

AS THE DEBATE OVER THE ISSUE of triple divorce is becoming more and more pronounced and sharply focused, it is evident that a majority of the educationally and economically well-off Muslims, both men and women, are against the pronouncement of triple divorce in a single sitting. Most of the lower income Muslim men, however, appear to be in favour of its continuation, though their women differ from them.

This was clearly brought out by a survey conducted jointly by MRAS/Burke, a market research agency, and *The Pioneer* in Delhi and Lucknow, as well as a convention held in the capital on August 8.

The day-long convention was called by the Muslim Intelligentsia Meet (a social movement launched in the aftermath of the Ayodhya tragedy) to evolve a consensus in the community on the issue of triple divorce. The participants represented across sections of Muslims, including Islamic scholars belonging to different schools of jurisprudence (Hanafi, Maliki, Shafai and Humbali among Sunnis and Jafri among Shias), Muslim women activists, academics, lawyers and journalists.

"The idea was to provide a platform to discuss the issue and move towards a commonality of view," explained Professor Imtiaz Ahmad of Jawaharlal Nehru University and one of the convenors of the Meet.

The debate centres around a form of divorce known as *talaq-e-bidat*. The most common method of *talaq-i-bidat* is a triple pronouncement of the word 'talaq' in a single sitting. This pronouncement could be made even during the period of a wife's menstrual flow, in jest, by a slip of the tongue, and under intoxication. Although disapproved of by classical jurists, it has been accepted by most of the Sunni Muslim jurists. The Shias and Malikis do not consider this form of divorce valid.

Resistance From Within

Muslims against the Practice of Triple Divorce

Askari Zaidi

It was a routine *fatwa* given by a scholar belonging to the Jamiat Ahle Hadees, a small Muslim sect which believes in the supremacy of *Hadees* (sayings of the Prophet Muhammad), in May this year that sparked off the controversy. The *fatwa*, first published in the Jamiat's magazine titled *Jarida Tarjumaan*, of May 21, and later quoted in several newspaper reports, was generated from a case involving a man of western Uttar Pradesh who had pronounced 'talaq' thrice to his wife in a fit of anger but later regretted it. The wife was also willing to join him back. Citing from Quranic verses and *Hadees*, the Ahle Hadees scholars ruled that the 'talaq' pronounced three times in a row is taken as one, and hence it is invalid. This kind of divorce is revocable under

the Shariat Act, 1937. It would be valid only if three pronouncements are made in three consecutive terms of "ritual purity" (monthly menstrual course).

The Jamiat Ulema Hind (JUH), a body of Muslim theologians belonging to the Deoband Darul Uloom, however, called a press conference in July and denounced the stand taken by the Ahle Hadees. The JUH holds the view that the pronouncement of triple divorce in one sitting is irrevocable, and if the parties wish to remarry, they cannot do so till the wife undergoes *halala* or the wife goes through another marriage which is consummated and subsequently dissolved.

Speaking at the seminar, Professor Zeenat Shaukat Ali, who teaches



Muslim women in Delhi at a recent meeting to consider the divorce provisions under the Muslim Personal Law in India

Islamic Studies at StXavier's College, Bombay, said that this form of divorce was prevalent during the pre-Islamic period (*jahilia*). "Neither does the Quran mention this form nor does it seem to have been recognised or sanctioned by the Prophet," Professor Ali stressed.

She explained that it seems to have crept into Islamic jurisprudence at the instance of the Omayyad monarchs who, finding that the checks imposed by the Prophet on the facility of repudiation interfered with the indulgence of their *ca-price*, endeavoured to find an escape from the strictness of the law.

Strongly pleading for discontinuation of the *talaq-i-bidat*, Professor Ali said that several Islamic countries, including Pakistan, have amended their laws to prevent this form of divorce being practised.

The statement of Maulana Mohammad Iqbal of the JUH that this form of divorce was not so common in India came in for severe criticism. "The press has tried to create a controversy by citing the case of one Shakila ... Hardly one percent Muslim women are affected by this form of divorce," Maulana Iqbal said.

Aisha Begum, a social worker from Gujarat, Seema Mustafa, journalist-turned-politician, Professor Imtiaz, and Dr Mehruddin Khan, a Hindi journalist, contested Maulana Iqbal's observation forcefully.

Aisha Begum said that no detailed statistics were available to determine precisely the percentage of Muslim women who were victims of this form of divorce. "However, in a survey of 10,000 Muslim families in Surat, we



precisely what percentage of Muslim women 'is actually divorced. The point is about possibilities. The practice of pronouncement of three divorces in one sitting renders the Muslim woman extremely vulnerable and as long as this possibility exists, the chances of her being short-charged by reckless husbands are high."

Seema Mustafa said that the problems of a divorced woman would remain the same till she was assured of a means of livelihood. "How does it make a difference if it takes 30 seconds or three months unless she has something to fall back upon?" she questioned. She demanded that women should be given the right to be "arbiters of their destiny."

Najmi Waziri, a High Court/Supreme Court lawyer, pointed out that the debate was baseless as, under the Shariat Act, an individual could on an affidavit say that he believed in a school of jurisprudence other than the Hanafi, and get a divorce. Abid Ali, an advocate from Lucknow, however, proposed three solutions. First, the procedure of divorce could be specified in the *Nikahnama* (marriage contract) at the time of wedding. Second, divorce could take place in the presence of two witnesses, and third, women could also be given the right to divorce.

Maulana Wahiduddin Khan, one of the few Muslim clerics who does not favour rebuilding the Babri Masjid mosque at the same site, and Professor Akhatarul Wasey Of the Jamia Millia Manila's Department of Islamic Studies, were of the view that even if the triple divorce in a single sitting could be justified, the issue

should be re-examined in the light of Quranic instructions and in consideration of the prevailing situation in the country.

The convention adopted a resolution which declared that the “pronouncement of triple divorce in one sitting was violative of Quranic instructions” and has “allowed a casual attitude to be adopted towards women.” The convention also set up a committee which will persuade the Muslim Personal Law Board to convene a conference of Islamic jurists, Muslim intellectuals and opinion makers to evolve an authentic interpretation on the issue, keeping in mind the ground social realities.

The most important outcome of the convention was, however, a decision to organise an all-woman meet in the predominantly Muslim area of Jama?Masjid in the capital towards the end of August or early September.

However, men and women evidently differ in their perceptions of the practice of triple divorce. A recent survey conducted by MRAS/Burke and *The Pioneer* in Delhi and Lucknow revealed that a majority of the men were for the continuation of the practice of triple divorce in one sitting. On the other hand, most of the women folk in the area voted against the triple divorce.

The poll, which was restricted to households with a monthly income of less than Rs 2,500, indicated that 55 per cent of the total number of Muslims, both men and women, did not want any change in the current practice of triple divorce. However, a majority of women (52 per cent) wanted a reform in the system. They were strongly opposed by a significant number of men (63 per cent) who would not brook any change.

In comparison, Lucknow emerged as a more conservative city. Sixty eight per cent of the people interviewed were against triple divorce, with only 28 percent women preferring change, as compared to 52 per cent women in Delhi. □

Haiku

*Even bones of youth
Aching with familiar pain
Must be rain again.*

*Summer Sky - a blanket of stars
they'll be somewhere else
open my eyes tomorrow.*

*In light of lamp the lizard
pretending deep sleep.
The insects hover around.*

*On my tiny potted plant,
a silken cobweb
shows off in the mornin-g sun.*

*Good morning friend birds
With the song of rain on leaves
Are you keeping dry?*

*Quick sunshine you may
While the wind plays with the branch
Visit my sick bed.*

*A quick peep outside
Again the sky wore new clothes
And the sea changed too.*

Nandini Bedi