the well-being of the child.

Oral and unilateral divorce is one of the key issues being faced by Muslim women. We have come across a high incidence of oral divorce through various means such as uttering the word thrice, through a post card, notice from the *qazi*, over the phone, communication

through relatives, etc. In several instances, the oral divorce takes place in the absence of the wife. This practice is in violation of the Quranic tenets of justice and is utterly unfair. It happens without any participation by the wife or without taking her views into consideration. Most times it happens in her absence and yet is passed off as a valid divorce by different shariat courts which are male-dominated bodies. It is important to recount that a large number of women respondents called for banning this practice.

Maintenance: Half the women respondents received maintenance from the husband during the marriage but 27% reported receiving none. Almost half of the divorced women were either being supported by their own parents or were supporting themselves by working as they did not receive maintenance from the husband.

Codification of Family Law: An overwhelming 83.3% women felt that their family disputes could be resolved if a law based on Quranic principles was codified and 89% wanted the government to intervene in helping to codify Muslim personal law. Over 86% women wanted religious leaders to take responsibility for enabling Muslim women to get justice in the family and wanted these leaders to support the bringing about of a gender-just law based on the Quranic tenets of justice and fairness. An overwhelming 86% wanted the community-based legal dispute resolution mechanism to continue but at the same time wanted the functionaries to be made accountable to law and to principles of justice. They wanted the government to help ensure this accountability through a legal mechanism. While 88.5% women wanted a partnership between the court and the qazi, 90% women wanted qazis to be brought under legal accountability mechanisms. On legal aid, 95.4% respondents wanted Muslim women to provide legal aid to other Muslim women.

Existing Legal Framework

Let us briefly take a look at the existing legal framework for personal laws concerning Muslims in India. The British

enacted the Shariat Application Act, 1937 which was an attempt at applying Shariat law and not customary laws to the Muslim community. This act states that the Muslim community will be governed by the Shariat and not customary laws. Although it states that Muslims will be governed by Shariat, it does not specify much on aspects such as the age of marriage, divorce, maintenance, custody of children, polygamy, etc. This is of no help to women as it does not list the various issues that they face. In practice, followers of different schools of thought continue to apply their own varied understanding and interpretation of the Shariat. There are, therefore, many conflicting views on several significant issues, especially those concerning divorce. The irony is that each view claims to be based on their respective interpretations of the Shariat. And the practice of unilateral oral divorce continues. Several Muslim countries have codified their laws and tried to ensure justice to women. Several socio-religious communities in India, including minorities, have codified personal laws as per their religious texts. But such a move has not been taken up for the Muslims owing to the politics over leadership.

The Dissolution of Muslim Marriages Act 1939 gave a Muslim woman the right to seek dissolution of her marriage on nine specified grounds. This is the only legislation enacted by the British, which introduced a substantive codification of the divorce law. However, although the act benefits women, it is rather piecemeal. It only lays down the grounds on which women can seek divorce. It does not lay down any procedure or a time frame within which she can get a divorce. The man can divorce his wife without assigning any reason and even in her absence. He may or may not approach the court or any authority to seek divorce. This act does not question or restrict the man's unbridled right to oral triple divorce. The act deals only with divorce and not with related matters such as maintenance, custody of children, payment of mehr, etc. For these matters, the woman has to file separate cases under other laws, sometimes in other courts. This law is a welcome measure but it needs more elaboration and matters under its purview.

Our findings clearly indicate that it has not stopped Muslim women from being divorced unilaterally and instantly.

The latest development in recent times has been the Shah Bano controversy and the Muslim Women (Protection of Rights on Divorce) Act 1986. The Shah Bano case is one of the most significant lawsuits in the history of the Indian judicial system. The case pioneered the Muslim women's fight for justice on the right to claim alimony. There was a huge uproar at the time over the right to maintenance granted by the courts to Shah Bano. It was dubbed "interference in religious matters" by some conservative male sections. In the aftermath, the Muslim Women (Protection of Rights on Divorce) Act 1986 was passed by Parliament.

According to this act, the husband is liable to pay alimony during the time of *iddat* or for the span of three months after the divorce. In case the divorced woman has no close relatives to look after her or she is incapable of providing her own maintenance, the magistrate has the right to order the Waqf Board to take up the responsibility of providing support to the woman and her children. The act shifts the responsibility of maintenance from the husband to the relatives and the Waqf Board. The husband knows that if he does not provide maintenance, he could still control and harass his divorced wife to beg at different places for maintenance. The husband takes responsibility for the children till they are two years old. After that the responsibility falls on the wife to claim maintenance for them. The efforts by a lone woman to rightfully claim maintenance after divorce got converted into a huge political storm and the concerns of the woman were relegated to the background, the Quranic injunctions on gender justice notwithstanding. Since then there has been no effort either by the various governments or by the community to revive the process of gender-just reforms in Muslim personal law.

These three laws exist in India in the name of Shariat or Muslim personal law. But as is evident from our survey, these are highly inadequate in enabling justice for women in the matters of marriage and family. There is no codified law that

covers all aspects of family and marriage matters. In Muslim society there are multiple implementing agencies that dispense justice in family matters. There exist Shariat courts, qazis, muftis (religious clerics), *jamaats* (sect arbitration councils) that also take in cases of family dispute. These bodies are readily accessible and have closer contacts with the community unlike the secular court structures. Poor people find going to a court expensive, cumbersome and time-consuming. The community mechanisms are accessible but are dominated by men who arbitrate and settle disputes, which more often than not go against the interest of the women. These individuals and institutions have adopted patriarchal, conservative and anti-women interpretations of the religious texts. In some cases there is little recognition of the Constitution and the values of justice and equality. Besides, the Muslim law being followed by these bodies is not homogeneous and its provisions vary according to the different sects and subjects.

Furthermore, it is an amalgamation of customary law and practices, statutory law and interpretations of the verses of the Quran. So while a Muslim woman is required to go to the court to seek divorce, a Muslim man is not required to do so. He can pronounce divorce thrice and terminate the marriage contract instantly and unilaterally. The presence of wife or witnesses is not required. These courts are mostly approached by men as most of these places may not be women-friendly. However, Muslim women do approach Shariat courts regularly with the help of male relatives or directly. Our findings suggest that women also approach family courts and other localised government-run legal structures but the time and money required to pursue a legal case is beyond the reach of most women. Poor economic conditions and lack of sustained resources necessary to approach legal mechanism prevents them from going to court. While gender-just reforms within the Parsi and Christian matrimonial laws have been enacted through the initiative and support of the government, there is no political will to bring about reforms in Muslim personal law that would benefit Muslim women.

Muslim family law as it obtains today is piecemeal and disjointed with no effort from the community or the government to make it comprehensive. There is no monitoring or review of male-dominated community-based bodies for dispensing justice. As a result Muslim women are left with no choice but to suffer the injustices done to them. It is hoped that with increasing awareness and mobilisation of Muslim women, their voices will be heard.

Conclusions

This study establishes that Muslim women have been denied justice and fair treatment in matters of family and marriage. The ground reality for an ordinary Muslim woman is quite grim despite the Quranic tenets of justice and fairness. She suffers from practices such as under-age marriage, oral divorce and polygamy in the absence of a codified law and knowledge of Quranic principles. She suffers injustice in family matters owing to misinterpretations emanating from patriarchal mindsets and interests. The community justice mechanisms may or may not be friendly places for a woman and she is left with very little legal recourse.

The ordinary Muslim woman has faith that the Quran is just and fair to all. Her clear thinking on what should be her legal rights is heartening. Her desire to have a clearly laid down legal mechanism needs to be taken up at all levels within the community and by the government. She wants a codified law based on the Quranic tenets to resolve her issues such as age of marriage, divorce, maintenance, polygamy, custody of children, property, etc.

Clearly, the existing male-oriented community justice framework has not helped Muslim women to get justice in matters of marriage and family. It is important to understand the meaning of the popularly held perception about Indian Muslims being governed by Shariat in matters of personal laws. Do we have codified Shariat laws in India that adequately address all aspects concerning marriage and family matters? The study establishes that the existing legal framework is far from adequate when it comes to upholding rights of women granted by the Quran. This is true in the Indian context where

the Muslim women's quest for justice is viewed with scepticism or even hostility. The secular democratic state has failed to enable fair representation for all sections of the population, including women, by only recognising the conservative religious voice as the voice of the whole community. The conservative sections are unaware and unconcerned about the issues of Muslim women and therefore they cannot continue speaking for them.

Furthermore, Muslim women and girls face several challenges of safety, security, survival and dignity in modern times like women and girls from all other communities. They are gradually learning to cope with these challenges. The solution cannot be that of confining them to homes for their own safety and well-being. They have aspirations like other citizens and it is binding on both the government and the community to recognise and support their concerns. Muslim women cannot forever live with the threat of instant oral unilateral divorce or polygamy or post-divorce economic uncertainty. These must be resolved by evolving a just and fair legal framework based on the principles of the Quran.

NOTES

- 1 The Rajinder Sachar Committee was constituted in 2005 by the Prime Minister of India. It was tasked with collecting information on the socio-economic status of India's Muslim population and identifying areas of intervention by the government. It collated data from the census and National Council of Applied Economic Research studies, and conducted its own surveys to highlight that Muslims in India fared worse than other socio-religious communities on issues of access to health, education, credit, general infrastructure and employment.
- 2 The Bharatiya Muslim Mahila Andolan was formed in January 2007 in Delhi. It is a democratic organisation of Muslim women, led by Muslim women, which works for citizenship rights of all and particularly Muslim women in India. In 2015, its membership crossed 60,000 women and men across 15 states. BMMA shares the values of justice, democracy and secularism enshrined in the Constitution as well as the values of justice and peace enshrined in the Quran. It believes in women's position as equal citizens in society and strives to build Muslim women's leadership. In different states—Gujarat, Maharashtra, Rajasthan, Madhya Pradesh, Karnataka, Tamil Nadu, Odisha, West Bengal, Bihar, Jharkhand—it works on the issues of education, jobs, security, law and health. BMMA is opposed to communalism and believes in communal harmony, mutual religious respect and coexistence. It stands in solidarity with all who believe in social justice and equality.
- 3 The full study *Seeking Justice within Family: A National Study on Muslim Women's Views on Reforms in Muslim Personal Law* can be found at bmmaindia.blogspot.in.