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**STATUS OF MUSLIM WOMEN  
SOCIAL REALITIES & RELIGIOUS NORMS  
(Part-II)**

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### Editor's Note

The validity of triple *talaq*, *nikah halala* and polygamy needs to be considered in the light of the principles of gender justice, dignity and equality. Article 15 (1) & (2) of Indian Constitution prohibit the state from discriminating any citizen on grounds of any religion, race, caste, sex, place of birth or any of them. The pronouncement of *talaq* three times in one go violates the right to life. The Muslim Personal Board has taken an extreme position saying that the interference in the Muslim Personal Law under the right to freedom of religion is akin to rewriting Koran and forcing Muslims to commit a suicide.

The triple *talaq* is not merely only a legal issue. It has social, ethical, humanitarian angle. What is legal need not be ethical, humanitarian and progressive. Moreover, the triple *talaq* violates human rights. The freedom of religion is not a licence to deny gender justice, decent standard of living and dignity to a Muslim woman based on interpretations of the religious texts, which are not in

tune with the time and space. The triple *talaq* is an aberration and it has hardly anything to do with the final message of God for all humankind. If message of God is for all humankind, then it cannot deny dignity, freedom and equality to Muslim women, today.

Prophet Muhammad had to carve out Islam, the religion of peace, to reform the pre-Islamic society and re-interpret, refashion and re-write the traditions, customs, beliefs which promoted evils of all kind in Mecca. Islam was a reaction to denigration of woman as an object of trade, sex and violence. Today, 22 countries have abolished triple *talaq* implicitly or explicitly. Muslim clerics and warriors divided the world into Dar-al-Hurb (House of War) and Dar-al-Islam (House of Peace). India falls into a Dar-al-Harb category. This is the precise reason why the Muslim Personal Law Board considers any interference in religious matter as an attack of Koran itself. Curiously, the word 'Dar' or 'Dur' meaning divisions is not mentioned in Hadith or Koran. So, is the case with triple *talaq*.

# STATUS OF MUSLIM WOMEN SOCIAL REALITIES & RELIGIOUS NORMS (Part-II)

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[Short forms for references from the newspapers and magazines quoted:

*The Hindu*: TH;

*The Indian Express*:

TIE;

*The Times of India*: ToI;

*Eastern Crescent*: EC;

*Holy Quran*: HQ;

*Sahih Al-Bukhari*: SAB.]

## Triple talaq

***Triple talaq in the Muslim society is inhuman. Are the Muslim organisations ready to consider triple talaq as invalid and accept changes in the Muslim Personal Law?***

HC verdict delivered by the bench of Justices A. R. Dave and A. K. Goel as reported on Oct. 29, 2015: “It was pointed out that in spite of Constitutional guarantee; Muslim women are subjected to discrimination. There is no safeguard against arbitrary divorce and second marriage by her husband during currency of the first marriage, resulting in denial of dignity and security of her.” As the title of the above news item reads, “If sati can be banned, why not polygamy?” (TOI Oct. 29, 2015). As reported in TOI of Nov. 7, 2015, “A survey of Muslim women victims of triple talaq found that 6 out of 10 women were given divorce by unilaterally by their husbands. In almost all other cases, the divorce was one-sided with the woman having been informed about it by her relatives, the local Qazi or via SMS or e-mail.” There is another judgment by Allahabad High Court stating that triple talaq or practice of Muslim men getting an instant divorce by saying “talaq” three times is “cruel”. Justice Sumeet Kumar said that “the Muslim husband enjoys arbitrary, unilateral powers to inflict instant divorce, does not tie in with Islaamic law.” Justice Kuma also

said that personal laws of any community cannot claim supremacy over the rights granted to the individuals by the Constitution that provides for equality and non-discrimination. Women cannot remain at the mercy of the patriarchal set up held under the clutches of sundry clerics having their own interpretation of the holy Quran” (TOI Dec. 9, 2016). The comment by Hon. Justice needs no further comment and elaboration.

### **Q&A about triple talaq in EC**

Even after so much of controversy and filing of petition by thousands of Muslim women and men seeking ban on instant triple talaq, mouth piece of Deobandi school monthly magazine Eastern Crescent (EC) published a Q&A on triple talaq validity on phone. It runs as under:

**Q.** My wife did not obey me once. We quarrelled a lot on phone and in last, I threatened her saying if you don't do what I say then I will divorce you. Later, I phoned her relative and told that 'I have left my wife and you should inform her parents.'

One of my relative says talaq has occurred. May I know what is the Islamic ruling about the above matter?

**A.** As talaq occurs by giving talaq in the same way it occurs too by admitting talaq falsely. So, in the above case, one Talaq-e bain (irrevocable talaq) occurred. Now she needs to pass Iddat period. If both want to live together again as wife and husband, they will have to renew their Nikah with mutual consent. (EC, May 2016, pg 46-47)

After I read it I was aghast. On two occasions, I have personally visited Deoband, had long discussions with the VC and the faculty. They appeared to be sober and considerate. Still they allow such an inhuman treatment meted out to a lady. When I mentioned about ceasing the tradition of *Ijtihad* in Islam centuries ago to the VC, he mentioned that it continues and will continue till the end of the world. And here the mouthpiece magazine of the institution advocates admission of irrevocable talaq indirectly given on phone through third party. In Islam, marriage is contract. But it always one sided contract where a lady has no say. Muslim women



always remain under psychological stress that they could be divorced on flimsy pretext; and that they would be devastated for life.

A very pathetic story of a lady thrown on the street in midnight is narrated by Shehnaaz Sheikh herself has appeared in TIE dt Nov. 16, 2016. After she was given talaq in midnight and thrown out, her ex-husband kept on troubling her even after the *iddat* period. She consulted five *qazis* - religion experts, who gave her different versions of divorce. Ultimately she took recourse to legal action with the help of a feminist organisation. Similar situations have forced thousands of Muslim ladies to approach the apex court to take up the case against triple talaq. Recently a women's organisation Rashtra Sevika Samiti took a stand that the talaq question should be resolved from within the Muslim community; however the Muslim community has failed to solve the problem from within.

Tahir Mahamud (TIE Mar. 23, 2016) points out that the tradition of triple talaq dates

back to the re-Islamic *jahliah* period and that Islam tried to put restrictions on the unbridled enactment of the old tradition. In connection with triple talaq clerics often quote instances from Hadith that Prophet scolded his close follower for having given instantaneous talaq - dicorce at Makkah in the early years of Islam. Holy Prropheet was against the tradition of oral talaq. His two daughters, Ruqiyah and Umm Khatum had to undergo divorce in the early years of Islam. However second Caliph, Haz. Umar was traditionalist. Once there was a family feud and conflict within Holy Prophet's family. Caliph Umar threatened the wives of the Prophet that he would suggest Prophet to unilaterally pronounce divorce to all of them and that He would get better wives than they were. Caliph Umar's threat wasn't empty threat. It had backing of the Pre-Islamic tradition. It appeared that the threat worked. The differences within the family were unilaterally settled without having to seek divorce. HQ 4.128 suggests an approach of reconciliation between the spouses. Most of the time, it is one way, for a lady to reconcile. The instances quoted earlier where the divorced ladies

approached local Mullahs, as in the case of Shehnaaz Sheikh, seeking for justice. However they did not get positive response but were snubbed. Some of them have organised themselves and made up their mind to approach the apex counter to seek justice

In the above example quoted from EC, the Mullahdom is given license to accept one time talaq even on phone. What kind of contract and relationship is the Islamic marriage? It is a unilateral contract, always holding only in favour of a husband, misogynist all through the period of survival.

Marriage system in Muslim marriage does not take into consideration the way it will impact the lady who only will endure ignominy and lonely life. As the data coated earlier indicates, divorced Muslim male gets married in no time, but the abandoned and divorced lady leads the pathetic life of ignominy as described by Shehnaaz Sheikh. She won't receive alimony beyond the period of three months. It should also be considered that women

are more emotional by nature. They get attached to the male whom they get married. If there be issues after marriage, the attachment to the husband and kids is all the more intense. Here the Muslim man quarrels with his wife on phone and seeks divorce. He surely expecting the docile of the *baarri* type (Infidel, Ayaan Hirsi Ali Pg 12) described earlier. In fact the answer provided in EC is incomplete. If one goes by tradition, the divorced lady has to undergo halala marriage before she remarries the first man. She has to officially marry another man, consummate the marriage and get divorce. As pointed out by Prof. Tahir Mahamud, even if the husband later relents, the ladies will have to face the ignoble situation of "sleeping with someone else before returning to a man". Then only she becomes eligible for marriage. What kind of misogynist attitude prevails in these clerics who look at other human beings, the female folks, like an inanimate object of entertainment? There have been the cases, when after a lady is divorced, the male kid is held back by the family and female kid is driven out with her mother and left to fend for themselves. EC article

mentions, “Now the lady is free to marry whosoever she wants” (*ibid.* Pg 29). In reality none comes forward to marry these divorced ladies. They have to lead miserable life.

Muslims abhor the traditions of other religions and customs of pre-Islamic society as born of ignorance *jahilia* and that these are to be discarded. However this tradition which favours Muslim males continues to prevail in India in a very shameful manner. Muslim Personal Law Board is pleading to continue it stating that it is divine. Deobandi clerics continue to back that inhuman custom. What kind of *Ijtihad* it is?

Shah Bano case in 1985 was a turning point for the Muslim women and Indian political ethos. Rajiv Gandhi Government had massive mandate in Parliament. But he altered the law and transferred burden of the divorced lady beyond Iddat period on the parents or the Waqf Board. The echoes of the case have been sounding in the judicial system of India. It will be interesting to know as to how many divorced

Muslim ladies were supported by the Waqf board in different states since the law was amended by late Rajiv Gandhi.

In a recent judgment Justice Goel pointed out, “An important issue of gender discrimination which, though not directly involved in this appeal, has been raised by some of the learned counsel for the parties which concerns rights to Muslim women. Discussions on the gender discriminations led to this issue also. It was pointed out that in spite of guarantee of the Constitution; Muslim women are subjected to discrimination. There is no safeguard against arbitrary divorce and second marriage by her husband during the currency of the first marriage, resulting in denial of dignity and security to her” (TH Oct. 25, 2015).

As I mentioned earlier, the ramblings about reforms in the Muslim Personal Law and implementation of Sharia, polygamy and triple talaq are very visible in the Muslim community. About the Muslim Personal Law Board, Zia Us Salam writes: “The churning within the Board goes on unabated. On the controversial triple talaq, for instance, one of the

members insists that the Board understands that it is valid but wants to make triple talaq 'punishable' at one go. It is a view point not shared by others, notable by (S.Q. R. Ilyas) Ilyas, who points out that the view of one member is not the unanimous view of the Board. He says, "Board is not a homogenous body. It has members from different schools of Islamic jurisprudence. For instance, the Ahle-e-hadith people regard triple talaq in one sitting as only a single pronouncement of divorce. They believe that one month period has to lapse between each pronouncement of divorce. We, however, cannot make it punishable as we are not living in an Islamic country." Other extreme view is propounded by other member. It is echoed by Zafarul Islam Khan who heads the All India Muslim Majlis-e-Mushavarat, an umbrella body of 12 Muslim organisations and comprising around 200 intellectuals. "If it were possible, I think triple talaq in single sitting should be punishable by lashes. It is wrong. The Quran specifies a procedure of divorce. However we do not interfere

with the working of the All India Muslim Personal Law Board. We believe they are competent to decide on such issues," he said. Zia Us Salam goes further to inform that the Board's very right to existence has been questioned by the like of Justice Markendey Katju as also Tahir Mahmood, former chairman, National Commission for Minorities. The board members stand to gain all the time" (TH Sept 6, 2015).

### **Codification of Sharia Laws**

Bharatiya Muslim Mahial Andolan (BMMA) has been seeking reforms in Muslim Personal Law as opposed to the introduction of the Uniform Civil Code. It has claimed that the Constitution of India, under Article 25, grants the right to all, including minorities, to have personal laws based on respective tenets of different religious communities. Muslims in India are governed by the Muslim Personal Law (Shariat) Application Law of 1936. This law makes the application of Shariat applicable to all Muslims. However, this law is not codified and is open to interpretation by the local clergy. Women's group have claimed that these interpretations are not gender friendly and prone





to be misused against women. These accusations come not from any Hindu outfit but a body of Muslim women. Recently BMMA published a report of a survey in which it had found that 92.1 per cent of the surveyed women wanted ban on oral and unilateral talaq, while 91.2 per cent did not want their husbands to have a second wife (TIE Oct. 17.2015).

BMMA founder member Noorjehan Safia Niaz while being interviewed by Mohammad Wajihuddin expressed, “Three Acts form Sharia law in India the Shariat Application Act of 1937, Dissolution of Muslim marriage act of 1939 and Muslim Women (Protection of Rights on Divorce) Act of 1986. All these acts discriminate against women. These laws merely say that Muslims will be governed by Sharia and various grounds on which a Muslim woman can seek divorce. It doesn't say how a man should seek divorce. Men misinterpret and think they don't need to follow the procedure; they just utter talaq or divorce orally on telephones, through text messages and on email. Our

law abolishes such divorce. We want compulsory registration of marriages and unlike the existing law, our draft also says the bride and groom should be at least 18 and 21 years respectively, neither should have a living spouse, thus banning polygamy” (TOI July 16, 2015) Noorjehan also rightly pointed out that the polygamy option to Muslim men is a license to harass wives. It's used as a Damocles sword- it must be done away with.

Other Muslim Women's organisations too are demanding codification of the Sharia law. With top legal brains in the AIMPLB, why was it not codified? As such there exists no standard Sharia text. Every sect has set its own norms as can be discerned by the opinions quoted above. These are left for the local clerics to arbitrarily decide. If one has to take recourse to the Hadith narrations, ladies are to be flogged, buried and stoned for various types of sins committed by them. Limbs of the male convicts are to be amputated or they are to be hanged on the gallows in presence of bellowing and enjoying crowds. These punishments too are the part of Sharia laws enactments. The

Muslim members of the AIMPLB in 1930s could not demand enactment of the Sharia law as it would have been rejected outright by then the British masters. That is why criminal part of the Sharia law was separated from the Muslim Personal Law. The five women, who were singing in a crowd in Kohistan from Pakistan, after their video went viral, have simply disappeared. Well! That comes under the implementation of Sharia law howsoever ghastly it is. As Rafia Zakaria has commented in an article in Dawn, "What all Pakistanis know, that women's lives are worth little in Pakistan and women who dare to have fun, to be happy, are worth even less" (TIE Dec. 25, 2016). If the clerics in India were to implement sharia following *umma*, one shudders what would happen to the Muslim womenfolk here. It is of utmost importance that Sharia laws be codified avoiding brutality as practised in many Islamic countries and keeping the human dignity and equality of female folk as mainstay of the text.

As regards triple talaq, I have to

narrate an incidence I witnessed at Bareilly. It is dealt in depth in my article of Feb. 3, 2013 issue of Marathi weekly "Vivek" Pg 15-18. During my visit to Bareilly in October 2012, I happened to meet learned editor of an Urdu publication within the premises of the famous Aala Hazraat Daargah. As we were discussing on the Middle Eastern turmoil of Arab Summer (no more spring), suddenly 4-5 males barged in the room. They were agitated. One among them was brother of a young married Muslim lady with a small child. On the earlier night, young couple had a fight and the husband uttered triple talaq. As they reported, the lady was immediately removed out of the room by her in-laws and packed back to parents' house *maika* early morning lest any untoward thing happened. After a few hours, the young man visited parents and profusely repented having uttered talaq. The family members of husband maintained neutrality towards the whole affair. Parents of the lady had to resolve the issue since she had returned back. According to conventional procedure, the talaq i.e. divorce is final after three utterances. The lady cannot live with the same man

unless she is married, marriage consummated and divorced again and over the period of three monthly cycles. The learned man, the editor in front of me, realized the intensity of the problem. He was silent for a while and then asked as to how many times the word *talaq* was uttered. As if rehearsed, all of them said that according to the young man, he uttered it only two times. The learned man uttered a sigh of relief saying that there is a way out. Suddenly he realised that I was listening their conversation. He begged my pardon, said goodbye to me and took all of them inside. As I left the premises, I was wondering how much time it must have taken for the young man in fit of rage to utter *talaq* three times. It takes less than two seconds. Can he be relied upon for his confession that he uttered it twice only?

To what extent the organised male obscurantism can go is shown by a *fatwa*, religious dictate dealing with triple *talaq*. Title of the news item reads, “*Talaq* even on unsent SMS valid”. “Typing the word '*talaq*' which may not be “sent” or

uttering the words '*talaq*' thrice even under the influence of alcohol or in a fit of rage amounts to separation under the Sharia. Darul Uloom-Deoband recently issued a fatwa, demolishing the common belief that anger or intoxication or not communicating the '*talaq*' decision to the partner did not amount to divorce in Islam..... According to Darul-Ifta, the Fatwa department, one *talaq* will be deemed to have occurred, whether the SMS was sent or not. In Fiqh term, SMS is a text which, if written by husband with the intention of *talaq* will be valid. Another question (Jan.3), a man said he had pronounced '*talaq*' three times in anger during fight with wife. A week later, he learnt that she was pregnant, and he wanted to live with her. The Darul-Ifta said, “Since the divorce came in clear words thrice, the element of intention loses its legitimacy” (TOI Jan. 7, 2009).

It is a best way to keep one's wife always docile and under control to have upper hand in the home affairs. As quoted earlier it forces wife to be pious slave in a Muslim household. A Muslim wife has to remain under stress for being divorced for all the time.

The EC answer in Sept. 2015 issue states that triple talaq is acceptable howsoever it may not be admirable. The fact remains that it exists in the Muslim society and to the detriment of the women folk. Appeal by the affected ladies to the apex court for relooking at the triple divorce should not be construed as interference in the religious matters of the Muslim community as a whole. Way back in 1995, a reformist from Muslim community, Asghar Ali Engineer, writing on “Personal Law and Gender Justice” has pronounced: “Triple talaq-divorce is un-Quranic. There is, however, no unanimity among Muslims on this question. Ahl-e-Hadis, Ahl-e-Quran and the Shi’ah Muslims do not accept its validity. It is only Sunni Hanifis in India who recognise it although they consider it a sinful form of divorce, pre-Islamic in origin. The Sunni Hanifi Muslims should accept the abolition of triple divorce which causes so much suffering to women throughout India. Apart from Pakistan, even Jordan, a Sunni-Hanifi country, had abolished triple divorce” (TOI June 10, 1995). It is to be noted that Muslim woman cannot ask

for divorce. It is called *khula*. For Muslim women it is a one way track. Prophet Mohammad was progressive about separation of a couple. He himself allowed a divorce as narrated in a Hadith: “Narrated Khansa bint Khidham Al-Ansaria that her father gave in marriage when she was a matron and she disliked that marriage. So she went to Allah's Messenger (Pubh) and he declared that marriage invalid” (SAB Pg 895). In the later days, honourable companions of the Holy Prophet too considered uttering word talaq thrice in one sitting as one and not three announcements. A list of the Holy Prophet's companions, usually called with honorific sahaba, is given by Waris Mazhari, a graduate of Dar-ul-Uloom, Deoband. They were Ali (the fourth Caliph of the Sunni Muslims), Abdullah bin Masood, Abdullah bin Abbas, Zubair bin Awwam and Abdur Rahman bin Aw. They viewed the utterances of the word talaq in one sitting as one and not three, and thus, as not resulting in an irrevocable divorce (al-talaq ul mughallaza). Mazhari further concedes that, traditionalist Muslim scholars wrongly regard even slightest deviation from their school (of thought) as unlawful. On the other hand, there are the



thousands upon thousands of Muslim women whose lives are being destroyed by the effects of this method of divorce (Mazhari in TIE Aug. 12, 2016). What more indictment of the proponents of the thinking of Dar-ul-Uloom, Deoband can be there? It comes from the graduate of the same institution.

Shaista Amber is a chairperson of the All India Muslim Women Personal Law Board. In her interview with Rohit E. David of The Times of India, she explicitly stated that triple talaq is un-Islamic and the women segment of the board was formed to nullify this system and fight such evil practices. It nullifies talaq given through sms, email or telephone. Male dominated society (that the Islamic society is) ignores their voices except for a few, most religious clergies prefer women to live behind their veils and abide by the rules set by male chauvinists (TOI Apr 15, 2016).

Another columnist Zeenat Shaukat Ali has expressed deeply scathing remarks on the stand taken by AIMPLB. She writes that the board has declared

that country's top court has no jurisdiction to undertake the exercise as Muslim Personal law "is inextricably interwoven with the religion of Islam", being based on Quran and not on a law enacted by Parliament. This argument has little logic. It needs to be unequivocally stated that the talaq-i-bidat, admitted by the Muslim Personal Law board to be "sinful" and an "innovation", finds no sanction of the Quran (TOI Apr 28, 2016). Well-known writer and lyricist Javed Akhtar has ridiculed the stand taken by the Mullahdom while speaking at IIT Delhi. He took cudgels for a hot topic of triple talaq. He said he heard that it is possible to pronounce talaq on phone. Shall I write talaq fully or just "tlq, tlq, tlq" will do? (TOI Sec 25, 2015). There are several instances when the Muslim women have come on the TV screen and testified as to how they are kept under constant pressure of triple talaq all through their married life (TV interview on a Hindi Channel Dec. 8, 2016). It reflects the third rate status of women in the Islamic society. It needs to be questioned whether Sharia as is practised today is correctly codified that it is to be accorded divinity on par with the

Holy Quran. Even the Muslim Women's organisations have not challenged that claim.

Why go in depth of triple talaq, because as stated in a report on the divorced women from the village Naiamu in Muzaffarnagar District in UP, the instances of unilateral triple talaq delivered on the phone, WhatsApp, Facebook are on the rise. Report also refers to the unholy incidence of Imrana, raped by her father-in-law, was declared by the clergy as married to him. The clergy also announced that her erstwhile husband would now be her son. The incident took place in the village Kukra, about 30 km from Naiamu village (TOI Oct 23, 2016).

Looking at the overwhelming opposition to triple talaq, and keeping in tune with the discrimination and gender injustice practised in Muslim society, the organisations like Deoband and other schools should evolve the acceptable rational for divorce and ban on polygamy for all the sects and sub-sects within the Muslim society. Or it is next to

impossible to come to common grounds for divorce such that Muslim women's organisations will have to independently take up the issue on the national level?

An EC article also mentions that while the Muslim women are allowed to marry after divorce or widowed, Hinduism forbids remarriage. As mentioned, "Depriving the widow and divorced women of remarriage in Hindu society is a big cruelty with them. The Hindu religious scholars should try to remove this false custom" (EC Sept 2015 Pg 31). This information is incorrect. Till a century ago, it was with the so called higher caste Hindus who observed the taboo of not permitting widow or divorcee marriage. The Bahujan Samaj, the rest of the Hindu society did not observe it. Ladies who were widowed or whose husband was not traceable for a few years were and used to get remarried. In Maharashtra it was called *Paat* - remarriage. In fact there were religious injunctions as to how much time should elapse for the unreported husband that the lady left alone can go for the next marriage. There are movies like "*duvidhaa*" depicting dilemma of

a woman whose first husband returns after remarriage. These days Hindu ladies from any caste go for divorce, get amicable settlement and start new life.

Such class distinction exists in Muslims too. As Zarina Bhatti in her article, “Socio-Economic Status of Muslim women” in her book *Muslim Women: Problems and Prospects* (1993) points to division in Muslim society based on two social divisions: “The division between the Ashraf and the non-Ashraf (*Ajlaf*) strata of Muslims is clearly reflected in their attitude towards women. The Ashraf concept of a woman is derived entirely from her role as a wife and mother and is garnished with traditional feminine virtues of pre-marital virginity, beauty, tenderness, modesty, self-denial, graciousness, sensitivity and devotion to the family.....Non-Ashraf women by comparison are freer. To begin with, they do not, as a rule, observe purdah. And since purdah is the insignia of respectability, these women are not considered as respectable as Ashraf women. While they play the role of wives and mothers, they are also partners in

the daily struggle... Non-Ashraf women too are subordinate to male authority” (*Muslim Women: Problems and Prospects*, pg 15).

There have not been problems like Shah Bano or Imrana incidents with the Hindus. Imrana case has just completed ten years in 2015. The Mullahdom showed utter insensitivity towards Imrana. While she was raped by her own father-in-law, the Mullahdome did not think of punishing him. It will need long discussion. There is need for the Muslim society to do introspection and really take humanitarian approach while dealing with the women folk and their problems and treatment in the family matters. As the things stand, if the mullahdom refuses to change, the Muslim womenfolk will tread their way forward to egalitarianism. It will be a real breakthrough for the current impasse on the national scene. As the proverb goes, even if the cock is kept under cover to prevent it from crowing, the Sun is sure to rise.

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### **Myth of a Marriage Contract**

Of late there have been many court

cases filed to deal with “Triple Talaq” by thousands of divorced Muslim women and others who support them, differ with the practice and desire to stop the tradition of triple talaq. It implies stopping the practise of divorcing a lady by pronouncing triple talaq in a one go. For the last few years there have been several articles published by columnists and scholars, often open debates and heated discussions on many TV channels on the topic of triple talaq. The ladies from the Bharatiya Muslim Mahila Andolan are in favour of not recognising the instant talaq as delivered in one go, whereas the Muslim theologians and the supporters of All India Muslim Personal Law Board (AIMPLB) vociferously defend it. As the arguments are put in favour, the tradition of triple talaq is an easy way out for both spouses without getting bogged down in the procedural rigmarole and letting them free from each other without delay. A very important point often made is that a marriage in Islam is a contract unlike the bond lasting for many births as it is considered in the Hindu tradition. In the same

breath these experts state the Holy Quran is against the talaq of any kind, sometimes quoting from the text. In one TV debate, on Dec 12<sup>th</sup> 2016, a Maulana even went to extend to state that since the marriage is a contract and the bride has also to agree. She has to loudly say “Qubool! Qubool! Qubool!”, to abide by it. It is a sort of vocal agreement for the contract witnessed by family members. In the event she keeps silent, the marriage does not proceed.

Nothing can be far from the truth. A contract to be legal, social or marital as above can't be accomplished unless both the parties have reached adulthood. Both bride and groom should be above 16 years of age. However many clerics insist that a girl can be married even at the age of 14 years. Thus, for a girl of 14 years, giving consent, “Qubool! Qubool! Qubool!”, for a marriage should be considered invalid. It should not be considered as her will but prompted by her parents and relatives. They are obviously not thinking well of their progeny.

### **Ideal marriage Contract**

In the Islamic culture an ideal marriage contract took place in the



times of ignorance i.e. *jahlia* period when matron H. Khadija married a honest and promising young man Muhammad who in future would become the Prophet. That marriage contract had long lasting effect on the humanity. Both of them were in their adulthood. In fact the marriage proposal was initiated from the bride to be. Have the Ulemas of this day discarded the precedence of the ideal marriage contract of two adults marrying with each other's consent just because it belonged to the times of ignorance?

Or they would like to follow the precedence of the child marriage of 8 years old H. Aisha marrying the Prophet. There is a Hadith giving sanction to their marriage. The marriage occurred after H. Khadija had passed. Narrated (Aisha): The Prophet asked Abu Bakr for (Aisha's) hand in marriage. Abu Bakr said, "But I am your brother." The Prophet said, "You are my brother in Allah's religion and His book, but she (Aisha) is lawful for me to marry." (Sahih Al-Bukhari 7:18). Apart from feeling lonely after H. Khadija's passing away, this marriage contract had many

more considerations. It was between the proposer and the parent *walid* of the bride. In today's times it can't be a valid contract. But these things are of the yore.

There is a hadith where the marriage contract was abrogated as the bride did not agree for marriage. Narrated Khansa bint Khidham Al-Ansaria: that her father gave her in marriage when she was matron and she disliked that marriage. So she went to Allah's Messenger and he declared that marriage invalid (Sahih Al-Bukhari 7:69).

In the life of Prophet Mohammad a marriage contract could not be worked out as the bride refused to give consent for consummating their marriage. Narrated Aisha: when the daughter of Al-Jaun was brought to Allah's Messenger (as His bride) and he went near her, she said, "I seek refuge with Allah from you." He said, "You have sought refuge with The Most Great; return to your family." (Sahih Al-Bukhari 7:181). This hadith is further elaborated by Abu Usaid. "Jaunia (a lady from Banu Jaun tribe) was brought along with her wet nurse (as a bride for the

Prophet). When the Prophet entered upon her, and said to her, "Give me yourself (in marriage) as a gift." She said, "Can a princess give herself in marriage to an ordinary man?" The Prophet raised his hand to pat her so that she might become tranquil (as she did not know He was Allah's Messenger). She said, "I seek refuge with Allah from you." He said, "You have sought refuge with One Who gives refuge." Then the Prophet came out to us and said, "O Abu Usaid! Given her two white linen dresses to wear and let her go back to her family (i.e. she is divorced). (Sahih Al-Bukhari 7:182). These are the typical cases of *Al-khul* where a lady proposed for breaking of the marriage contract. Will the Ulemas of today allow *khul* for a lady today?

### **Verbal expression of consent**

Another contentious issue is the verbal consent of a bride. As was narrated by the Ulema on TV show, unless the bride gives verbal consent, the *nikah* can't proceed. The fact is otherwise. Narrated Abu Huraira: The Prophet said, "A matron should not be given in marriage except

after consulting her; and a virgin should not be given in marriage except after her permission." The People asked, "O Allah's Messenger! How can we know her permission?" he said, "Her silence (indicates her permission)." (Sahih Bukhari 7.67). Even H. Aisha too has seconded the above hadith. Narrated Aisha: I said, "O Allah's Messenger! A virgin feels shy." He said, "Her consent is (expressed by) her silence." (Sahih Al-Bukhari 7:68).

As a matter of fact, it has been happening for centuries. Child brides have either been keeping silent or uttering Qubool! Qubool! Qubool!, as a matter of formality prompted by elders in the household. Under these conditions to claim that a Muslim marriage is consented contract from either side is really a myth. This myth is further perpetuated by the triple talaq in one go. Apart from the support by AIMPLB for the triple talaq, the mother institution of Sunni Muslims has come out in support of it. In an article in the mouth piece "Eastern Crescent" (EC) of Darul Uloom, Deoband, by M. Burhanuddin Qasmi, he has reiterated, "In one of my articles previously 'Talaq, talaq, talaq: is

crime but it kills' I detailed how triple talaq has been applicable since Prophet Mohammad's (saws) life time. The Prophet (saws) though was angry owing to misuse of talaq and not following the spirit of Islam by some of His companions, yet He had enforced separation following triple talaq in one go on more than one occasions. The first Caliph Abu Bakr (ra), the second Caliph Umar bin Khattab (ra), who introduced punishment against the defaulter of using instant triple talaq but enforced outcome. He further states that all four schools of thought Hanifi, Shafie, Maliki and Hambali sects have been following it in the same way till date." (EC Dec. 2016 Pg 23). The tradition of easy separation dates back to *jahilia* period and has continued unquestioned as it served the purpose of the male dominated tribal society. How far it is relevant to apply those norms today? As such the spirit of inquiry *ijtehad* has disappeared long back.

### **Extreme misogyny**

In any contract, both the parties have to agree to abrogate the contract. There have to be

consultations and mutually agreed terms to separate. The procedure has fairly well been laid down by a Muslim Judge, although in secular India it does not matter what his religion is. Justice Baharal Islam of Gauhati High Court in 1978 stated, "In my view the correct law of talaq as ordained by the Holy Quran is that talaq must be for reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters one from wife's family and other from the husband's. If the attempts fail, talaq may be effected. In Shamin Ara's case (2002) the Supreme Court approved of the views of Justices Krishna Iyer and Baharal Islam." (as quoted from A. G. Noorani, another Islamic scholar in The Indian Express Dec. 15, 20116). These views are well in agreement with the HQ 2:229: "Divorce is twice; then keep her honourably, or release [her] virtuously....." here it implies that the couple can separate twice and the wife can return to husband without undergoing *halala* i.e. consummating marriage with other man. It is aptly been stated as accepting her honourably. Any women will feel let down by being made to sleep with another man if

she doesn't desire. It is further augmented by another *ayat* HQ 4:21. It in fact this *ayat* honours the feeling of a lady who offers herself to be in bed with a man. That very instant a covenant is reached. HQ 4:21, "And how do you take it back when you have lain (*afda ila*) with one another and that they have made with you a solemn covenant?"

There is a hadith which lays down the procedure to go for divorce. Divorce according to *As-sunna*, the Prophet's legal way is that one should divorce his wife when she is clean from her periods and he has not had sexual intercourse with her (after her period) and there should be two witnesses for the divorce. (Sahih Bukhari 7.177).

These misogynists Mullahs should inquire with near female relations whether they consider *halala* as honourable course of action. Darul Uloom is ready to accept indirect pronouncement of talaq even by SMS on a mobile, giving no chance for a lady even to say a word (EC May 2015 Pg 46-47). EC defines triple talaq as "Beauty of Islamic system of divorce" (EC Oct 2016 front

page). Is that the way contracts are to be abrogated? Supporting the triple talaq in one go is mockery of the spirit of contract. These misogynists are still rooted in the middle ages and trying to perpetuate the myth of a marriage contract in Islam. Now the Muslim womanhood has started questioning these obscurantists openly. In a decade or two the Mullahdom will have to mend their attitude and ways towards the Muslim female folk.

#### **[About the author:**

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