



Abusing Religion To Oppress Women

A Challenge To Muslim Personal Law
By A Muslim Woman

Recently we received a letter from Shahnaz Sheikh, in which she said: "I am a Muslim woman and have suffered under the peculiar implementation of Muslim laws in our country. I have filed a petition on the subject of Muslim personal law in the supreme court, and the petition is pending admission... There is nothing extraordinary for me to write about except that I am committed to the cause of Muslim women, who are a neglected lot, and whose plight is known only to a few." We summarise here the contents of the petition.

SHAHNAZ Shaikh, aged 24, is a Sunni Muslim. She has filed a civil writ petition in 1983 against the Union of India and Abdul Rab Kavish, her ex-husband.

Personal Experience

On account of an accidental injury to her pelvic bone during her childhood, Shahnaz's right leg was deformed and is shorter than the left by about three centimetres. She was advised to be careful during sexual intercourse and pregnancy and was warned that her pelvic bones might not be able to bear the weight of a foetus. However, on the insistence of her parents, she was married to Abdul Rab Kavish on October 24, 1981. Before the marriage, Abdul Kavish was told about Shahnaz's physical infirmity. The *meher* fixed for payment on divorce was set at Rs 12,000 in the *nikahnama*.

Abdul Kavish, aged 39 at the time of marriage, was a lecturer in economics at Chinai college of commerce, Bombay. Immediately after marriage, he began to exhibit extreme jealousy, harshness and cruelty towards Shahnaz. He took special delight in describing to her his sexual exploits with other women. He even told her that he was already married to another woman.

Sex with Abdul was one physical

torture after another and Shahnaz's remonstrations that her pelvic bones were defective only elicited further cruelty from him. He ordered her to wear drab clothing, black and white in colour. There were occasions when he pushed her out of the house on the ground that she was frigid and sexually inadequate for him. Shahnaz had to remain out-side on the doorstep all night long. Abdul would allow her to enter the house only after he had extracted promises and assurances from her. One of such conditions imposed on Shahnaz was that she should not show herself to men, which she scrupulously observed for two months.

Abdul Kavish repeatedly reminded Shahnaz that she was nothing but a chattel belonging to him and that he had done her a favour by marrying her in spite of her deformity, and that he could discard her at a cost of Rs 12,000 any time he pleased. Threat of divorce was an instrument of torture which he used freely with a total disregard of Shahnaz's feelings.

Shahnaz's parents being conservative, and her father being a devout Muslim, they made it clear to her that she had no place in their family if she was divorced by Abdul. They

considered him to be a devout Muslim and therefore an ideal husband. Yet matters reached a stage when Shahnaz felt death was preferable to life with Abdul, so when he threatened to divorce her, she readily agreed that he should divorce her and release her from the torture. In September 1983, he pronounced the *talak* and she felt she was duly divorced although there were no witnesses present and the *meher* was not paid.

When, however, she packed her bags, Abdul physically prevented her from doing so and compelled her to leave the house without any of her clothes except those she was wearing. Unknown to him, she managed to carry her wrist watch, chain and earrings.

Shahnaz is now working as a typist earning Rs 600 a month, and is living as a paying guest on a near charity basis. Abdul has appropriated to himself all the furniture, jewellery and clothes belonging to Shahnaz.

After narrating all these details in her petition, Shahnaz says that she does not blame him for what she had to suffer, because she feels that he behaved in the manner he did only because the existing personal law is so much loaded in his favour. She then proceeds to challenge various

provisions of Muslim personal law on different grounds.

Weaker Section

The law making bodies of the states and the Union of India have fought shy of making laws applicable uniformly to all citizens of the country, as enjoined on the state by article 44 of the Constitution of India. Article 46 also imposes a duty on the state to protect the weaker sections of society.

Article 39A provides that the state shall secure that the operation of the legal system of the country promotes justice and shall ensure that opportunities for securing justice are not denied to any citizen by reason of any disability. Article 38 provides that the state shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political, shall inform all the institutions of national life.

Shahnaz alleges that though the state is fully aware that Muslim women constitute a weaker section that is over four crores in number, it has not made any laws to ensure social justice for

them. It appears from the public pronouncements of leaders of ruling parties as well as opposition parties that the state has left it to Muslim men to initiate social reform for women. Thus the state has allowed the beneficiaries of a socially unbalanced law to continue to enjoy superiority over Muslim women.

What Is Secularism ?

One of the often quoted reasons assigned for non legislation on such subjects of Muslim personal law is that any legislation imposed on Muslims by parliament is liable to be interpreted as forcible legislation by the majority for the minority. It is noteworthy that the protection of the rights of women within the minorities has not so far engaged the attention of law making bodies.

No attempt has been made by the state to delink the Muslim personal laws which are nonreligious in character from those Muslim laws which involve the practice, preaching and propagation of the religious faith.

Customs and usages and uncodified personal laws of Muslims

which are recognised in courts of law must conform to the Constitution of India. Any law which causes an infraction of the fundamental rights of any citizen is liable to be struck down. Shahnaz submits that as a Muslim woman, she has been discriminated against by the Union of India, which has repeatedly made laws applicable only to Hindus, and has not performed its duty to make laws applicable to all Indians. This is discrimination on the basis of religion

Who Interprets ?

Further, she submits that an examination of the constitutionality or otherwise of Muslim personal law would not necessarily be an interference with matters of religion. Taking into account all the controversies which exist between different Muslim sects, it can be said that the basic essentials of the religion are a belief that there is only one god, and Mohammed is his prophet. The Koran does lay out a jurisprudence and judicial system but an Islamic country is free to adapt or modify it as it chooses. Even in predominantly



Muslim countries such as Pakistan, modifications have been introduced in keeping with the spirit of Islam.

She points out that Muslims do not hesitate to open savings accounts or to take loans on interest although the giving and taking of interest is strictly prohibited in Islam. Some banks are even run exclusively or substantially by Muslims. Similarly, Islam prohibits games of chance and strong drinks. Yet a large number of Muslims take alcohol, buy and sell lottery tickets and unhesitatingly collect prizes on lottery tickets. Fornication is also prohibited in Islam but affairs between Muslim men and women outside marriage are not infrequent.

The criminal jurisprudence and penology of this country is already at variance with the Koran. The Koran condemns unbelievers and idol worshippers and calls upon the faithful to destroy them. Such *surahs* as also the *surah* pertaining to punishments to be meted out for rape, fornication, adultery, are not being followed in the jurisprudence of this country.

Since Muslims in India do submit themselves to the general law as to contracts, there is no reason why they cannot be governed by the general law in respect of the contract of marriage. In Islam, marriage is regarded as a contract, not a sacrament, and therefore no question of religion enters in while examining the principles of marriage and divorce.

She says that the religion is being misused and abused. Persons have been known to convert to Islam only with a view to commit bigamy legally. Foreigners have been known to come to India, marry a poor woman and then desert her. Islam, according to Shahnaz, is full of regard for women and believes in utmost justice to them. *Talak* is regarded, for instance, as the nearest stage to hell (*dozak*). Followers of Islam, however, have misinterpreted the religion for their own ends.

Vested Interests

Shahnaz further says that though the Constitution of India clearly gives

the parliament power to make laws in respect of personal laws of the citizens, yet the political force of Muslim men has been so formidable throughout the years since independence that any intended law in respect of change of Muslim personal law has been successfully sabotaged by traditionalists, fundamentalists and a strong lobby which would not hesitate to use religion as a tool of oppression. The inaction in respect of Muslim women is a form of discrimination on the basis of sex alone which offends the spirit and letter of article 14 of the Constitution.

Fundamentalists of the Muslim religion, men and women alike, are likely to use every means in their power, fair or foul, to dissuade her from prosecuting this petition. She acknowledges that she does not have resources to match the political, financial, social and physical potential of the men who have a vested interest in the continuation of the existing system.

She fears for her life as one of her close friends has already presumably been killed by those who were making an effort to trace Shahnaz and prevent her from filing the petition. She says that she is pursuing the petition because an increasingly large number of Muslim women are led to destitution and prostitution within or outside marriage solely as a result of the operation of the law.

She then proceeds to describe some of the laws which discriminate against Muslim women, though she points out that this is not an exhaustive list but only a few of the more glaring examples of laws, customs and usages which are violative of the Constitution and are therefore illegal, null and void.

Parda—Unseeability

The practice of wearing burkha and the practice of parda are imposed on woman by man to protect by force the marital rights of man. The Union of India cannot enforce such a practice since the Constitution provides that the country shall be secular. She

submits that it is subhuman to treat the Muslim woman in such a manner, especially when women from other communities are not subject to this indignity.

The parda is unhygienic and deleterious to health insofar as a person shrouded in a burkha for long stretches of time is liable to contract pulmonary diseases or encounter dermatological problems.

She submits that while untouchability has been declared an offence by the Constitution, "unseeability" or the practice of parda is protected, promoted and provided for in various provisions of the Procedure Codes in respect of *pardanashin* women. Such protection, promotion and provision for parda system is discriminatory against Muslim women on grounds of religion and is therefore violative of article 16 of the Constitution which prohibits such discrimination.

Further, such protection by law of the parda system amounts to protection of the marital rights of the man without corresponding protection of the marital rights of the woman and is therefore discriminatory on the grounds of sex alone, thus violating article 15 of the Constitution.

Polygamy

The practice of polygamy prevalent among Muslims in India is contrary to law, unconstitutional and unenforceable since it offers to the husband the right of marrying any number of wives without offering a corresponding right to the wife.

Also, the practice of polygamy forces the Muslim wife to share her matrimonial bed with the other wives of her husband while such a practice does not exist among Hindus, Christians and other religious groups in the country. Thus, Muslim women are discriminated against on grounds of religion.

She points out that the practice of polygamy is not essential to the practice of the Muslim religion. A man is no less of a Muslim if he has one wife. Even in Islamic countries such as

Pakistan, the practice of polygamy has been restricted.

She points out that if a Muslim man marries again during the lifetime of his wife, he is unaffected while if a Hindu man marries again during the lifetime of his wife, he is liable to lose his life and liberty for a maximum period of seven years. Thus there is no proper legally acceptable rationale to decide who is an offender and who is not an offender.

Talak—Status Of A Slave

The practice of divorce by unilateral pronouncement of *talak*, which is enforced by courts in India in favour of Muslim men without the consent of Muslim women, is discriminatory on grounds of sex alone and is thus unconstitutional. It gives an unqualified right to the man without giving a corresponding right to the woman.

Divorce by unilateral pronouncement of *talak* is an extremely harsh and cruel practice which binds the Muslim wife to the husband in such a manner that in law she has no better status than that of a slave. The husband has absolute power to divorce his wife any time he pleases, without offering any reason but the wife's right to divorce is restricted to the limited reliefs and remedies available under the Dissolution of Muslim Marriages Act, 1939, and she has to move the courts for granting a divorce.

Talak is not essential to the practice of the Muslim religion therefore it can be struck down without affecting the other rights of Muslims under article 26.

Half Of A Man

A Muslim daughter receives as a share of her father's estate only half the share of a son on intestate succession. This inheritance law, virtually ruling that a woman is worth half a man, is violative of articles 14 and 15 of the Constitution. Also, since a Hindu daughter gets as much as a Hindu son, this inheritance law also discriminates against Muslim women on grounds of religion.

While a Hindu divorcee is entitled

to maintenance at a rate dependent on the status of the husband at the date of application, a Muslim woman divorcee is entitled only to the dower fixed at the time of marriage. On the payment of this sum of *meher*, the Muslim husband is released from the responsibility of future payment of maintenance.

Reliefs Sought

Shahnaz has prayed that the court be pleased to declare the following practices null and void, unconstitutional, inoperative and of no effect, and further to ban and prohibit them :

1. Parda and all provisions of law relating to *pardanashin* women;
2. Polygamy;
3. Divorce by unilateral pronouncement of *talak* by the husband;
4. Section 494, Indian Penal Code;
5. The Muslim law of succession whereby a daughter is entitled to only half of what a son is entitled to from a father's or ancestor's estate;
6. Muslim law by which a father is entitled to exclusive custody of the children irrespective of age, upon divorce of the mother;
7. *Meher* payable at the time of divorce being that which is fixed at the time of marriage.

She has further asked that the court be pleased to grant a writ of mandamus or a writ, order or direction, directing the Union of India to make proper laws pertaining to all communities including Muslims, pursuant to article 44 of the Constitution of India.

Who Represents Muslims ?

A member of parliament called Asad Madani, president of Jamia Tulema Hindi, has filed an application for intervention in Shahnaz's petition. He accuses her of having filed the petition with ulterior motives detrimental to the Muslim community. He claims to represent the "entire Muslim community in India" and says he is "duty bound to intervene...in order to protect the various Muslim laws based on holy Koran of Shariat."

In reply to this application,

Shahnaz Shaikh has filed an affidavit denying that Asad Madani represents the entire Muslim community which covers Ismaili Khojas, Ishnashiri Khojas, Cutchi Memons, Halai Meinons, Qadianis, Dawoodi Bohras, Sulaimani Bohras, Sunni Bohras, Molesalem Girasias and other sects. Even among the Sunnis there are at least four subsects. If he considers himself representative of all these sects, he should file a comprehensive application with full details, and Shahnaz should be heard on the matter before he is impleaded.

She has categorically denied that she has ulterior motives detrimental to the Muslim community. She says : "The Jammata-e-Ulema-e-Hind, alleged to be looking after the causes of the public, ought to support and not oppose my petition... I say that the Muslim women are as much a part of the public and of the Muslim minority as are the Muslim men."

She has asked Asad Madani to disclose the names of the women members of the managing or executive committee of his organisation since she has reason to believe that the organisation has no woman member whatsoever. She has also asked him to set out the causes of women, if any, sponsored by his organisation, and has pointed out that if such organisations had adequately looked after the interests of Muslim women, her petition would have been redundant.

She says : "By no stretch of imagination can the petition be treated as detrimental to the interests of the Muslim community as the petition would benefit at least 50 percent of the Muslim community... It would be nearer the truth if the applicant represents the Muslim men and alleges that the petition is detrimental to the interests of Muslim men. I say that even Muslim men would support the petition if it were not for orthodox elements such as the applicant and the fear of excommunication, ostracism and religious lock out." She points out that the orthodox elements blackmail others of the community by refusing them

burial rights in the cemeteries which are controlled by the former.

Finally, she submits that even though she knows that as a convert to another religion, she will secure better rights or even if she marries in accordance with the

Special Marriage Act, she will be better protected, yet she chooses not to seek such reliefs because she loves her religion and shall die as a Muslim : "I do not seek any special reliefs for myself except those which will accrue to me incidental to the

determination of the issues involved in the writ petition. If 40 million Muslim women citizens of the country benefit from the petition, my objectives would be fulfilled.' The petition has been filed by a woman lawyer, Indira Jaisingh.

The Courageous Women of Babubigha

Babubigha is a tiny village, consisting of 22 chamar families, situated in Nalanda district, Bihar. Recently, the chamars, who are landless and very poor, have been organised by the only man in the village who is somewhat educated, Ramprit Das. In reaction against the villagers' attempts to assert their rights, high caste men from surrounding villages sent them threats and warnings. An application by the chamars to the police station, asking for protection, received no response

On June 10, 1983, at 11.30 p.m., about 45 high caste men entered the village, beat up the men and strapped them to their string beds, gagged and raped the women, and looted whatever they could find, even the clothes off people's backs. With unusual courage, the people of Babubigha registered a police case, naming the offenders and telling all the details. The case is now being fought in the supreme court.

In February 1984, 11 students from Patna women's college, went to Babubigha to meet and talk to the women there. We talked to Parvati, an unmarried young woman, who told us that she was raped by three men that night. She recognised one of them who was from a nearby village. When her father tried to save her, he was beaten with iron rods. His left hand was broken.

Lalita Devi, who has been married five years, was raped by four men. She was three months' pregnant and the child had to be aborted. Everything in her house— clothes, utensils, fowls,

goats, money—was looted. Since she was a young wife who was not allowed to leave her hut and hardly came in contact with the men around, so she could not recognise any of the rapists. That night, she became unconscious. Next morning she was taken to hospital by the villagers but received no medical help there. The women had to use their own herbal medicines.

The women of Babubigha are repeatedly being threatened by the men whose names they have divulged. Such is the influence of these men that though the women gave 11 names to the police, only five were recorded. The



supreme court has passed a number of orders favourable to the people of Babubigha, but whether the culprits who have been identified will be punished is still to be seen.

—Rose Ann Braganza

Doings of a "Foreign Returned" Husband

On November 17 and 22, the *Ananda Bazar Patrika* carried reports of the death of Kalyani Choudhury, aged 30. A month before, Kalyani had got married to Aurovindo Choudhury who "had recently returned from a foreign country and held an international passport." Kalyani was found unconscious in her house at Kalyani town. There was a bottle of poison in the room. She was taken to hospital and there pronounced dead. On the complaint of her father, Shivapada Ganguly, the police arrested Aurovindo on the charges of mental torture and forcement to suicide.

In Montreal, Mrs Shirpra Choudhury, who has been married to Aurovindo for 21 years and has three teenaged children by him, read the reports of Kalyani's death. This is how

she came to know that her husband had illegally remarried in India. Shirpra had suffered horrendous physical and mental abuse throughout her married life, and had finally approached the South Asia Community Centre in Montreal for help. She and her children had started living separately from Aurovindo Choudhury but were still subjected to continual harassment and the threat of physical violence from him.

She has also started divorce proceedings against him but the divorce has not yet come through so she is still legally married to him.

The authorities have been informed of these facts. Aurovindo Choudhury has been released on bail.

—Rita Bhatia
(South Asia Community Centre)