

NOTE

Reforming Muslim Personal Law

Yoginder Sikand writes :

Attempts to reform Muslim Personal Law to address some of its provisions that impact particularly harshly on women have inevitably met with stiff resistance from the ulema or Islamic clerics—even though, as some advocates for reform point out, these provisions have no sanction in Islam as they understand it. For its part, Indian political parties, with their eyes on the substantial Muslim vote-bank, are loathe to tamper with Muslim Personal Law for fear of angering the ulema, who project themselves as the authoritative spokesmen of the country's Muslims. Reform in Muslim Personal Law, it thus appears, is impossible as long as the ulema continue to oppose it.

While the overwhelmingly Sunni All-India Muslim Personal Law Board continues to oppose any significant reforms in Muslim Personal Law, a recent initiative of the little-known All-India Shia Personal Law Board (AISPLB), a group of Shia Muslim clerics set up five years ago, indicates a growing willingness on the part of a section of the Indian ulema to address crucial questions that women activists, Muslims and others, have for long been debating. While not explicitly demanding reforms in the existing Muslim Personal Law, the AISPLB is seeking to bring about reforms in order to protect the rights of Shia Muslim wives indirectly—through the model marriage contract or *nikahnamah* that it has recently come out with and is seeking to popularize among India's roughly twenty million Shia Muslims.

The *nikahnamah* is divided into two broad sections, one that outlines the rights and obligations of the bride, the other that of the groom. Both spouses are required to assent to these rules. To protect the rights of the wife, the groom promises not to force her 'to do anything in violation of the shariah' or that might cause her 'embarrassment in society'. He undertakes not to 'make any allegation' against the wife without any authentic evidence. He promises never to demand any gifts or money from the wife and/or her family after marriage, while agreeing to provide properly for the maintenance of the wife and their children, if any. He agrees to the stipulation that 'to fulfil domestic obligations, within the bounds of the shariah' and to improve the economic situation of the family, if the wife 'wants to work anywhere', he shall not stop her from doing so. On the tricky issue of divorce, a subject of endless controversy in discussions about Muslim Personal Law, the model *nikahnamah* offers the wife substantial rights. Thus, for instance, if the husband disappears for two consecutive years and fails to provide for his wife, she has the right to delegated divorce. She has the same right if the husband uses physical force against her or mentally tortures her. She also has the right to ask her husband for separate living arrangements if any of his relatives 'excessively' troubles her.

The *nikahnamah* does not go so far as denying the husband's prerogative of arbitrary divorce that Muslim Personal Law, as it is recognized in India, allows for. At the same time, it seeks to make such divorce more difficult for the husband than is presently the case.

In short, the AISPLB's new nikahnamah has numerous clauses that address some of the most glaring shortcomings of Muslim Personal Law as it presently exists in India. However, a crucial clause in the nikahnamah lays down that it is not mandatory for both parties to accept the conditions in the contract—some conditions can be deleted, cancelled or narrowed down. At the same time, new conditions can also be added—and these could well benefit the bride—provided they do not go against the shariah.

The AISPLB's marriage contract does not, of course, address all the demands of Muslim women's activists. But that it is still a bold attempt to deal with some of the most pressing problems of Muslim women cannot be denied. That the initiative for this sort of effort has come from a section of the ulema, otherwise seen as a bastion of conservatism and patriarchy, is, to say the least, heartening—many other ulema simply do not even acknowledge the existence of the problem, leave alone making any efforts to solve them. □□□