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The Fatwa from Muzffarnagar- An urgent need to review the 1937 Act

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By R. Upadhyay

The news (September, 2014) of repeated rape of a young Muslim woman from Muzaffarnagar in Uttar Pradesh allegedly by her father-in-law at gun point resulting in her impregnation and the issue of a fatwa by a local Maulana that declared “As per the Sharia law, the baby in her womb is her husband’s father’s,- her husband must divorce her, even if his father looked at his wife with lust” must have startled every right thinking individual in India.

This again proves that the Islamic priestly class is still living in the medieval era as far as their approach towards their women folk is concerned. The Mullah argues that his decision was based on Shariat (Islamic law) which is divine and immutable. A similar decision was given earlier by the Mufti of Darul Uloom Deoband in 2005 in a case of Imrana. There were no public protests from the community then and not now either. In an interview published in Radiance weekly (August 10-16, 2014) Dr. Syed Qasim Ilyas, a prominent leader of Jamaat-e-Islami Hind and also a member of the working committee of All India Muslim Personal Law Board said: “The British could not find courage to touch or down play any provision of Muslim Personal Laws because family laws were linked to the identity of Muslims and any amendment or change in the personal laws could be considered an act to stop Muslims to follow Islam”. Defending the right to Talak only to the man he said, “after marriage, husband takes all responsibilities of wife and he signs the agreement of marriage; therefore only he is entitled to break the agreement and has the right to disown it”. It appears that Dr. Ilyas is also trapped in the patriarchal mindset of medieval clergy Al-Ghazâlî (11th century) who in his book- The Revival of the Religious Knowledge, advocated that women be kept ignorant: “She must not be well-informed nor must she be taught to write. She should stay at home. … If you relax the woman’s leash a tiny bit, she will take you and bolt wildly. … Their deception is awesome; their guile is immense and contagious. Wickedness and feeble mind are their predominant traits.” (The Medieval Mindset: http://www.ahoban.org/gender-equality-in-islam/ [1]). Ghazâlî was an influential Muslim theologian and believed that

“Women’s empowerment is a threat to their ideology, and whilst attempting to obliterate any attempts that jeopardize their established dogma, they cite ‘Islam’ as a way of justifying it.”(Ibid).

Like Ilyas, a similar humiliating statement was issued in 1999 by Mufti zubair Bayat, the founder of Darul Ihsan Research and Education Centre, Durban, South Africa. He opined: “When the point has been accepted that men and women are not the same and that they have not been created for the same purpose, then common sense dictates that their rights cannot be the same or equal”. (Islamic Voice, February, 1999).

Another from the Islamic clergy and general secretary of All India Sunni Jamiyathul Ulema, Kanthapuram A P Aboobacker Musaliyar in an interview published in Siraj (1913), the mouthpiece of 'Kanthapuram' faction of Sunnis, said, "The demand for male-female equality is against nature. Man and woman have different faculties and different responsibilities."

Go to the Root Cause- The Personal Law Application Act 1937 of the British:

The prevailing injustice to Muslim women is primarily rooted to the Muslim Personal Law Application Act 1937 enacted by the British then and still holds good to this day. The Act allowed the continuance of Shariat in respect of marriage, divorce and other family laws in Islamic society. The Mullahs are harping on this Act and resist any reform in it on the same plea that Shariat (Islamic law) is divine and therefore immutable.

But the Muslim intellectuals must be aware that just within two years (December,1939) of the enactment of this Act, the United Nations General Assembly held a Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 5(a) of its resolution “asked all states to take appropriate measures for elimination of prejudices and customary and other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotype rules for men and women” (Unequal Citizens – A Study of Muslim Women in India by Zoya Hasan, 2004, Oxford, page 6).. The resolution was ratified by almost one hundred nations. India ratified it in 1993 but with a rider of reservation on Article 5(a) because of its conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. However, the stand of the then Congress Government was hypocritical as the government of the same party had interfered in the personal law of the Hindus in 1955 and passed Hindu Code Bill despite some opposition from a sizeable section of Hindus.

Many Islamic Scholars have not taken kindly to the 1937 Act:

Contrary to the stand of Muslim orthodoxy, a number of Muslim scholars have argued that the Muslim Personal Law is not a divine command and has also been reformed in many Muslim countries as well as in India during British rule. A.A.A.Fyze, an internationally reputed Islamic scholar in his book ‘Modern Approach to Islam wrote: “Muslim Law in India today is not prevalent as a legal of divine command but a piece of

legislative enactment by the British and is known as the Shariat Act of 1937".

Another Islamic scholar J.D.M. Derrett ('Religion, Law and the state in India') has also preferred to call Mohammedan Law or Anglo-Mohammedan Law instead of calling it Shariat which in fact is not enforced strictly in South Asia. He said, " In India only a portion of Shariat laws are in force, Islamic law in British India developed into an autonomous legal system, substantially different from the strict Islamic laws of the Shariat and it is appropriately called Anglo-Mohammedan Law" (Vrinda Narayan –gender Community –Muslim women's rights in India, page 4, 8, 95). For him Shariat was transformed into Anglo-Mohammedan Law.

Since reforms in Shariat were carried out by many Islamic countries like Turkey and Egypt, the argument of Muslim orthodoxy in India that it is immutable is not based on sound logic. Even in India the colonial power replaced the provision of criminal laws in Shariat with the British system of laws which are still common to both the Muslims and other religious communities in the country. The objection of the religio-political class in the community is seemingly nothing but their self-seeking politics for mutual profit between them and the vote-seeking political class at the cost of the socio-religious and political injustice to the Muslim women.

Who is afraid to render Gender Equality to Women?

Despite the above views on time to time reforms in Shariat, the Muslim orthodoxy in India took this Act as an instrument not only to deny the right of gender equality to their women folk but not even acknowledge or address their systematic disadvantage. The post-colonial secular and democratic Indian state's uncritical acceptance of fundamentalists as the sole representatives of Muslim interest encouraged the latter to treat their women subordinate to the men in the community in the name of religion. In fact by not taking up the problem of Muslim women seriously and allowing the British enacted law to continue exclusively for a particular religious community, the state also allowed the violation of the constitutional guarantee to all citizens irrespective of religion and sex.

"Muslim Personal Law as practiced in India contravenes the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) in several respect" and "the continued existence of personal law which arguably violates the constitutional principles of, inter alia, equality and freedom from discrimination are void to the extent of contradiction" (Unequal Citizens – A Study of Muslim Women in India by Zoya Hasan, 2004, Oxford). The writer also argued: "the Muslim women survey (2000) presents a picture of glaring inequality – social, economic, political – that consistently defines and circumscribes – all women and Muslim women in particular.(Ibid. Page 4, 5).

In view of the repeated propagation of such a humiliating stand against the Islamic priestly class and silence of the State, the status of Muslim women within the Islamic community in India particularly when it comes to gender equality remained undoubtedly an important issue for the Muslim feminists. Male privilege of unilateral divorce, ubiquitous veil, conformity to the strict confines of womanhood within a fundamentalist code are some of the major problems Muslim women have been facing under Muslim Personal Law (Shariat) Application Act 1937 as a result they are the victims of humiliation of their inequality and subordination to men within the community.

This Act had also empowered the self-proclaimed religio-political leaders of the community to out rightly reject the demand for any reform in existing personal laws particularly in the matter of marriage or divorce. They argue that since the Muslim personal law is an integral part of Islam any change in it amounts to destruction of the religious identity of the Muslims.

Why this “silence” from the Indian Mullahs?

The Mullhas’ silence over the prevailing malady, rampant marriage breaks and humiliating treatment of wives in Muslim proletariat, strong reservation in permitting the girls to go to schools imparting modern education shows that the radicals are totally indifferent of the such socio-religious problems in the Muslim society and therefore not ready to free the women from the siege of medieval bondage.

The Indian State on the other hand never made any initiative in this direction despite the fact that such right is protected in many Islamic countries. So much so, by accepting the narrow definition of Muslim Personal Law as divinely ordained law it not only supported Muslim orthodoxy but also became responsible for the centuries old injustice to women as this group is the only population in India whose right to monogamous marriage is not protected.

The Initiative has to come from within- “those Affected”:

For over a decade some Islamic feminist groups in India are organising protests against the unfair sections like polygamy, divorce, property rights and other discriminatory laws against Muslim women and are demanding their abolition. But even though India has a progressive constitution, pro women laws and judgements they have failed to achieve any success due to the absence of mass support and absence of any effective and assertive leadership. Therefore, their voice for gender equality is yet to jerk the conscience of the community or to draw due attention of political class or media.

The movement of Muslim women groups may be nascent but the problem with them is that they are not fighting for their rights as an organised group. Instead of challenging the discriminatory provisions in personal law constitutionally or internationally accepted human rights principles, they are found engaged in re-reading of religious texts to find out Islamic solution to these problems. This could be an acceptable and reasonable way but they have not taken into account the powerful and entrenched position of the radical Mullahs who perhapos feel that

any change would undermine their own hold on the community.

They should also try to understand that the Mullhas have linked the issue of gender inequality with the religious identity of the Muslims only for their self-seeking political game despite the fact that this issue has no relevance in a secular and democratic country. Such political game of the radicals has pushed the women folk in the community to a stage of subordination. Apart from it, the women activists are not coming forward to spell out the various oppressive practices of gender discrimination prevailing in the community.

Their silence in cases like Shahbano and on the fatwa issued by the Mufti of Darul Uloom Deoband in the rape of Imrana allegedly by her father-in-law and a similar case recently shows that they do not want to confront the orthodoxy in the community who claim themselves as the sole interpreters of Islamic texts and impose such interpretation on the illiterate woman like Imrana and others.

The Islamic feminists must be aware that right to gender equality is historically rooted to the establishment of All India Women's Conference in 1927 "as an organization dedicated to upliftment and betterment of women and children" (Wikipedia). By 1942 its leaders started demanding reform in the religion based personal law and application of gender equality principles to women's rights.

The debates in the Constitutional Assembly:

The issue was however, initiated after Independence when a proposal was introduced in the Constituent Assembly in 1947 by Minoo Masani, a member of the Fundamental Rights Sub-Committee. Minoo Masani together with two women members namely Hansa Mehta and Rajkumari Amrit Kaur and B.R.Ambedkar wished to include the clause on Uniform Civil Code as a fundamental right but they were outvoted by the rest of the members in the committee mainly in deference to the vocal opposition of Muslim members who took it as threat to state interference in their personal law. (Reference from Minoo Masani, Against the Tide, Vikas, New Delhi, 1981, pp. 4-5. http://www.india-seminar.com/1999/484/484%20chiriyankandath.htm#484%20ch... [2]). As a result of such opposition of the members to appease the community, the very objective of a Uniform Civil Code was relegated to a status of uncertainty.

Masani, Mehta and Kaur however, recorded their dissent, stating that "one of the factors that have kept India back from advancing to nationhood has been the existence of personal law based on religion which keeps the nation divided into watertight compartment in many aspects of life. We are of the view that Uniform Civil Code should be guaranteed to Indian people..... ". (Vrinda Narayan- Gender and Community- Muslim Women's Rights in India page 5-8).

During Constituent Assembly debate B.R. Ambedkar repeatedly contested the arguments of the Muslim members that their personal law was immutable. He pointed out that "The Shariat Application Act had been enacted specially to bring those Muslims who had hitherto been governed by Hindu law within the purview of Shariat law" (Ibid. Page 9).

The other day (September 14) a TV channel had programmed a debate on the issue of divorce as per Shariat Act and some Muslim women participants were against the prevailing system on this issue in Islamic society and wanted its abolition. But the issue hardly attracted the attraction of the people concerned and even people believing in the concept of gender equality.

Way Ahead:

Even the All India Muslim Women Personal Law Board (AIMWPLB) which was constituted by a group of Islamic feminist organisations in 2005 to protect the rights of Muslim women particularly on the issue of marriage, divorce and other legal rights is also facing the challenge mainly from All India Muslim Personal Law Board, All India Ulema Council and other Mullhas-controlled organisation which does not allow any reform in the Shariat Act.

In order to advocate reforms and change in British enacted family laws for Muslim women that are detrimental to them, there is a need for Islamic feminist groups in the country to form broad coalitions and alliances with the progressive and democratic intellectuals of the community and scholars against the hardliners to reclaim their rights and justice constitutionally as well as on the basis of international organisations in support of their cause.

Apart from it, they should also arm themselves with supporting interpretations of Islamic texts and organise intellectual debates to expose the mutual profit game that is being played out between Mullahs and the vote-seeking political class in the Islamisation of women's problems of inequality by oppressive and patriarchal interpretation of religious texts.

Fighting for any code that guarantees the gender equality is the only answer to free the women of the community from their medieval bondage that has pushed them to the stage of inequality and discrimination.

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