

INDIAN MUSLIMS follow the Muslim Personal Law or the Shariat Act of 1937 in matters of marriage, *mehr*, maintenance, dowry and judicial separation. Therefore, a Muslim woman must resort to the legal system to procure a divorce. The Dissolution of the Muslim Marriage Act of 1939 was passed to allow a woman to ask for divorce but only in very special conditions, as when her husband's whereabouts have not been known for a period of four years, she has been neglected by him, or the husband has not provided maintenance since four years. The other conditions are husband's impotency, imprisonment for three years, insanity, or failure to perform marital obligations for three years. If a woman seeks divorce, she forfeits her right to *mehr* and maintenance even during the *iddat* (three months and 10 days immediately after the divorce) period.

I interviewed a group of 100 divorced Muslim women from Bombay and Pune. Fifty women were selected from the Muslim Satyashodhak Mandal and 50 from the community through the snowball technique. The sample consisted of 30 Shias and 70 Sunnis. Most of them (80 percent) belonged to the lower socio-economic strata, with very little education.

In order to study the impact of the provisions in the law, we tried to put together information about women's marriage and divorce, including information on whether the women or their husbands had been married before, amount of *mehr* settled, the actual payment of *mehr* or reasons for nonpayment, return of dowry, divorce procedures and issues of maintenance.

# Divorce Among Indian Muslims

## Survey Report from Bombay and Pune

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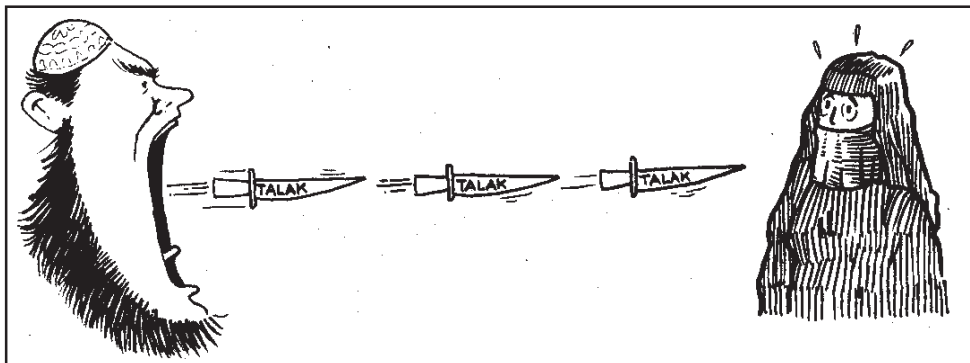
From the sample of 100, there were seven women who had married a second time and 13 husbands with previous marriages. In eight of the 13 instances of remarriage among the interviewed men, their first wives had initiated the present divorce. In the remaining five instances, the husbands had initiated the present divorce. Besides, there were only five women who were in polygamous liaisons, where the husband had taken a second wife as allowed by the Shariat. Four of these five wives had initiated the present divorce as they could not tolerate being second wives.

The trend appears to be that more Muslim women were asking for divorce second marriages, especially in case of their husbands entering into a polygamous marriage. Polygamy does not appear to be widely prevalent (five out of 100). The reasons could be the living pattern in the urban areas, women's awareness of their role and status, so that they do not want to play second fiddle, or the easy access to divorce for the men.

The women were asked to describe the divorce procedures and also questioned whether the wife or the husband wanted the divorce and who initiated the procedure. Forty-three women in the sample said that they wished to end the marriage although only 38 initiated the divorce proceedings. The fact that women are willing to end a marriage that is not working is evident from the growing number of women who said that they wanted a divorce. In the remaining five instances, the husbands sent the divorce papers when they became aware that their wives wanted a divorce.

Of the 38 women who initiated the divorce, 35 applied to a *kazi* (priest) or a marriage council for a divorce. In order to procure the divorce, it was essential that the husband agree to the divorce. Three women sought divorce through the Dissolution of Marriage Act as their husbands were missing for more than four years.

By comparison, 48 husbands wished to terminate the marriage. The



Muslim Personal Law permits a husband the right to divorce with an oral pronouncement, and also to do so when the wife is not in his presence. Therefore, it is not surprising to find that 17 of the husbands divorced their wives by oral pronouncements, while 28 husbands, which included five instances where the wives wished to terminate the marriage, sent divorce papers by registered mail to their wives at their parents' home. The divorce decree or *talaknama* was a written statement, which usually contained the day, time and the year of divorce, details of *mehr* (if he was paying it), reasons for the divorce and custody/maintenance issues. Among the husbands who divorced their wives, only eight applied for a divorce to a *kazi* or to a marriage council. The wives then agreed to the divorce. Out of the hundred couples, nine mutually agreed that they wanted to end their marriage.

The length of time between separation and granting of the final divorce is an important indicator of the process for securing a divorce. Since Muslims do not necessarily have to resort to the law courts, the time span between separation and final divorce could be as little as one month. Twenty four husbands either sent divorce papers or pronounced an oral divorce within one month of their decision to divorce their wives. However, when the wife wanted a divorce and the husband was not agreeable, the separation could be agonisingly long, lasting upto five years. Since the husband must consent to divorce (divorce being granted under the Dissolution of Muslim Marriage Act in special cases), it is not surprising that several women in the sample could not remarry or ask for any maintenance or child support as there was no official divorce.

It is customary for the bride's family to give gifts (which may take

the form of cash, household articles, clothes, jewellery) to the bride as "dowry" at the time of the marriage. Generally, among the Muslims, there was no tradition of demand or coercion by the husband or his family as to the type or form of the dowry. It was left to the wife's family to give according to their means. The trend is changing, with more and more families insisting that the family of the bride give large sums of money, luxury items, household furniture, even before arranging the marriage. In the present sample, 42 women brought back with them all (35 percent) or some (17 percent) of their dowry after divorce. A significant number of those women who received back their dowry after divorce had initiated the divorce and/or belonged to the Shia sect, so that the marriage council regulated the divorce, thus ensuring that the women took back what belonged to them.

All the women were aware of the custom of *mehr*, a sum of money to be paid by the husband to the wife at the time of the marriage or in the event of divorce. The *mehr* amount ranged from as little as Rs 100 to as much as Rs 35,000. Sixty women did not receive *mehr* although it is considered to be

the right of the wife, as stipulated in the Muslim Personal Law, except when the wife initiates a divorce. In two instances, where the *mehr* amount was fairly large, the husband would not divorce the wife because he would be forced to pay the *mehr*. After a long separation, the wives initiated the divorce proceedings, thus losing their right to the *mehr*. Thus, *mehr*, especially a large sum, which is supposed to be a protection for the wife and a deterrent to a hasty divorce, does not always work in favour of the wife.

Seventy-seven percent of the women did not receive any maintenance after the divorce. Seven women, out of those who were guaranteed maintenance (33 out of hundred), were to receive on a monthly basis amounts ranging from Rs 100 to Rs 500. At the time of the interview, only two women were still receiving the amount that had been agreed upon. Four women received the money irregularly, and one was paid only after the husband received a court order. Thus, it appears that even when they are granted maintenance by the courts, in reality the women do not get any financial support from their husbands.



Three women received a fixed amount, less than Rs 5,000, while two were paid more than Rs 5,000. One woman took her husband to court and asked for maintenance and a home as she had three children and was living with her parents. After six years of no settlement in the court, she approached the local *kazi*, who was able to bring together the husband's family and appeal on her behalf. The husband's family pressured the husband, who had long since remarried, into buying a home and giving a fixed amount as maintenance for the children of the first wife. In this one instance, it appears that the community and social pressures worked whereas the courts failed. Ten women were given maintenance for the *iddat* period (upto Rs 2,000) as per the Shariat.

Eight women out of the 23 belonged to the Muslim Satyashodhak Mandal and had claimed maintenance with the organisation's help. Eleven of the 23 women belonged to the Shia sect, which has marriage councils to regulate the divorce proceedings. The Shias usually approach the community authorities (marriage council or its equivalent) for divorce, ensuring some regulation of the divorce settlement. However, it is important to be cautious in interpreting the role of these councils as well as organisations such as the Muslim Satyashodhak Mandal since the maintenance received in some cases was either a fixed amount of money, or only for the *iddat* period.

It is quite evident from the findings of this study that a husband has greater choice and control in the divorce strategy and its outcome. The results indicate that the women are not getting their rightful dues in matters of maintenance, dowry, *mehr* and child support even within the tenets of the existing personal law.



Almost all women in India suffer from inequities which are a part of a wider socio-cultural complex and cannot be explained entirely in terms of legal codes or religious ethos. For instance, the custom of *purdah* inhibits women's creativity and limits their job and learning opportunities.

### What Will Help

Perhaps the most effective way to enhance the status of Muslim women is to educate them. Education and economic independence would go a long way to improve the status of women. An expansion of women's roles beyond that of mother and wife, and increasing opportunities to learn, work and be productive, will effect a rapid change.

Education and awareness will enable women to demand and insist upon getting their rightful dues under the Muslim Personal law, the Dissolution of Marriage Act, and the recently passed Muslim Women's (Protection of Rights on Divorce) Act. Most Muslims, even if they do not get any formal education, are exposed to religious teachings, usually limited to the recital of daily prayers and reading of the Koran, without any insight into the meaning of the Koranic injunctions. Perhaps a better knowledge of and understanding by both men and women of the legal provisions and the Koranic injunctions may be able to alter significantly the status of women and



**Anis, 35, does beadwork in her home near Ajmeri Gate in Old Delhi while caring for her eight children. She earns Rs 15 a day and says her husband has not earned for many years**

make men more aware of women's rights and their own obligations.

Since Muslims consider marriage a contract and there is always a *nikahnama* or marriage agreement at the time of the wedding ceremony, the *nikahnama* could be standardised to ensure that some of the inequities suffered by the women are removed from the marriage agreement. The *nikahnama* could state that the man cannot practice polygamy, that the woman's right to divorce would be equal to that of the man, and that *mehr* would be paid immediately after divorce. Since there is no uniform form of *nikahnama* ordained by the Koran

or the Shariat, such steps would not mean changing or challenging Muslim law. The passage of the Muslim Women's (Protection of Rights on Divorce) Act (1986) has made it possible for the wife to be paid her *mehr*, dowry, maintenance for the *iddat* pe-riod, and child support till the children are two years of age. The Act does not specify what constitutes "reasonable and fair provision", which is left to the judge's discretion. Thus, there is scope for justice within the constraints of the law. With the help of forward thinking lawyers and judges, women could get a fair share as demonstrated by two decisions of

Justice Rekha Dixit. In addition, with the establishment of family courts in some of the major cities, for dealing specifically with issues of marriage, custody of children and divorce, it may be possible to secure a settlement earlier as well as allow the women to have a more equitable amount.

A general policy that aims to inform Muslim women about the Muslim Personal Law should be incorporated into the marriage procedure. The *kazis* and members of the marriage councils should be made to impart this information at the time of the marriage as well as maintain formal registration of marriages and divorces.

Finally, it should be kept in mind that mere changes in the law are not likely in themselves to result in a lasting solution. Not many people know the legal provisions nor can they afford legal recourse. Far-reaching social changes are necessary to effect collective action and increase women's bargaining power. □

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