

The Real Debate on Arbitrary Talaq is Happening Within Muslim Communities Themselves

BY [A. SUNEETHA](#) ON [09/12/2016](#)

Indian Muslims have come a long way since the Shah Bano case in the 1980s; today, there is a vibrant debate within the community on the need for respecting the rights of women in marriage and the family.



Hand on heart. Credit: Meena Kadri/Flickr CC 2.0

The Allahabad high court's observation that [fundamental rights have priority over personal laws](#) in a case of arbitrary talaq has once again brought to the fore the contentious debate around the issue, [sparked off by the petition of Shayara Bano](#) in the Supreme Court a few months ago.

In this multilayered political debate that is being played out in the context of a majoritarian onslaught since the Bharatiya Janata Party's assumption of power, Muslim communities have been forced into a defensive position, asserting that they will not brook any interference in 'Shariat'-inspired personal law. This communitarian position is being interpreted as necessarily against individual Muslim woman seeking relief for arbitrary talaq. Pitted against this view is the idea – reflected in media discourse – that the courts are the only forums where such women can and should obtain justice. This interpretation follows and reinforces the much stronger assumption that Indian Muslim communities, led by the *ulema*, dogmatically oppose gender equality and that no change is possible from within. This assumption is fundamentally wrong.

In the ferocious debate around arbitrary talaq that is mostly centred on law reform and court judgments (necessary and useful), what is being missed is the significance of the [initiatives towards social reform \(*islahi mashra*\)](#) that were undertaken post-*Shah Bano* by Muslim communities to address gender inequality. Contrary to popular belief, the debate on marriage and personal laws has been alive within the communities – but in the register of social reform. After the Rajiv Gandhi government [formulated the 1986 Act](#) in consultation with the AIMPLB, it came under pressure to initiate reforms in the community to stem the trend towards unilateral talaq, permanent deferment of *mehr*, dowry and other issues. The board constituted several Darul Qaza in different parts of the country in existing madrasas or qazi offices to solve family disputes. Provoked into action, many also took the initiative to start women's madrassas in cities like Hyderabad, to initiate Muslim women into religious education. A few of these madrassas such as Jamait-ul-Mominath not only worked within the communities educating women about what Islam entitles them to in marriage and family but also designed courses to train women muftis to ease Muslim women's access to such religious authorities and obtain fatwas through special Darul Ifta. The Jamat-e-Islami (which says it believes in strengthening Muslim women with knowledge of Islam so that they do not have to approach muftis and qazis for dispute resolution) strengthened its women's wings and began counselling services for women facing domestic violence.

At another level, Uzma Naheed, a member of the AIMPLB, along with other feminists in Mumbai proposed a new model *nikahnama* or conditional nikahnama in 1995 to reflect the new realities of Muslim marriage. Seeking 'a solution within the framework of Shariat' for the myriad problems affecting Muslim women, they submitted the draft to the AIMPLB for consideration – which led to a vibrant discussion on the desirable 'conditions of marriage contract' in the latter part of the decade. Some of the most contentious issues of marriage such as underage marriages, non-payment of *mehr*, arbitrary talaq, cruelty in marriage, maintenance after talaq and multiple marriages of men came up for discussion. Uzma Naheed talked of addressing scores of meetings of ulema in remote towns in this process during a discussion in Hyderabad in 2011.

The responses of the ulema from all over the country to this nikahnama [was compiled by the Islamic Fiqha Academy](#), and published as *Conditions in Nikah*. Most ulema agreed that women could negotiate for *tafweez-e-talaq* (delegated right of divorce for women) through a Darul Qaza and that 'unreasonable talaq' should be compensated with *mehr* 'six to seven times' the original amount as this practice needed to be curbed urgently. And that 'mehr' should never be

‘forgiven’. In 2005 when the board approved the conditional nikahnama, it retained the clauses against dowry and violence but replaced the mandatory clauses regarding arbitrary talaq with a simple caution. Disagreements on the significance of these issues led to forums such as All India Muslim Women’s Personal Law Board, All India Shia Law Board and Bharatiya Muslim Mahila Andolan developing their own versions of a ‘gender-just’ nikahnama.

It is significant that revocation of mehr and arbitrary talaq also figured in the report ‘[Voice of the Voiceless](#)’, prepared by Syeda Hameed in 1999. She reports that the then president of the Muslim Personal Law Board agreed that necessary measures to fill the gap between the tenets of Islam regarding equality between men and women and the actual practice needed to be taken.

The last 30 years also saw Muslim women taking the lead – to defend their men against false terrorism charges, to fight for justice for their family members in the communal carnages, to access education and scholarships, to demand reservations – all in the face of the extreme hardship and obstacles. In the process, a number of small, vocal Muslim women’s groups have emerged that seek to work within the framework of Shariat to address their everyday problems – these include the Tamil Nadu Muslim Women’s Jamat led by Shareefa Khanum, the All India Muslim Women’s Law Board led by Shaista Amber, the Muslim Girls Association, Hyderabad and others. There are many groups that work without any publicity.

The Muslim women we see in the ongoing debate on both sides have come out of these community processes and this political context, whether it is the women of All India Muslim Personal Law Board or that of Bharatiya Muslim Mahila Andolan. Even as they seek to actualize their rights within the Shariat, they do not necessarily agree on the meaning and interpretation of Shariat or the strategies and procedures to follow. While some see Shariat as immutable and unchanging, some others see it as a complex but constantly evolving entity. Some equate Muslim personal law with Shariat while others see the former as a statute. Some want changes to happen within the communities while others want to approach the courts and government.

Shah Bano as watershed

After *Shah Bano*, we have found the political framework of ‘internal reform’ the most appropriate to understand the struggles of Muslim women – to protect the communities from external onslaught even as one tries to fight against male privileges within the communities. BMMA’s campaign took a risk by stretching the boundaries of this ‘internal’ to that of ‘Muslim personal law’. Critics have found [their surveys wanting](#), their supporting numbers exaggerated and [their claims faulty](#). Some have even dismissed the validity of the entire campaign and the Shayara Bano case. But, given the fact that the issue of the arbitrary talaq by men has been on the radar of community-led social reform for nearly two decades now, it is pertinent to ask if the current debate would have occurred without BMMA’s ‘misguided’ campaign. It is not a mere coincidence that the AIMPLB launched its women’s wing with Asma Zehra at the helm in the midst of this turmoil. One cannot but read it as an acknowledgement of the growing political presence of women within the communities and, hopefully, of the social changes that they can push for in future.

This vibrant scenario of reform and debate around the family belies the stereotypical picture of a stagnant and backward community. Without interference or pressure from outside, Muslim communities acted with concern about women and responded well to the initiatives of Muslim women and adapted suitably. It is reasonable to assume that, in the absence of the BJP's appropriation of the campaign against arbitrary talaq, Muslim communities would have responded appropriately. The current opposition to the state regulation of arbitrary talaq is perhaps not indicative of either the communities' understanding of this practice or concern about women victimized by such a practice.

Even if one supports a law reform regulating arbitrary talaq, many researchers have pointed out that no law reform works as intended unless accompanied by a wider debate about the norms and practices that the law seeks to change. For it to translate into social change, it involves years of work preceding and succeeding the actual legislative change. We have innumerable examples and many nuanced research studies of colonial and post-colonial India to demonstrate that customary practices, whether it be child marriage or bigamy or dedication of dalit women to Hindu deities, not only require socio-cultural but economic-political changes to be 're-formed'.

The widespread ongoing debate on 'arbitrary talaq', therefore, may actually work towards alerting more people to its unjustness in a way that many progressive judgments in the courts over the last decade have failed to do. For instance, the AIMPLB and many ulema now strongly advocate the conditional nikahnama with its strong caution against arbitrary talaq as a good deterrent. Increasing emphasis is being laid on making the Darul Qazas work for women. Demands are being made to appoint women qazis there. Huge meetings are being organized where Islam is being discussed as a religion that guarantees gender equality. Men are being told to behave themselves and not indulge in unholy practices such as arbitrary talaq. The numerous community meetings by the ulema, politicians and intellectuals as well as sermons in the mosques and dargahs, writings in Urdu and English newspapers and other social media – to clarify and propagate against what they agree is a bad social practice – may be aiding the process of social re-formation. As we all know, social change cannot be simply be mandated by the law.

A. Suneetha is a researcher and an activist and is the Coordinator of the Anveshi Women's Resource Center in Hyderabad