

Muslim Personal Law – Women’s Experiences and Perspectives

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Since the first elections in 1994, there have been a number of debates in South Africa on the recognition and implementation of Muslim Personal Law. In particular, the relationship between the Bill of Rights in the constitution and interpretations of Islamic Law has come up for repeated analysis. One of the unintended consequences of this debate has been the tendency to re-affirm the tension between human rights as enshrined in the Bill of Rights and aspects of Muslim personal law. Like all kinds of oppositions, this one too tends to dominate the debate.

Human Rights and Islamic law have become symbols and attract other associations. Those who take the side of Human Rights, begin to think of Islamic law in its most unfortunate implications. The inequality suffered by women, flagrantly demonstrated by the conviction of raped women in Pakistan and northern Nigeria while men simply deny their involvement on oath, is seen as an unavoidable manifestation of Islamic law. On the other hand, the highly selective application of human rights by superpowers is seen as the essence of human rights. The right to insult sacred and honourable symbols of religion, for example, is another supreme value or essence of human rights. The value of these concepts lies elsewhere.

In order to escape the unfortunate polarization of human rights and Islamic law, a different set of questions needs to be asked. Rather than asking if Islamic law and human rights were compatible with each other, we should begin with understanding the experiences of people who are the most vulnerable. What are the women’s experiences, particularly those who face the breakup of a family when their husbands get married again or they are divorced? How do they experience the application of Muslim personal law? Since Islamic law is still a non-statutory issue in South Africa, we wanted to see how the different social and religious organizations came to the assistance of women in difficult circumstances. In order to provide another view of this debate, we have decided to look carefully at the construction of Muslim women’s

identities in relation to Muslim personal law. We expect a heightened sense of identity as women consider their experiences and encounters.

Eleven women were interviewed in the first half of 2002 in and around Durban, South Africa. The women chosen were either divorced or going through a divorce, or those whose husbands had married second wives without prior information or approval. Some of them had also experienced various levels of physical or mental abuse. The interviewees were asked to describe their experiences without explicitly soliciting evaluations of Islamic law, religious leaders and organizations. The interviews were open-ended but directed at the breakdown or crisis in terms of their understanding of Islam and Islamic law. For example, for one interviewee, the Islamic intervention meant spending some time at the Badsha Pir Dargha (Tomb), while for another, it meant visiting the local Imam or organization. The interview tried to collect concrete data on the support or lack thereof from Islamic organizations and family members. The interviewees were also asked about their knowledge of Islamic law and where they obtained this information during the crisis. In addition to the interviews with the women involved, four interviews were conducted with service providers. One was a local *alim* who was often called upon to provide advice during marriage crises in all parts of Kwazulu-Natal; the second was a member of a local mosque committee responsible for distributing *zakah* to the indigent; and the third and fourth were social workers who provided support to women through a service organization and through private counselling respectively. I had more informal discussions with two other *alims* in Durban, both of whom had intimate knowledge of the kind of critical issues being discussed here.

Two general remarks may be ventured with respect to the findings. In the first case, women involved in the crises developed a clear sense of individuality and identity. And in all of the cases concerned, the women projected a sense of self-confidence in themselves, their relation with their children (where present) and their relationship with religion and God. The implication of these testimonies is a serious critique of the position of women in marriages under present conditions. Their sense of self and dignity came to the fore only after a difficult and painful experience. From the interviews with the women themselves and the social workers, it seems that the problem is much larger than is admitted. Secondly, the experiences of women clearly

pointed to the particular meaning and role of religion/Islam. It revealed the management of crises in the Muslim community, and the introduction of social work support services. But most importantly, their experiences reveal a myriad ways, positive and negative, in which Islamic rules and symbols were present in the conflicts.

In most cases, it was very clear that aspects of Islamic law pertaining to divorce and marriage were an integral part of the women's self-understanding. Islamic law was not an abstract set of rules that had to be evaluated and assessed, and possibly discarded. The Islamic rules (*ahkam*) were religious parameters around which one constructed one's life. The choice between Islamic law and human rights was not an option.

But there was no clear boundary between an Islamic ruling (*hukm*) obtained from a qualified person or a book, and an ethical, moral or religious inclination. So, for instance, when one interviewee was asked about her separation and Islam, she responded that she likes to take time off for herself and go to the Badsha Peer Mazaar. Similarly, many women could not understand why they were being asked to be patient in the face of abuse. This was not the overwhelming response from the religious organizations. But the point being made here is that bearing hardship with patience was regarded as a one-sided response that demanded nothing from the offending husband. While the local *imam* or *alim* was recommending this response, the woman affected could not relate to it in terms of her general understanding of the morality of the issue:

... [when] you have to ask any of the '*ulama*', make *sabr* [they respond], you know, you can't do anything you just have to make *sabr*. And I've got to think about the children So I asked Mufti B just to ask and I wanted to know what the real, I just wanted to know for myself the background of performing a second *nikah*, you know, what the real reasons for these (are), or things like that, what is the right way of doing it, things like that. I know you don't have to get permission from your first wife, but the moral thing about it, you know, just tell her, you know, things like that, I just needed to know that. I asked him if he had literature for me to read on the second *nikah*? (ND 1 January 2002)

A critical inquiry lies in this statement from someone who yearns to understand the implications of a man marrying another woman without informing a trusted and intimate partner. And this questioning re-appeared consistently in the interviews. What is significant, however, is that there is no choice left outside Islamic law for her. She wants to read something; she demands an explanation that she believes lies somewhere in the great books of Islam. And that means that Islamic law is both a given fact of life and moral at the same time.

Accepting the matter-of-factness of Muslim Personal Law did not mean that women succumbed as docile victims. Rather, their experiences of the particular male choices opened up new opportunities for looking at themselves in relation to self, family and religion. The particular contentious issues in Muslim Personal Law raised in the national debate like the unilateral right of divorce by the husband, or the right to take a second wife, became significant for the affected women. The process of separation, estrangement and rejection led to a heightened sense of self. AD (Interview 11-01-2002) had to suffer the consequences of her husband taking another wife. While dealing with this personal shock, however, she also had to deal with the justification given by her husband:

He says Islam says he must take on widows and women and children and things like that so I also thought you know, maybe it was, I was holding him back from his Islamic duty, but I didn't realize that I was actually doing an injustice to myself and to my own children by allowing that...

Unfortunately, the second marriage went ahead. But AD has clearly become aware of what she wants and how a decision taken by her ex-husband was detrimental to herself and her children. While extremely sad about the eventual break-up of the marriage, AD could also share her re-discovery:

In fact [I took] many years to find myself again. It took me years to come back to what I was. Like when I tell my children you know I was so brilliant at school in every way and then I wasn't married and I had to be quiet and submissive and it was in my nature to be - I am not a wild person or things as such but I do things you know and then suddenly to put you into this state where you got to be submissive.

It is this sense of individuation and self-discovery that came up in all but one of the interviewees after the crisis. And in each one of the interviewees, the discovery of the self was a discovery of both a sense of self-worth and religion. Without being in opposition to religion in general or Islam in particular, women who experienced aspects of Muslim personal law developed a heightened sense of individuality. Here is another poignant testimony: “I think now when I look back I had to actually change my entire personality to suit him, because that was the only way that would sort of calm him down, and he wouldn’t get angry” (AM, 9 January 2002). Of course, this discovery of the self should not diminish the sense of disappointment and frustration felt. However, the women discovered themselves in the ordeals.

There was one exceptional case where I thought the individuation was least observable, a reflection of which suggests another dimension of the experiences of the women worthy of consideration. The particular meaning and context of Islam in practice becomes particularly clear in the interviews. The person had attached herself so totally to a mosque group that seemed like a substitute for a family:

I’m in the in the, ladies jamaat, but I do everything with my Moulana, with his wife, Apaa S, so I’m continually with, continually busy with them, doing everything, collect cloaks, - like whatever they, I collect, go see the Masaajid, the Madressah, for the ladies, convert them, teach them, then we have thikr home, we have thikr at the masjid, we go around having thikr, all that we are doing.

But upon further reflection on the rest of her interview, it became clear that there were several other issues to consider. While wholly attached to this religious community, she also realized that she was not in a financially viable position to be separated from her husband. She expected him to initiate the divorce in order for him to take the responsibility whether she would rather be divorced:

I don’t, I don’t work and I don’t have money, if I had the money, I was going to do it, long time, but I don’t have. He walked out of the house, so he must do it, Kader, I’m, not going to do it, I’m not prepared to, if he

doesn't want me he must do it, he's sitting with money, he's got everything, so he must do it, but I feel, but I've been hurt many a time, ya, in this two years I've been hurt (R, 9 July 2002).

While belonging to a community of religious fellows, she was also aware of her financial vulnerability. I suspect that this was also important in the other cases as well, and merits some reflection. In many ways, financial independence and individuation were closely related. Vulnerability increased with financial dependence, and so did a sense of self-worth.

The greater sense of religiosity in the wider community played a role in the marital problems that presented themselves in the interviews. Religion could not be avoided as elements of Islamic rules of modesty, rights and obligations became enmeshed in the conflicts. The conformity to Islamic rules came up in more than one case. AM was perturbed at the conflicting signals coming from her ex-husband. At one time, he wanted her to dress for the beach while at another he demanded absolute "modesty". At one time, he would neglect his daily prayers and then claim that he had a right to abuse her according to the Qur'an:

... religious scruples were unreal, you know, before we got married this man you know, had a beard, he'd gone for hajj, he, prayed five times namaaz ... and you just get married and the man doesn't read namaaz anymore, I mean I was very negligent of my namaaz after I got married, I thought now I'm at home I might as well do it ...if I had got him up for *fajr* I'd say to him you know, its *fajr* time, you now you must get up now, you know, he's awake but he wont get up, he, its just his Islamic scruples were completely twisted around. He claimed the Qur'an says you can hit women. When he said that to me, I was so furious ... and I even asked a family Moulana about regarding this statement, and he says you know its completely misinterpreted ...

While in R's case, Islam provided a desperate sense of belonging, in AM's case the outward manifestations and justifications of Islamic practice come clear in all their contradictions. These contradictions are well known as Muslims struggle between form and symbol, and conscience and outward presentations. Just because someone looks like a good Muslim is never a sufficient indication of an underlying ethical or moral stance. The dominance of the outward manifestations of Islam often covers up

these doubts and contradictions. With the breakdown in families, however, they come easily to the fore. Here is another example of ND whose husband cannot imagine granting a divorce for religious reasons of dubious origin:

And he said he cannot, he cannot give her 'talaq' because he does not want to shake the *arsh* (throne) of Allah, he will not give *talaq*, he will not give it to her and he will not give it to me either. Even if I cannot accept this so I said ok I'll ask for a separation you know, but in the event of me wanting a *talaq* he will not give it, he will not because he will not shake that *arsh* of Allah.

Under pressure from his family, the husband was asked to divorce his second wife. He refuses to take this step for fear of shaking the throne of God, divorce being a reprehensible act made permissible. ND seemed to accept this justification because her husband was a pillar of a local religious organization. He was motivated by this dread of shaking the throne of God. But, clearly he is using a *hadith* to avoid the responsibility for what he had done. The use of this statement clearly reflects yet another way in which religious sentiments are interwoven in the conflicts.

Sometimes as source of solace, sometimes in contradiction, and sometimes as convenient scapegoat, religion and religious elements are unavoidable. The public debate between Islam and human rights obscures the complicated way in which these elements present themselves in communities and families. They cannot be avoided when we look at women's experiences.

But not only men used religion. According to one of the social workers, religion was used by men and women in their differences:

Before that, they carry on merrily doing whatever they want to do when, not thinking too seriously about their religion and stuff. But then they run into difficulty, then in some ways they use religion to control each other.

In the very prominent role that religion plays in public life, Islamic elements come up again and again in the conflicts.

Both religious leadership and social counseling services supporting women in such situations were acutely aware of this struggle. The women themselves were sometimes surprised when they did get the support from the religious leaders. Not expecting a sympathetic ear, they found that the *alims* were sometimes responsive to their plight. Thus, RA (Interview 5 January 2002) for example, revealed the complexity of this issue:

... I met a few sisters, who've been to the Jamiat, and I felt that the advice they got there didn't help them at all, right, the Jamiat didn't help them ... But on hindsight I wish I went to Jamiat, because after the kind of help they gave, maybe they had some role to play.

She struggled with the issue, and chose to ask other Islamic organizations at first but eventually found support with the *alims*. Her statement reveals the general lack of confidence in the religious leaders. However, her experience revealed that they were not totally out of touch. When I interviewed an *alim* who was dealing with family crises, he was quite emphatic about the social problems facing families. He attributed these problems to two factors: the interference of the extended family, and the lack of sufficient knowledge among women. For the first, he presented a strident indictment against men who failed to live up to their responsibilities and failed to limit the interference of extended families in their home. The following makes this very clear:

... Indian Muslim community the in-laws is having interference for the daughter in law's life. They say your wife is doing this, your wife is doing that, your wife is doing that. Taunting them all the time and pointing finger all time and pointing finger all time to them. So then we are talking to the husband also say listen you got *haqq* for your mother also you got *haqq* for your wife also. ... And sometime husband are very dominated by the mother, the overcoming power of the mother. What mother says they listen. "If you don't listen to my mother pack up your bag and you go." Then we advise to them say no you can't do that. You have a mother, agreed, but he got a wife also, and wife has also children and the children they have also their mother if the husband is treating her like that today what will happen to the children? They are going to treat husband or father like that because to have seen how he is treating her mother.

The social transformation of the home identified by the *alim* is clearly manifested in almost all the interviews. For the second problem of insufficient education, the

religious leaders are trying to address the issue by appealing to a sense of duties and rights within the home. They use the community radio and other public opportunities to highlight the various problems in the society. Amidst the need for better education, though, the individuality and dignity of women was not considered. The women, though, seem very clear about this.

As a measure of responding to the emerging needs, social workers were employed by religious organizations. The director of one social support organization said that she could work with religious leaders on an individual basis, but found less understanding and sympathy from *alim* organizations as such. Here perhaps lies a problem at the heart of the conflict with which I opened the article. The ideological polarization within Muslim Personal Law seems incapable of being resolved by Muslims in their public personas. As individuals, they seem more responsive to the dilemmas faced by women. This comes through in many of the interviews. With persistence and some assistance, women were able to get some support from the religious establishment.

In spite of the good will of the religious leaders I spoke to, marital problems persisted and their resolution seems to take its toll on women. The social workers I interviewed revealed the widespread nature of the problem. It was always the women who found the need for seeking assistance, and men had to be cajoled and pressurized to listen to the complaints against them or take their own responsibilities seriously (Interview RD 5 January 2002).

Paying careful attention to their testimonies, it is clear that their crises provided an opportunity for their developing a sense of self and dignity through negotiating and reflecting on the religious values, symbols and establishments. Secondly, these experiences also expose the many ways in which Islam is lived, sometimes contradictory but always challenging to how men view religion. Most importantly, the question of identity and experience should alert us to the unfortunate and inadequate contradiction between Islam and human rights.