

Triple Talaq

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“Power does not corrupt. Fear corrupts... perhaps the fear of a loss of power”, John Steinbeck had famously said. That the fear of loss of power may not only corrupt one’s morality and judgement, but also blur the distinction between sanity and insanity in the minds of otherwise normal and distinguished individuals was in ample evidence in the way the All India Muslim Personal Law Board (AIMPLB) had defended the practice of triple *talaq* in an affidavit submitted to the Supreme Court (SC) last month, by stating that women were lesser mortals than men. In response to a petition challenging polygamy and triple *talaq* by a Muslim woman named Shayara Bano and by some Muslim Women’s Organisations urging the apex court to declare triple *talaq* and polygamy unconstitutional, they came up with this gem, “Shariah grants right to divorce to husbands because men have greater power of decision making. They are more likely to control emotions and not take hasty decisions.”

If it was not for the seriousness of the matter, one would dismiss this as a joke, albeit one in extremely poor taste. But the complete abandonment of reason by these powerful men who constitute the AIMPLB and supported by the Mullahs, the gatekeepers to Allah’s kingdom, rule the Muslim society and its womenfolk, did not cease here. While asserting that the practice of triple *talaq* as part of Islam was protected by the fundamental right to religion that was beyond the adjudication of SC, the AIMPLB also vigorously defended polygamy, which allows a Muslim man to have four wives, as being necessary to ‘curb illicit sex’ and to ‘protect women’. “Concern for women... lies at the core of the provision for polygamy”, they declared in their compassion for women. In saying “polygamy meets social and moral needs and the provision for it stems from concern and sympathy for women”, it redefined morality. In avowing that “An unlawful mistress is more harmful for the social fabric than a lawful second wife”, it appropriated unto itself the wisdom and ultimate authority to decide what is good and bad for the Muslim society.

These learned gentlemen, who reek of a misogynist medieval mindset that is completely out of sync with the values and beliefs of a modern society, need to be shown their place in secular and democratic India ruled not by Shariah but by the Constitution. I am not sure if in echoing these sentiments they are truthfully reflecting the position of their scripture either. As Karen Armstrong says in her authoritative and extensively researched “Islam – A Short History”, “The Quran gave women rights of inheritance and divorce centuries before western women were accorded this status..... there is nothing in Quran that requires the veiling of all women... These customs were adopted some three or four generation after the Prophet’s death....The Quran makes men and women partners before God, with identical duties and responsibilities.”

The Muslim Personal Law (Shariat) Application Act, 1937, allows Indian Muslims to be governed by the Shariat. The absence of codification has legally allowed community leaders to hold the practices as sacrosanct, thereby subjecting Muslim women in India to arbitrary triple *talaqs* by weird methods -

through postcards, telegrams, emails or SMS - which were always upheld by the Mullahs. Similarly the argument of AIMPLB that the purpose of polygamy is to prevent women from leading a spinster's life is bizarre, given the sex ratio of 951 females per 1,000 males among Indian Muslims.

Personal laws of Muslims, like the Hindus, flowed from patriarchy, misogyny and subordination of the marginalised sections of society. These were put in place to protect entrenched interests when religion lost its vitality and intellectual appeal and gave way to meaningless rituals. These laws have to be reformed to meet the changing dynamics of an evolving and vibrant society. Hindu society has done so to empower their women, though much more remains to be done, and so has many Muslim societies. Triple talaq has been banned in more than 20 Muslim countries, including Pakistan, Bangladesh, Afghanistan and Iran. Polygamy is similarly prohibited in many Muslim countries like Turkey, Azerbaijan or Tunisia. Ethos of a democratic society is clearly against theocratic practices the AIMPLB would like to enforce for the Indian Muslims.

Unfortunately not many prominent Muslim voices have been heard against these abhorrent practices in India, the reasons for which can only be the fear of retaliation – which does not exclude physical violence - by violent orthodox elements within the community that blindly follow the dictates of its powerful clergy. That clergy, lacking in modern liberal education, derives their power from the poverty, ignorance, and the economic and educational backwardness of large sections of the community. Governments in the past had always shied away from taking on this clergy, for fear of losing Muslim votes and left the hapless Muslim women to the whims of their Mullahs. The fact that some Muslim women have now approached the judiciary proves a weakening of their overwhelming hold, which is why they are reacting so loudly - and so miserably.

In 1985, in the Shah Bano case, when the Supreme Court had ruled that a divorced Muslim woman was entitled to fair maintenance far above what was granted under the Muslim Personal Law, the same AIMPLB and the Mullahs had threatened that the judgment was tantamount to interference in their religion and blackmailed the Rajiv Gandhi Government into capitulation. They forced it to enact the Muslim Women (Protection of Rights on Divorce) Act, 1986, that annulled the judgment. An opportunity that could have been a milestone in the Muslim women's search for justice was thus surrendered for petty vote bank considerations. India did not have a dearth of liberal Muslim intellectuals even then, but not many voices of protest were heard against the injustice perpetrated to Muslim women. The Government meekly withdrew and abdicated its responsibility to uphold the Constitutional right to equality.

This time, however, the Government has put up a spirited defence, and dissociated the issue from that of the Uniform Civil Code. In its response to the affidavit, it clearly stated its position that "gender equality and the dignity of women are not negotiable". If Islamic states could reform Muslim personal laws, these certainly could not be considered an integral part of the practice of Islam. Arguing that "No undesirable practice can be elevated to the status of an essential religious practice," it said, "any practice that leaves women socially, financially or emotionally vulnerable or subject to the whims and caprice of menfolk is incompatible with the letter and spirit of Articles 14 and 15 of the Constitution". Further, Muslim women,

merely by virtue of their religion, cannot be relegated to a status more vulnerable than women belonging to other religious faiths.

But the fundamental question is whether in a secular democracy, religion alone can be a reason to deny the equal status and dignity available to women under the Constitution. Article 25 of the Constitution guarantees all citizens the right to practice and profess a religion of their choice. But liberties guaranteed in the Constitution are not absolute, and the right to freedom of religion does not supersede other fundamental rights. Like all fundamental rights in our Constitution, religious freedom too is subject to reasonable restrictions imposed by the State. A secular nation is under no obligation to respect the norms or commandments of any religion, just as it does not have the liberty to violate such norms without reason. Further, Article 13 lays down that any law that impinges upon fundamental rights shall be void, and the practices of triple *talaq* and polygamy should therefore be declared illegal, since they violate the fundamental right to equality.

Expectedly, the AIMPLB and the Mullahs from Darul Uloom Deoband, Bareilvi and Jamiat Ulema-e-Hind are up in arms against Centre's position which will render them virtually powerless. In the coming days, they can be expected work out a religious hysteria to retain their coercive power and vice-like grip over the community. India has one billion Hindus and 180 million Muslims who, save a few hard-core Hindutvawallas, Mullahs and of course the AIMPLB members, believe in the idea of a secular, liberal and progressive India in which religion plays no role except for matters of personal faith and worship. Hopefully, they will together counter any move to convert this country into a theocracy. Hopefully they will redeem themselves by not letting the mistake of 1986 to be repeated. Mullahs may hear this message loud and clear.