

WOMAN IN ISLAM

RAM SWARUP



This study discusses woman's status under Islam; it discusses Islamic laws relating to marriage, divorce and dower; it discusses polygamy and concubinage which were not long ago important political institution of Islam; they were made possible by its fast-growing Imperialism and they in turn had fully served its expansionist needs.


According to the author, Islam probably inherited a world where woman's position was low, but it became worse when Islam took over and the old Arabic social practices became Revealed Commands of God.

Today woman's problem in Islam is more ideological than legal; her depressed social position derives from her depressed theological position. Woman can receive no justice much less honour in a religious ideology which has no concept of a female God. Although the Quran may teach here and there kind treatment of woman, it is within the framework of man's unquestioned superiority, moral and metaphysical.

But now under new compulsions and impulses, some effort is being made to improve woman's lot. The author welcomes this effort but believes that the problem of reform under Islam is a difficult one; he holds that no worthwhile reform is possible within the ideational and ethical framework of Islam's traditional theology — as Taslima has discovered by experience.

The author also mentions Islam's treatment of the infidels, a related and even more cruel aspect of the same problem, and also a question of grave concern to the non-Muslim world. The two credos derive from the same source — an inadequate and undeveloped spirituality; they also need the same cure — a *review* of religious categories such as exclusive gods, exclusive intermediaries and exclusive revelations. Any basic reform in Islam requires a new intellectual lead derived from a very different concept of man, woman and, yes, of deity; it requires self-questioning, a questioning about Islam itself ! But for that, is Islam ready yet ?

WOMAN IN ISLAM



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Preface

Woman in Islam discusses briefly Islam's laws on marriage, divorce, dower, polygamy, concubinage as derived from the Quran and the *Sunnah* and subsequently codified by Muslim legists. These laws are often arbitrary, particularly those relating to divorce. Therefore, it has been painful to write these essays and it must be painful to read them too.

However, the problem of woman in Islam is more ideological than legal. Both traditionally and in its deeper conceptualization, Islam's world has been a male's world in which woman has held frankly a low position. Perhaps that is the kind of world Islam inherited and woman's position became worse under new ideological pressures. But now Islam itself is under pressure and it lives in a different world than it has known. The question of Muslim woman has opened up and there are voices of protest and there is demand for change. True, those voices are still feeble and not entirely unequivocal, but they can no longer be ignored and they cannot remain without influence for long.

However, the problem of those who seek change is not easy. Islamic laws on marriage and divorce are not just social legislation which could be changed in response to new social mores and needs; they are revealed truths, Allah's commands and, therefore, unalterable. To seek to change them is both a crime against a truly Muslim State and rebellion against God. True, perhaps some of these laws were once current social practices among the Arabs of the time of the Prophet; but once they were adopted by Allah and acquired heavenly sanctions, they were no longer amenable to legal modifications or even normal social wear and tear or silent social change.

Under the circumstances those who seek a change hope to humanize Muslim legislation through reinterpreting the Quran. They point out that the Quran was not always so unalterable, that there was a time when different and multiple interpretations of its texts were possible and different schools of jurisprudence that exist today testify to that period of freer discourse. And in anticipation, they have already begun with their reinterpreting and in the process have given us a Quran which was not known or even suspected by Islam's best minds and legists in the past. Similarly, though they have failed to serve the cause of Muslim woman, they have certainly used the pretext for doing some fine propaganda for Islam. In any case it is not they who have used the authority of Quran for their purpose, it is the Quran which has used them for strengthening its over-all authority.

In this study, we have held that no worthwhile reform is possible within the present ideational framework of the Quran and the *Sunnah*. But this fact should be openly recognized and squarely met. Any other method, particularly the one mentioned above, will be self-defeating. It will merely strengthen the authority of the very sources of the ideas which have kept woman down. Some interpretation is permissible and even necessary but it should not become insincere and the Revised Version should not lose all touch with the Authoritative Version.

Some unreal discussion along the false lines mentioned above was already going on in India when Taslima Nasrin burst on the scene. Taslima is a genuine reformer, very different from the ones we know in India. She has convictions and can suffer for them. She has been in the forefront of the struggle for women's liberation and has opened up this question in a big way along with a host of other important questions like the question of free discussion under Islam, the

question whether man's best authority is Reason or a Book, and even the tabooed but very important question of the treatment of non-Muslims under Islam.

On the woman question she seems to agree with us and she has found by her own experience that reform is not possible within the four walls of Quranic morality. In a television interview she recently gave to the Australian Broadcasting Corporation, she said that "Islam treated women as slaves," and if they "wanted to live with dignity" they would have to live "outside the Islamic law." She had therefore earlier suggested that the Quran should be *revised*.¹ We all know the subsequent story; how the hell broke out and she now faces the *fatwa* of death.

We appreciate what led her to this view. We also salute her courage in expressing that view, a courage which is likely to bring her martyrdom. But would the course she has suggested help the cause that is uppermost in her mind? The problem is sensitive and the course she has suggested is not viable. There are other considerations too. Firstly, a book has a right not to be revised and expurgated except by its author; secondly, the readers of a book like the Quran, which is held in such high esteem by them and which has been preserved unaltered with great care over centuries, have a right to have it as it is. In the new climate, we may differ with the book but in that case the best course is we write our own book or commentaries to show why and where we differ.

To my mind the Quran needs not neo-interpretation or revision but it needs to be reviewed, re-examined, and reappraised; it does not need rewriting, it needs rereading by a critical mind and an alert heart — that is, by a heart open to larger truths of life and having wider sympathies. It needs to

¹ In an interview published in *The Statesman*, May 9, 1994, she said "I am not in favour of minor changes of the Quran. It serves no purpose... The Quran should be revised thoroughly".

be discussed more widely and the unstated requirement that it should only be praised should be considered unworthy of an intellectual and spiritual venture. A reawakened humanity needs rationality as well as internality in its scriptures.²

Woman in Islam has also passingly mentioned Islam's treatment of the infidels and its neighbours. This is important for many of us who are infidels of Islam's definition. Islam has treated her women badly enough, but it has treated its neighbours far, far worse. The two problems are not unconnected but we cannot go into this question here except to say that they originate from the same ideology, the same attitude, the same mind, the same psyche. Historically too, religious ideologies which have been unkind to women have been cruel to their neighbours.

Quran is an ideological work. It manifests a certain kind of mind and psyche which regards quite a sector of humanity as inferior. It treats women and infidels as inferior. It may recommend kindly behaviour towards them here and there — which become quotable pieces of the liberals — but that is quite compatible with intolerance, persecution and systematic cruelty towards them on a large scale. Yes, Quran needs *reviewing* and *re-examination*, not *revision*.

In this book we have praised Taslima for speaking for Muslim women who do not have many spokesmen in the Muslim world. But her real glory is that she has also spoken for the persecuted Hindus in her country — for whom no one speaks, not even the Hindus. And in fact this is what rankles in many minds and that is why she has not found much support even in liberal circles. Muslim orthodoxy and Muslim liberalism may be divided on the question of Muslim

² Those interested in the fuller discussion of the subject may refer to the author's *The Word As Revelation: Names of Gods*, Impex India, New Delhi-2, and *Hindu View of Christianity and Islam*, Voice of India, 2/18, Ansari Road, New Delhi-2.

women, but they are one where the infidels are concerned. It is curious but true that in Muslim history there has been no protest from Muslim quarters against what Islam has done to non-Muslims.

In this book, we have said that for sympathizing with Hindus, Taslima is not likely to be more popular with Hindu 'liberals' in India than with Muslim liberals in her own country. In some ways, Hindu 'liberals' are worse than Muslim liberals. Their first and fondest antipathy is Hinduism; and the rest of their politics is a mere corollary. Taslima has described the sorry plight of the Hindus in Bangladesh. The anti-Hindu Hindu 'liberals' in India can never excuse her for that though some may make some appropriate noises to look liberal. In fact, this role of Taslima remains unrecognized and even unmentioned and every effort is made to push it under the carpet in order to suppress the very idea and need of such a role.

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Woman in Islam

Some years ago, the Shah Banu case came and the media was full of it, but it led to no deeper understanding of the underlying problem. Recently talaq was in news and under much discussion but with no different results. Once in a while, a discussion of this kind may allow a peep through the purdah and reveal some interesting facts, but it fails to provide any coherent picture.

The tendency is to limit the question to unfortunate individual cases like that of Shah Banu and seek such relief, legal or otherwise, as is possible under the circumstances. But such a narrow approach can hardly throw any light on the larger subject. We forget that we need a bigger perspective and that most such and similar cases belong to a larger framework involving Islamic laws on marriage, divorce, dower, polygamy, and indeed involving the very question of woman's place in Muslim theology.

The Muslim law, *Asb-Sharia*, on these questions derives from the Quran and Hadis as interpreted by Muslim *Fiqh*, traditionally consisting of four schools¹. It may and it does require changes but first it must be understood in its integrality; secondly, it must also be kept in mind that any change

1. It is often said by Muslim apologists that the Quranic laws on different matters were alright but they became bad when they were subsequently interpreted and administered by lesser people. But it does not seem so. On the contrary, we find that the spirit of of Abu Hanifah's legislation, for example, was often milder and it mitigated the harsher regulations of the Quran and "the Pious Khalifas."

will have to come mainly from within the Muslim society itself even though it may be an uphill task and the initial impulse may have to come from the outside.

The questions of matrimony including related problems of dower and divorce and custody of children belong to *Munakahat* (Nuptials) section of *Mu'amalat* (Transactions) division, one of the five categories into which the Muslim law is divided. Among the Sunnis of the world, four schools of law, all considered orthodox, prevail. These themselves have emerged out of more than a dozen which have existed at one time or another amongst Muslims of different regions. In India, the Hanafi school named after its founder, Imam Abu Hanifah, scores in popularity. Perhaps the most important book of this school is the *Hidayah* (Guidance), a very early work composed by Shaikh Burhanud-din Ali who was born in AD 1135; it was translated into English in 1791 AD by Charles Hamilton at the instance of the East India Company.

Customary practices of a region have also the force of law and have been often in vogue among different Muslim tribes, castes and countries. In fact, the source is so powerful that Arabic customary practices became revealed laws of Allah and the *Sunnah* of the Prophet. But the *Shariat* pretends that this source does not exist or is evil. In any case, as fundamentalism rises, *Shariat* laws become increasingly more important.

Woman in pre-Islamic Arabia

It is generally held that a woman's position in Islam is low and that this position she inherited from pre-Islamic Arabia. But this is only partially true for the Muslim accounts themselves tell us that her position in pre-Islamic days was not as depressed as it subsequently became. As the story of Khadija, the prophet's first wife, shows a woman could run her own business, engage her own employees and choose

her own husband. Again, the story of Hind, the first lady of Mecca, wife of its chief, Abu Sufyan, shows how spirited and independent-minded a woman could be. When her husband refused to fight the invading forces of the Prophet, she gave free expression to her indignation: "Kill this fat greasy bladder of lard! What a rotten protector of the people," she said. And again, when Mecca fell and she was forced along with the rest to take the oath of fealty to the new chief, she was equally spirited and fearless. When asked to take the vow "not to kill her children", she told the Prophet: "I brought them up when they were little and you killed them on the day of Badr when they were grown up..."

In Medina, where the Prophet had taken refuge, women enjoyed even a better status. There men who married went to live with the people of the wives. Throughout marriage, the wife kept her own tent. When she wanted to separate from her husband, she simply turned the tent round to face in the opposite direction, and that was the end of their relationship. No doubt, this was a bad influence on Quraish women now residing in Medina. Once when the Prophet was angry with his wives and the word had gone round that he had divorced them all, Umar went to meet him and told him, "how we the people of Quraish had domination over women but when we came to Medina we found people whom ~~their~~ women dominated. So our women began to learn from their women." Then he advised the Prophet to divorce his wives, and that if he did, "Allah is with you, His angels, Gabriel, Mika'il, I and Abu Bakr and the believers are with you."²

But with the new order came new disabilities, this time not as evil social accretions but as divine ordinances which it was impious to question. Wife-beating was perhaps already there, but Islam brought to it a heavenly sanction.

2. *Sabih Muslim, hadiths 3507—3511.*

"Those from whom you fear perverseness, admonish them and banish them to beds apart; and scourge them," the Quran says.³

To the evil of polygamy were added the veil⁴ and seclusion. The new Revelation was frankly on the side of man. "Men have pre-eminence above women" (Quran 4.34), declared Allah. Orthodox commentaries on this verse explain that men have "superior understanding and strength, and the other privileges of the male sex." Al-Ghazzali, perhaps the most influential theologian of Muslim history, explains it to mean that "merit has one thousand components, only one of which is attributable to women. While nine hundred ninety-nine are attributable to men." For Eve's disobedience and the moral depravity of her kind, God has punished woman, he says, in eighteen different ways which include menstruation, pregnancy, child birth, separation from parents and marriage to a stranger, not having control over her own person, her liability to be divorced and inability to divorce, the fact that it is lawful for man to marry four wives while she must be content with only one husband, that two women's testimony is to be set against the testimony of one

3. There is also a *hadis* relating to the question of wife-beating. It is said that on one occasion the Prophet advised his followers not to beat their wives. Then Umar came and represented: "Our wives have got the upper hand of their husbands." In response, the Prophet permitted the old practice. Then women collected round his house and complained of their husbands beating them. The Prophet said: "Verily a great number of women are assembled in my home complaining of their husbands, and those men who beat their wives and do not behave well. He is not of my way who teaches a woman to go astray and who entices a slave from his master."

4. Dr Kalim Siddiqui, founding president of the British Muslim Parliament, gives us an interesting view of the *purdab*. According to him, it is a kind of political statement, a proclamation, a form of *jihad* or warfare. Speaking at the Sixth Conference of European Muslims (18-19 April, 1992), he said: "When we men walk down in the street, we are just a face in the crowd. But when a woman wears a *hijab*, she is carrying the flag of Islam. She is making a statement: that this European civilization is unacceptable to us, that it is a disease, a pestilence on mankind" (through the courtesy of Koenraad Elst).

man, and so on in the same vein.⁵

Though the Quran teaches here and there kind treatment of women, it is within the framework of man's unquestioned superiority, moral as well as metaphysical, here as well as in the next world. Once the Prophet stood at the portals of Hell and Heaven and he saw that the majority of those who entered the gate of Hell were women while among the inmates of Heaven they formed a minority.

Probably a woman's depressed position in Muslim theology has also tended to make her position depressed in Muslim society. The Quranic God is palpably masculine and he waged a relentless war against pre-Islamic Goddesses like al-Lat, al-Uzza and al-Manaat. God in Islam is not conceived as a Mother, and that may explain why motherhood is not holy and conceiving and child-bearing are not God's favours and blessings but are his penalties and curse. In Islam, there is no spiritual apotheosis of man and his acts embody or partake of no cosmic significance. Man is man and God is God and the two do not meet except in man obediently following the rules and commands revealed to a favoured Prophet. Man's deeper religious sense finds this approach spiritually unsatisfactory, to say the least.

Islam disfavours idealization of woman in any other form. She is treated too matter-of-factly, even too nakedly.

5. Christianity, Islam's elder sister, too, holds woman to be inferior to man. Paul tells us that "man is not of the woman, but the woman of the man," and that "the man was not created for the woman, but the woman for the man" (1 Cor 11.8,9). Thomas Aquinas, Christianity's Al-Ghazzali, and born after him, repeats the latter's opinion and logic. He tells us that "the woman is subject to the man on account of the weakness of her nature... Man is the beginning of woman and her end, just as God is the beginning and end of every creature... Woman is in subjection to the law of nature but a slave is not." Both the Quran as well as the New Testament follow their parental scripture, the Old Testament, according to which woman is under the curse of God. Has not Jehovah told her: "I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee."

The Arabic-Persian word, *Aurat*, means a woman or wife but primarily 'pudenda'. Similarly, *nikah*, the Arabic word for marriage, means both matrimony as well as conjugal intercourse.

Marriage in Islam

We see that Islam brings a different psyche in treating the institution of marriage. According to Manu, "the husband receives his wife from Gods." This deification is perhaps too incorrigibly Hindu, but many cultures have taken at least a sacramental view of marriage. Christianity, for example, after centuries of hesitation declared matrimony to be holy and now brings man and woman together until "death them do part". In the light of prevailing facts, the principle is obviously exaggerated but it has been proclaimed again and again and it expresses a great psychic truth. Islam, on the other hand, regards marriage as a social contract which creates certain social and sexual obligations and rights.

And yet even here though marriage is a civil contract, it is fortified by religious sanctions. In fact, the Prophet was against celibacy in his followers and enjoined marriage upon them as a command of Allah. A believer who is sane, healthy and adult and yet does not marry is "one of the brothers of the Devil," according to a saying of the Prophet. According to another saying, a Muslim by marrying "perfects half of his religion"—the other half is perfected by engaging in *Jihad* or *Ghazwah*, holy war against infidels. Celibacy has no part in Islam. In this regard too, it follows the lead of the Old Testament which has even no word for a 'bachelor'.

Prohibitions

Muslim law prohibits marriage between two parties⁶ on grounds of consanguinity or lineage (*nasab*), or matrimonial alliance (*musabarat*), or common fosterage (*rizab*), etc. According to a tradition, there are seven prohibited degrees according to the first ground, and the same number according to the second. Those who were nursed by the same mother also cannot intermarry. Once it was suggested to the Prophet to marry the daughter of his uncle Abbas; but he declined on the ground that he and his uncle suckled at the same breast.

A Muslim cannot marry a married woman until she is divorced; but the prohibition does not apply to women captured in war. This is in accordance with the Quranic injunction which declares: "And all married women are forbidden unto you save those (captives) whom your right hands possess. It is a decree of Allah for you."⁷

A Muslim may marry a *kitabee* woman (Jew, Christian, or Sabean), but not a polytheist woman for the Quran commands: "Marry not a woman of the idolaters until she embraces Islam."⁸ But she can be kept as a concubine. A female Muslim can under no circumstances marry a non-Muslim.

A slave cannot enter into a contract of marriage without the permission of his master; for among the conditions of a valid marriage contract are discretion, puberty (*bulugh*) and freedom (*hurriyyat*), the last of which he lacks.

A marriage contract need not take the form of writing, but it is supposed to take place between two consenting

6. The Quran tells the Muslims: "Prohibited to you are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your foster-mothers, your foster-sisters, your mothers-in-law, your step-daughters under your protection born of your women to whom you have gone in (but no prohibition if you have not gone in), the wives of sons who spring from your own loins, two sisters together, and married women except those your right hands possess" (4.23, 24).

7. Quran, 4.24

8. Quran, 2.221

parties. The contract consists of two parts: declaration and acceptance. A Muslim marriage where both the parties are Muslim can only be contracted in the presence of two male witnesses, or one man and two women (for legal purposes, one man is equal to two women), who are sane, adults and Muslims. But infidels may witness the marriage of an infidel woman with a Muslim according to Abu Yusuf, though Imam Muhammad and Imam Zuffar disagree with this position.

The consent of a girl who has attained the age of discretion (*sinni rusb*) is necessary for a valid marriage. The right of a widow who has known a husband (*saiyibah*) is still greater in this regard. The woman expresses her consent by her silence or smile. Though a woman has a say, it does not mean that she can arrange her own marriage. "A woman who marries on her own is an adulteress," says Abu Hurairah reporting the Prophet's words. According to Aisha the Prophet says: "A marriage without a guardian (*wali*) is null and void (*batil*), null and void, null and void." "A man who has intercourse with such a woman should pay her *mehr* for the advantage he has derived from her *farj* (pudenda)," according to *Miskatu'l-Masabih*, the well-known compilation of traditions much used in India.

A woman cannot give away another woman in marriage, for she is excluded from guardianship though this prohibition does not seem to apply among the Shias.

Temporary Marriage

There is another form of marriage called usufructuary or *mut'b* marriage. It has a historical value now but it shows how far a contractual theory of marriage could go. In the language of the *Hidayah*, this form of marriage consists in saying to a woman, "I will take the use of you for such a time for so much." It was once permitted by the Prophet though it was soon discontinued. One Jabir b. Abdullah reports: "We

contracted temporary marriage giving a handful of dates of dower during the life-time of Allah's messenger and during the time of Abu Bakr until Umar forbade it." *Ain-i Akbari* mentions this form of marriage and the Emperor's divines declared it legal under certain conditions. It is said that this form is still legal amongst the Shias of Iran.

In its casualness, this resembles the 'live-in' form of marriages now so popular in Europe and in certain avant-garde circles elsewhere. But the similarity ends here. For the first form involves hire which is not the chief feature in the second. But both view man-woman relationship as primarily contractual and regard the sacramental approach too fuzzy and bothersome.

Equality (*kifa't*)

A Muslim woman is entitled to equality in the choice of her husband. But this is no Bolshevik thought; the word, *kifa't* only means parity and similarity. It means that the woman has a right to be married to a man of equal or even superior rank in all respects — tribal, racial, religious and economic. The *Hidayah* says that the "husband be the equal of his wife, but it is not necessary that the wife be the equal of the husband, since men are not degraded by cohabitation with women who are their inferiors."

All Muslims are equal but some are more equal than others. Islam recognizes different degrees of equality within itself. The *Hidayah* discusses this ranking, and different "orders" of inter-marriageability. It declares that "a Quraish is the equal of Quraish." It means that there is no pre-eminence between Hashmees, Niflees, Teymees or Adwees. Sayyads who trace their descent from Bibi Fatimah, the Prophet's daughter, are a race apart. A register is kept of all their marriage transactions and every attempt is made to keep their blood untainted through mixture with the lesser breeds of Muslims.

Next in ranking are the *Sarib*, the Arabs. "An Arab is the equal of the Arab," continues the *Hidayah*. A Quraish woman married to an Arab bedouin can repudiate that connection. Then come non-Arab Muslims, the *Mawali*, or *Ajami*, more strictly, barbarians or Persians. "They are the equals of each other throughout, regard not being made among them to lineage, but to Islam." This means that an *Ajami* is not worthy of a woman of Arab descent. And among themselves, a new convert is not the equal of one born of a converted father. Accordingly, he is not worthy of a woman born of a Muslim father. This seems to contradict the view of Imam Abu Yusuf who holds that an *Ajami* whose father was a Muslim is the equal of a woman whose father and grandfather were Muslims. The two views are based on two different principles. One principle says that a man is twice the worth of a woman; the second principle says that a two-or-three-generation convert is superior to a first-generation convert.

In India, the principle of ranking finds a vigorous application. Those who claim foreign ancestry are the aristocracy, the *Ashraf*. They have their own ranking: Sayyads, Sheikhs, Mughals and Pathans. They are divided into subsidiary categories, generally all endogamous.

The local converts constitute the plebian class and are frankly called *Ajlaf* and *Arzal*, Arabic words which mean the wretched, the ignoble, the mean, the triflings, mere pots and pans. The word truly describe their status. They are further divided literally into hundreds of castes, most of them strictly endogamous. At the very bottom of the pyramid are the *Momins* or *Ansaris* (weavers), greengrocers, tailors, barbers, milk vendors, laundrymen, butchers and scavengers.

Marriage: Rights and Duties

When a Muslim man and woman marry, they have their rights and duties. "A woman is a man's tilth unto whom he may go as he desires" (Quran 2.223). She cannot refuse cohabitation except on such grounds as menstruation and sickness. If she refuses to go to the husband's bed when called, "the one in Heaven is displeased with her until the husband is pleased with her," says the Prophet according to an oft-quoted *hadis*.

In return, the wife has a right to maintenance (*nafaq*). In Muslim law, maintenance has been described as a recompense for the matrimonial restraint. According to the *Hidayah*, when a woman "surrenders herself into the custody of her husband, it is incumbent upon him to supply her food, clothing and lodging." One school says that maintenance is determined by the rank, condition and ability of the husband, for the Quran says, "Let him support her according to his ability."

However, another school holds that a woman's circumstances should also be taken into consideration and one accustomed to live in affluence should be treated differently, particularly by a husband who has the means and the ability. If he can afford it, the husband is required even to maintain her wife's servants. Following the Prophet's example, he should provide her with a separate room or apartment of which she has the lock and key. But under all circumstances, she is under the control of the husband with respect to visitors. He has a right to prevent even her parents or her chil-

dren by a former husband from coming in, but he cannot prevent her from conversing with them.

The right to maintenance is so overriding that if a woman marries a slave voluntarily and he fails to supply her needs, he could be sold for her maintenance. According to Imam As-Shafi'i, if a husband becomes so poor that he cannot support her, then the Qazi should separate them.

Zina

Though Muslim marriage is all in favour of man, and with polygamy and concubinage it gives him all the opportunity and freedom, yet it demands from him too "faithfulness" of a sort as it does from woman. Any extra-marital sexuality in Islam invites grave penalty. The Arabic word *zina* (usually translated as whoredom) includes both fornication and adultery, and both are punished heavily though the two offences incur different penalties.

Zina is established before the Qazi in two different ways: by confession and by proof. A confession is established when it is made by a person of sound mind and mature age four times at four different appearances. Proof is established when the accuser produces four witness who all declare that "they have seen the parties in the very act of carnal conjunction." If he fails or the witnesses are not forthcoming, the accuser is given eighty stripes. This is in accordance with the command of Allah in the Quran who says: "Produce four witnesses from among you against them"; and also, "if any person advance a charge of whoredom against others of chaste repute, and cannot produce four witnesses...let him be punished with eighty stripes."⁹

9. This revelation is connected with a particular incident. On one occasion, while returning from a military campaign, Aisha, the Prophet's young wife, was negligently left behind. Later, she appeared escorted by a young Muslim. This set many tongues wagging as such things often do. The Prophet was much troubled. After some time, a revelation descended

If the accusation is proved, the penalty for fornication is one hundred stripes and also a year's banishment. But the penalty for adultery is lapidation, or stoning to death (*rajm*). It seems that when Muhammad began his ministry, the punishment for *zina* was immuration as the Quranic verse (4.15) declares: "As for those of your women who are guilty of lewedness, call to witness four of you...And if they testify, then confine them to the houses until death take them or until Allah appoint for them a way." But this punishment was later on replaced by lapidation, which was closer to the Old Testament penalty.

Probably left to himself, the Prophet would not have preferred stoning. At least this is how it appears from the case of Ma'iz, who confessed to adultery on his own. The Prophet gave him every chance to deny his confession, but it seems his conscience was very much in trouble and it could not be assuaged by a lesser penalty. The Prophet himself was under some sort of psychological compulsion to stand by the Old Testament law and to do better than even the Jews among whom the punishment of stoning in such cases had lapsed by custom. Being so unnatural, the Muslim world also wanted to forget it, but Umar insisted on it. He was apprehensive that "with the lapse of time, the people may forget it... and thus go astray by abandoning this duty prescribed by Allah." He insisted that "stoning is a duty laid down in Allah's Book for married men and women who commit adultery." He insisted that a revelation to that effect existed at one time in the Quran.

When *zina* is established and the party is to be stoned, he or she should be carried to some barren place. The first stones should be thrown by the witnesses, followed by the

declaring Aisha's innocence and ordering punishment with 80 stripes of those who had participated in the scandal. Several important Muslims were given 80 stripes including Hamna, the sister of Zainab, the Prophet's favourite wife.

Qazi or Imam, then by the bystanders or the "faithful who should witness the chastisement." The Quran tells them: "Do not let pity for them take hold of you in Allah's religion."

Stoning to death was the normal punishment for adultery in countries under Muslim rule. But during the last centuries, when many Muslim countries came under the rule of European powers, the law could not be applied. Now that those countries are on their own again and the forces of Islamic fundamentalism are on the march, the old punishment is being revived with varying success. Many such cases have been reported from Pakistan and Bangladesh. For example, on January 10, 1993, Noorjahan, a 22-year-old woman of Bangladesh, was made to stand in a waist-high ditch, stoned 101 times as a punishment handed out by the Imam of a local mosque. According to the *fatwa*, the woman's crime was that she went for a second marriage without obtaining 'talaknama' (divorce deed) from her first husband. Her death anniversary was observed this year. Her case was not isolated.¹⁰

It is all cruel, but *zina* under Muslim law is most difficult to prove. The requirement to procure four witnesses is difficult to fulfil particularly if the accused parties are willing partners, and when the penalty for failure to prove the accusation is so heavy. Therefore most such cases go unreported or unpunished. If the accused is powerful, there is practically no chance of proving the accusation. This became obvious from the earliest days of Islam. For example, Mughira, a Companion, Governor of Basra, who had already a harem of four score wives and concubines was yet accused of adultery with a bedouin lady. But there was a flaw in the testimony of the fourth witness; so the witness was scourged instead of the culprit. If a supreme ruler such as the Khalifah com-

10. *The Hindustan Times*, New Delhi, January 11, 1994.

mits adultery, he is not subject to its punishment, and quite wisely so.

Victims of this law are mostly weaker sections and women who are defenceless. Some time ago, a husband brought a case of infidelity against his wife. The woman was sentenced to five years' imprisonment, fined Rs.10,00/- and publicly given 20 lashes in Swat, NWFP. In another case, an 18-year-old girl, Fahmida, was administered 100 whips, and her lover, Allah Bux, a bus driver, was sentenced to be stoned to death publicly. Fahmida had produced papers of her marriage to the driver, but they were rejected on the ground that at the time of marriage she was pregnant.¹¹

On the other hand, when a woman is actually raped, she has hardly any redress. When a woman files for rape, she runs the risk of accusing herself of committing adultery. Rape is a widespread phenomenon in a country like Pakistan where rape of another man's wife or daughter is a common method of seeking revenge. A non-governmental organization called War Against Rape reports that in 1992, 1,300 cases of rape were filed in the Punjab province alone. The actual number is thought to be at least four times this number. We are further told that the police was implicated in 20 per cent of these cases in which one-third of the victims were under 18 years of age.

In many cases, women believed to have sexual relations outside the marriage even when they are unwilling parties are simply murdered by their families in order to protect their honour.

11. *The Illustrated Weekly of India*, February 27, 1983.

Polygamy and Concubinage: Towards Monogamic Reform

The Quran takes for granted the institution of polygamy and concubinage¹² that prevailed among the Arabs at the time of the Prophet but it froze the custom by giving it a divine sanction. For quite many centuries, any worthwhile Muslim's harem consisted of two categories of women: one included wives proper who were married in the prescribed form and on whom some dower was bestowed; their number was restricted to four. To the other category belonged half-wives or concubines consisting of women purchased or gifted and also often captured in holy wars and received as war-booty — or, in the colourful language of the Quran, women whom “your right hand possesses.” This category knew no restriction and its number depended on a man's means, capacity and opportunities.

Even in the first category, the limitation meant four wives *at a time*. The wives could be replaced and it was perfectly legal if they did not exceed four at any time. The Quran itself speaks of “exchange of one wife for another” (4.20) though it recommends that the husband should not take back whatever he has bestowed on the divorced woman. No wonder

12. On these questions, the older Judaic Revelation on which the Muslim prophet depended so much provided no different light. The Old Testament allows polygamy and concubinage. The earlier patriarchs like Abraham, Isaac and others were no monogamists. As time passed and the Jews settled and formed a kingdom, polygamy and concubinage also became more pronounced. David had 10 concubines and Solomon 300.

that Abdur Rahman, one of the earliest converts, close to the Prophet and friend and advisor of the early Khalifas, had children from sixteen wives and many concubines. Hasan, the Prophet's grandson, married seventy times (according to some other traditions, ninety times) without breaking the Quranic limitation of four wives at a time.

A slave is entitled to only two wives; he however cannot marry without the consent of his proprietor, because the Prophet has said, "Whatever slave marries without his owner's consent is an adulterer." He could also be sold for the discharge of his wife's dower.

Monogamy

Under the pressure of new moral forces, many Muslim apologists and reformers claim that, properly understood, the Prophet taught monogamy. Strangely enough, in their support they cite the same verse which allows four wives. The relevant verse reads: "And if ye fear that ye will not deal fairly by the orphans, marry of the women who seem good to you, two or three or four, and if ye fear that you cannot do justice then one or that your right hand possesses."¹³

The apologists quote a portion of the verse omitting the rest. They argue that since the Quran teaches equality between all wives in all respects, and since that ideal is impossible, it, in fact, teaches monogamy.¹⁴ They support their argument by the example of the Prophet who, it is claimed, treated all his wives impartially and partitioned his time with them equally.

The argument is weak. Firstly, will it be a fault in a be-

13. 4.3

14. The Old Testament also teaches some sort of equality between the old and the new wives without pretending that it is teaching monogamy. It says: "If a man takes him another wife, her (the first wife's) food, her raiment, and her duty of marriage, shall he not diminish... and if he do not these three unto her, then shall she go out free without money" (Exodus 20. 10, 11).

liever if he failed to follow the example of the Prophet while trying to follow his injunction? Secondly, why should a man take a second wife if he has to feel and act the same way towards the first one? Thirdly, is the claim of equality made for the Prophet true? The best that can be said about him is that he tried his best though without always succeeding and he was conscious that he treated his wives differentially. According to Aisha, the Prophet said: "I make an equal partition of my time with my wives for that is in my power. But do not bring me to account for that which is not in my power, the affection." The Prophet also allowed himself many exceptions in the equality-rules he framed. For example, one wife could make over her day with the Prophet to another. Saudah, now old and under the threat of a divorce, made over her day to young Aisha and thus saved her marriage.

Moreover, the verse read as a whole without omitting any portion does not have the meaning its monogamist apologists would like it to have. The passage is obscure in some ways but not on the count of polygamy. Its reference to 'orphans' and how they are related to the problem in hand is not clear; it also seems to be inconsistent as it recommends upto four wives in the name of fairness in the first part, and one wife in the name of the same principle in the second part. However, in spite of this obscurity, the tenor of the passage is clear and it permits plurality of wives.

In fact, some commentators have read in this verse support for nine wives (2+3+4), others even for eighteen. A more literal rendering would make the verse read as follows: "Marry whatever women you like, two and two (*masna*), three and three (*sulas*), four and four (*ruba*)," which make them eighteen (2+2+3+3+4+4). *Ain-i-Akbari* tells us of a pious and respected Muslim divine who gave this rendering and lived up to its injunction.

But even if we disregard these interpretations, what does one do with the last clause which supplements wives with concubines without restriction? Ibn Khallikan tells us of a leading theologian in Baghdad who had 148 concubines without offending the Quranic law or the Muslim public morality. Thus what the verse does with one hand, it undoes with the other; it is therefore a poor support for the ideal of monogamy, supposing it is an ideal. The Muslim reformers who oppose polygamy will find the verse of dubious value though they will have to make the most of it. But their position is neither supported by the ethics of the Quran read as a whole, nor by the example of the Prophet and his companions, nor by tradition, nor by *Fiqh*. According to a tradition of Ibn Abbas, the Prophet had said: "In my Ummah, he is the best who has the largest number of wives."

No wonder believers took to marrying without stint. Even Umar, the second Khalifa, temperate by Muslim standards, contracted many marriages. He had already married four times before the Hijra; in Medina he married five more times, the last in the eighth year of his Caliphate when he was sixty. At one time, he developed a liking for Abu Bakr's daughter or Aisha's sister, but she did not encourage the idea. Umar ended by marrying, at the age of fifty-seven, the granddaughter of the Prophet, Omm Kulthum, daughter of Ali and Fatima, who bore him a son and a daughter.

The Quran recognizes polygamy and concubinage but this alone will not account for their importance in Islamic history. The fact is that in Islam these were political institutions; these were made possible by fast-growing Islamic Imperialism and in turn they served powerfully its expansionist needs. It could be cogently argued that nature wants man to be monogamic. In any given society, the number of males and females are more or less equal. This fact disallows polygyny whether polygamous or concubinary in form ex-

cept marginally. But a society which suffers from acute inequality is compatible with polygyny for this fact makes it possible for some to have more wives while others go without. However, polygamy and concubinage on a large scale are possible only for societies which practise aggressive wars and annex outside territories as suppliers of slave men and women. Polygamy and concubinage in Islam flourished because of *Jihad* (crusades) and conquest. Infidel lands provided a continuous supply of captives, men and women, who were further bred for more slave trade. Politically too, polygamy and concubinage were useful. One Arab or Turk with many slave concubines became the sire of numerous progeny. This helped Muslim expansion and colonization and strengthened its demographic and administrative base. No wonder that in the annals of history, Muslim imperialism probably endured the longest. With check on territorial-colonial expansion, polygamy and concubinage of old style and scale is no longer possible. The present political realities are on the side of monogamic reformers in most Muslim countries, though petro-dollars tend to support opposite tendencies. There is a lucrative trade in young maids and brides from poor countries like Indonesia, the Philippines, Sri Lanka, Pakistan, Egypt and India to keep the harems of neo-rich Arab Shaikhs in goodly supply. There are 1.9 million women from these countries working mostly as maids with little protection and few rights.¹⁵

15. Besides filling up harems, there are also "Friday markets" in Kuwait where the maids from these poor countries are picked up by rich Arabs for a day's fun. On one occasion, as widely reported in papers, Sri Lankan girls demonstrated in front of their embassy in Kuwait demanding a ban on sending out their sisters to that country.

Dower (*Mehr*) in Islam: Its Meaning and Nature

Though Islamic law of dower may also have its specific connotation, it was heavily influenced by the customs that the early Arabs followed and the neighbouring people among whom they lived. The early Arabs followed the practice of the Egyptians and the Hebrews whom they knew and with whom they had close contacts. In fact, the very word used in the Old Testament for dower is *mehr*, the same as in the Quran. According to the Code of Hammurabi a man may divorce his legitimate wife by refunding her dowry as well as her bridal price or paying her instead of the bridal price one mina of silver. If he divorced a concubine (captured woman), the woman received her dowry and a half of the estate to raise the children; after the children were grown, she received a portion of the estate equal to that of one son (Sections 137-8). This law given by "Lofty Anu" seems to be more generous than the one subsequently established by Islam as given by Allah.

In its larger conception too, Muslim law follows the old lead. In this conception, dower was regarded as a purchase-price for the sexual favours received from the woman. According to the Bible, if a man seduced a girl, he "shall give to the father of the young woman fifty shekles of silver" (Deut. 22.29) and make the girl his wife.

In some ways, Islam borrowed heavily from this older

Revelation. Dower is not differently conceived. The Quran, at several places, frankly calls dower, *ujoor* (wages or hire), a word quite current in that sense in India too (*ujrat*). For example, one verse in the Quran reads: "O Prophet! Lo! We have made lawful unto thee thy wives unto whom thou hast paid their hire" (33.50). The same term is used in verses 24 and 25 of Sura 4 too.

The traditions and *Fiqh* are even more plain-spoken on the subject. If we look at the section on dower in the *Hidayah*, we find the discussion carried in the language of hire, purchase and sale. We are told that a woman's person — or in the undisguised language of the jurists — her *booz* (genitale mulleris) is "the return for 'the dower," or is the "object of the contract" in the marriage; and, therefore, it is by consummation of the marriage that the woman becomes entitled to her dower; it is by consummation that "the delivery of the return for the dower, namely the *booz*, or woman's person, is established, and therein is confirmed the right to the consideration, namely, the dower."

But where the marriage has not been consummated, a woman is entitled to only half the dower following a Quranic injunction: "If you divorce them before you have touched them...pay them one half of what you have settled" (2.237).

The injunction seems clear enough. But the jurists had to decide what constitutes consummation and what constitutes "being untouched". Consummation of marriage is complete retirement or *khalwati sahib*, a technical legal term which means retirement in conditions where there is no legal or natural impediment to the commission of the carnal act of marriage. But even after such retirement, if the marriage is not consummated, then the woman is entitled to half the dower according to Imam Ash-Shafi'i, "because the husband cannot obtain possession of the object of the contract but by actual coition; and the right to the dower is not corroborated

and confirmed without enjoyment.”

But the argument is not flawless and it can be held that when there is no consummation in spite of *khalwati sahib*, the whole dower should of right drop “because the object of contract reverts to the woman untouched,” the same as in sale, where the whole price drops, if the buyer and seller break off the contract. Against this view it is argued that it is the purchaser’s fault if he suffers the goods in the hands of the seller to perish; similarly, it is the husband’s fault that he did not make use of his possession, but suffered it to pass from him untouched of his own choice.

Gift

According to Muslim divines, if a man marries a woman without specifying a dower or on condition of there being no dower, and divorces her without carnal connection, then she is entitled to only a gift (*matal*). This follows the Quranic injunction: “It is no sin for you if you divorce women whilst you have not touched them, nor appointed unto them a portion. Give her a present, rich according to their riches and poor according to their poverty” (2.236).

In order to reconcile this injunction with another tradition, some jurists hold that the present must not exceed in value one-half of a woman’s proper dower, nor be worth less than five *dirhams*. Some hold on the basis of a tradition going back to Aisha and Ibn Abbas that this present consists in three pieces of dress: a veil (*khimar*), a shift (*dir*), and a wrapper (*milhafat*).

It appears from a perusal of the Quran, the *Sunnah* and the *Fiqh* that the Muslim law has no idea of maintenance of a divorced woman in the modern sense of the word. She is entitled to a dower but that is a very different thing in conception and intent and it does not amount to maintenance as such. One Fatima bint Qais was given an irrevocable divorce

by her husband even while he was away from his home. She was angry and went to the Prophet for redress. The Prophet said that there was "no lodging and maintenance allowance for a woman who has been given an irrevocable divorce," though he found for her a husband to relieve her situation. Later on, Khalifah Umar disregarded her testimony, "the words of a woman", as he called them and held that according to the *Sunnah*, a woman is entitled to maintenance during the *iddat* period, which is three months after divorce. Imam Shafi'i holds that no maintenance is due to her unless she happens to be pregnant. The period of *iddat* is to see whether her womb carries or not the seed of the divorcing or the dead husband. If a birth takes place during this period, *iddat* terminates and she is free to marry again.

Dower and Divorce

In the case of Shah Banu, the Supreme Court granted her dower arguing that it is related to marriage. But this does not seem to agree with the Muslim law and practice. It is true the dower is stipulated at the time of marriage but it becomes effective at the time of divorce. In most cases, if there is no divorce, there is no dower, except in one form of it called "prompt" dower (*mebr moajil*), which, theoretically at least, can be exacted at any time after marriage, yet in practice this too remains unpaid until divorce.

Marriage and Dower

Some dower, big or small, is incumbent on a Muslim husband. It is prescribed by revelation and supported by tradition. It need not be in terms of money; it could also be in terms of goods excepting wine, hog and a few such other things. It could also be in terms of such labour as is not degrading for the husband.¹⁶ Pastoral labour is an acceptable dower as it has the support of hoary patriarchal tradition. Moses had helped Jethro, a shepherd-priest, in watering his flocks in exchange for the hand of his daughter, Zipporah. Isaac worked for seven years for Bethuel to marry his daughter, Rebekah. Scholarship in the Quran is a good dower. Once the Prophet gave away a woman to a believer who had nothing, not even a ring, for a dower, but who could recite some verses of the Quran. On another occasion, a believer had contracted a marriage with an *Ansar* woman for a dower of four *Uqiyas*. He went to the Prophet for helping him out with the sum. "We may send you to an expedition where you may get booty," the Prophet replied offering him an opportunity of earning the dower. On another occasion, he paid

16. In the *Hidayah*, it is argued like this: "...it is not lawful that a woman should be in a situation to exact the service of her husband...as this would amount to a reversal of their appointed stations, for one of the requisites of marriage is, that the woman be as a servant, and the man as the person served." The prohibition applies to any degrading work, but "the tending of flocks is not a degrading office." Similarly, the prohibition applies where the husband is a freeman, and not where he is a slave, for the service "performed by him to his wife is, in fact, performed to his master."

dowers to two young men of his family, Abdul Muttalib and Fazl b. Abbas, out of *Khums*, "the Fifth," or the fifth of the booty to which the Prophet was entitled and which constituted the *Baitul Mal*, or the public treasury of the Islamic state.

A proper dower (*mehr misl*) of any woman is to be regulated, in its amount or value, by that of her paternal relations, such as her paternal sisters or aunts. Attention should also be paid to her age, beauty, fortune, understanding and virtue. Exceptional beauty in a girl tends to increase and widowhood to decrease the amount.

A dower can be high or low according to the circumstances of the parties concerned. But this can under no circumstances be less than ten *dirhams* which, in India, was customarily fixed at Rs. 121/2, but which must have become meaningless under new inflationary pressures. This minimum dower is obligatory even if the marriage contract does not mention it. This minimum is derived from what the Prophet is believed to have said, "There is no dower under ten *dirhams*." The Muslim divines reinforce this tradition with their own argument. They say that a dower must "manifest respect for the wife; and that sum is ten *dirhams*," that being the lowest amount of a theft inducing the punishment of amputation of a limb, which shows that such sum is the least that can be regarded in an important and respectable light.

Though ten *dirhams* is the legal minimum, in practice it tends to be high. In Arabia, it is high enough to make even the Shaikhs feel the pinch. In order to cope with the problem, the United Arab Emirates and Kuwait planned recently to offer easy loans for dowries ranging from \$4,000 to \$15,000. The Saudi monarch has been discouraging extravagance in marriage and recently, at his behest, tribal leaders in southern Saudi Arabia limited dowries to \$10,810 for a virgin

and \$8,108 for a widow or a divorced woman.

The tendency however in most Muslim countries, particularly in their upper strata, is for the parents to fix the figure on the higher side. One reason is that a high dowry is a mark of social status and prestige; the second reason is that parents want to discourage husbands from ill-treating their daughters and taking another wife.¹⁷ The strategy should work but it does not always succeed. One reason lies in the nature of the dower itself: customarily, *mehr* is not a cash payment but a future promise which a woman legally can and normally does forgo. As the jurists of Islam argue, the dower is purely a right of the woman which she is at liberty to renounce. Allah provides for this remission and custom takes full advantages of it. "Give to women their dower freely; but if they are good enough to remit any of it themselves, then take it and enjoy it with right good cheer" (4.4), says the Quran. In India, the custom is to get it remitted on the first night.

In order to discourage its abuses, the new tendency in reformist Muslim countries is to disallow remission altogether and the amount of *mehr* is registered at the time of the wedding in the marriage records (*nikahnama*). But it has led to its own abuses. Unwanted brides are beaten and sometimes even burnt. The unfortunate women have no redress. The Muslim woman has a right to divorce and she takes recourse to it. But this frees the husband from the liability of the stipulated *mehr*.

Tyrant husbands often force this kind of divorce on their brides in order to escape from the liability of paying the

17. If the parents still fail to find a suitable husband for their daughters, they marry them to the Quran. It is a practice widely acceptable in rural Pakistan. But concern for the daughter is only part of the story. As the Muslim law provides for right of a woman to inherit a share of parental property, she is either made to surrender it, or the difficulty is got over by marrying her to the Quran. A woman thus married cannot have any contact with any males above the age of 14.

mehr. The Muslim law provides for it. In fact, it goes further, and allows a woman in this situation what is called a *Kbul'* divorce, a form of divorce in which a woman obtains release from the husband not only by forgoing her *mehr* but even by paying some compensation to him. The practice is old. According to a well-authenticated tradition, the wife of Sabit b. Qais got her divorce by the permission of the Prophet by returning her husband's orchard to him. Sometimes, however, a woman is forced to return not only her dower but also to pay something out of her own estate to buy her freedom. The *Hidayah* says that under certain circumstances "the woman need not scruple to release herself from the power of her husband, by offering such a compensation as would induce him to liberate her." This is based on the Quranic teaching which declares that "if a woman fears ill-usage... it shall be no crime in them if they agree the matter amicably between themselves" (4.128).¹⁸

In the ordinary course, even this limited right to divorce her husband, at whatever cost to herself, should help a Muslim woman to improve her marital position. But whom should she go to with her plea? The Hanafi school which most of the Sunnis of India follow simply provides no such channels. While a Muslim male can divorce his wife for any reason or no reason at all, the law recognizes no ground on which a woman could go to a Qazi for the dissolution of her marriage. So in the matter of talaq, a Muslim husband has all

18. According to *Tafsir-i Raufi*, this revelation took place in the following context: A man was seeking an excuse for divorcing his wife who had already several children. She pleaded with him not to do it saying that in return he might take as many wives as he liked. The revelation put a seal on the settlement.

Another story bearing on the same subject relates to the Prophet himself. He wanted to divorce one of his wives, Saudah, already in her forties. But she pleaded: "I am not asking you to sleep with me; I yield my place to Aisha. But I want to be there, on the Day of Resurrection, among your wives" (*Tabqat of Katib-al Waqidi*). Thus the matter was amicably settled and the marriage saved.

the initiative, a woman none. Some improvement was made in this direction by the Muslim Marriage Dissolution Act enacted as late as 1939 under the auspices of the British. Unlike the Muslim male, she had to prove her case in a court, but she at least now knew that she could go somewhere and sue for the dissolution of her marriage.

In order to improve women's position and to discourage irresponsible talaq, some Muslim Governments have made dower a legal requirement which is enforced at the time of talaq. But as we have seen, a way out has been found in *Kbul'*. Her condition is made so miserable that she agrees to *Kbul'*, foregoing a claim to any *mehr* or maintenance.

In Pakistan — and it must be true of India too — a new phenomenon called the “Dubai disease” is taking place. When Pakistani workers return from the gulf countries, the first thing they often do in their new prosperous status is to get rid of their old wives and seek new brides. They torture them, abandon them and send them to their parents. Muzaffer Hussein tells us that according to a current Survey, 70% women are routinely beaten by their husbands, and four out of six husbands send away their wives to their parents. Thus abandoned, they submit to *Kbul'*. And thus the revelation which apparently teaches “amicable settlement”, has become a source of great oppression.

The improvement of woman's position in Islam is a difficult matter. It goes beyond re-interpretation of scriptural texts or liberal legislation or new reformist trends. Islam has been eminently a man's religion in which woman holds a low position as a matter of course. Though there must be many many exceptions, women are beaten routinely in Islamic countries. Recently, a Kuwait newspaper, *al-Anaba*, published some characteristic confessions. One Arab husband bragged that he beat his wife regularly, that “when she starts arguing with me I take off the chord around my head

dress, drag her by the hair and whip her senseless." Another husband said that wife-battering "asserts my manhood, and if she doesn't like it the door is big enough to let a camel out." Another man admitted to having broken his wife's hand, and added: "She has a strict code to observe. Never go out of the house, never talk to the neighbours and never open the door to anybody, including your mother."

Divorce (*Talaq*)

Talaq (Divorce) literally means “undoing the knot”, but in Islamic law, it signifies the dissolution of marriage, or the annulment of its legality by certain words or even gestures. The section on divorce in the *Hidayah* is twice the length of the one on marriage, and its reading pains and amuses at the same time. According to a tradition, divorce is hateful to Allah but it is perfectly legal and it appears to have been made pretty easy for those who are so minded.

The Prophet had said that “every divorce is lawful, excepting that of a boy or a lunatic.” A divorce can be pronounced personally or delivered from a distance through a letter; it can be explicit (*sarih*), or implied (*kinayat*). It could be expressed metaphorically, like “take veil”, or “join your people”, and this amounts to a divorce. For the benefit of the dumb, it can be expressed in the language of gestures, for example, by dropping three pebbles. A perfectly normal person too can take advantage of this language. For example, if a man says to his wife, “you are under divorce thus”, holding up his thumb and fore and middle finger, three divorces become effective. The divorce can be pronounced monosyllabically or in a full sentence; it can be pronounced separately, “you are divorced, divorced, divorced”, or collectively by saying “you are divorced thrice”. In fact, the *Hidayah* takes many pages in discussing the grammar and arithmetic of these pronouncements. For example, if a man tells his wife, “I divorce you with divorcement”, it counts two di-

divorces depending on the intention of the husband. He could also say to his wife, "you are under three moieties of two divorces", and it means three divorces; for "the half of two is one, and consequently three moieties of divorce amount to three." True, things in normal practice could not be this bad, but all this shows the contempt of the Muslim divines for women and the levity with which they discuss the subject.

A divorce is automatic as soon as the word 'talaq' is repeated three times. If the wife is a bond-maid, two times will do. It has nothing to do with a man's intention, nor the expression of regret could stop its operation. Sometimes it has led to ludicrous results. *The Hindu* (January 1, 1987) reported the case of a "drama in real life." In Islamabad, in a divorce scene in a TV Urdu play, a prominent actor, Usman Pirzada, was shown divorcing his wife by saying 'talaq' three times. But to his misfortune, the role of the wife in the play was enacted by his real wife, Samina. The religious scholars lost no time in proclaiming that the actor and the actress stood separated after the triple talaq. This was irrespective of the fact whether they intended to divorce each other in real life or not. The divines issued the *fatwa* that according to the Prophet, in such cases words uttered unintentionally or even for the sake of fun are binding.

Such talaqs, however, are not laudable (*talaqi-basan*). A good talaq is one where a husband repudiates a wife by three divorces in three *tubrs*, meaning spaces intervening between three menstrual fluxes. On the other hand, a triple talaq delivered in one sitting is bad (*talaqi-bid'at*). But though bad, it is perfectly legal and has been the most common. Now attempts are being made in certain Islamic countries to curb its excesses. In Pakistan, for example, according to the Muslim Family Law ordinance (1961), a husband has to notify an Arbitration Council immediately after pronouncing the triple talaq. This freezes the actual talaq for 90 days

during which the Council tries to bring about conciliation.¹⁹ Similar laws are in operation in Egypt, Indonesia, Turkey, Tunisia, Lebanon, Syria, Afghanistan, etc. But with the rise of fundamentalism in these countries, one cannot be sure how lasting or effective these reforms would prove. Recently, a High Court in Pakistan had given a ruling that a divorce would become effective only when registered with a local Council after due process of law. But many Islamic scholars and religious leaders rejected this ruling and stated that under the Islamic law, the spoken or written word of divorce was enough to end a marriage contract. Perhaps as a result of this pressure, in 1992, the Supreme Court invalidated the requirement that a husband give written notice of a divorce to a local union council, leaving the husband free to confirm or deny at will and making the new couple legally vulnerable. A woman could be charged with adultery if her former husband denied having divorced her. In fact, this happened in February, 1993 when a district and sessions court sentenced Nasreen Bibi to be stoned to death and sentenced her second husband to 100 lashes when her first husband denied having divorced her. Mercifully they were acquitted on an appeal when the higher court decided that there was sufficient evidence to prove that they had entered into marriage in the belief that Bibi was divorced.

According to the *Shariat*, a divorce could almost be automatically procured under certain conditions: when the husband is impotent; when he or she refuses to embrace Islam; when either of them apostatises from Islam; when the husband takes a vow of not having sexual intercourse with the woman for four months and keeps the vow; when the pair belongs to two countries, *darul-harb* and *darul-Islam*, and

19. Probably, the attempt is made on the Quranic injunction: "And if you fear a breach between them twain (the man and his wife), appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment Allah will make them of one mind" (4.35).

either of them refuses to do *hijrat* or migrate; or when the husband belongs to an inferior stock or status, and so on.

Returning to the wife (*Rijaat*)

If a man gives to his wife one or two reversible divorces, he can take her back any time before the expiry of the *iddat*, even against her will, for Allah has said in the Quran, "You may retain them with humanity" (2.231).

Rijaat is of two kinds: express and implied. In the first, the husband says, "I have returned to my wife", in the second, as the *Hidayah* puts it, "he has carnal connection, or takes conjugal liberties with her, such as viewing those parts of her which are usually concealed."

But if a woman is divorced by three divorces, he cannot marry her again unless she is married to a third party and they have carnal union. This is in accordance with the Quranic injunction: "If he divorces her, she is not after that lawful to him, until she marries another husband" (2.230). This requirement is more than formal. The second marriage should be consummated before a woman is again lawful to her first husband. This is made clear in the following tradition: a divorced woman having married another man wanted to go back to her old husband; for, as she explained to the Prophet, all that the new husband had for masculinity was "like a fringe of garment." The Prophet smiled but refused her permission to go back to her old husband. "You cannot do that until you have tasted his sweetness and he has tasted yours," he said (*Sahih Muslim*).

The *Hidayah* explains that the tradition only makes explicit what is already contained in the Quranic verse. It explains that the word used in the verse is *nikah* which, as we have already seen, has two meanings: carnal conjunction and legal union. We are told that the word in the text of the Quranic verse is used in the former sense. But we are also

told further that the condition of consummation in such a case "requires only the entrance of the penis into the vagina, and not the emission of the seed."

This circuitous permissibility or rerouting gave birth to the institution of a *mustabil* or *mobullil*, a second husband procured for rendering the woman lawful for her first husband. The Prophet curses the two parties: "Let the curse of Allah fall upon the *Mobulil* (legalizer) and the *Moballal-le-boo* (the thing legalized)", but nothing can be done. The whole proceeding is abominable but perfectly legal. Sir William Muir tells us that the institution passed into such proverbs as, "A thousand lovers, rather than one *mostabil*", meaning that many lovers and gallants cause less shame to a woman than one *Mostabil*.

Forms of Divorce: Custody of Children

There are other forms of divorce too. One is *Kbul'*, which we have already mentioned and in which a woman buys her divorce from the husband by forgoing her dower and even paying him some compensation. This form has seldom been put to any use and it certainly has never amounted to a woman's right to divorce her husband. In fact, there were no channels and she could not initiate any action for divorce; therefore Muslim women hardly ever exercised that right except at the initiative of their husbands. For example, during the British rule, till 1939 Muslim women did not have the right to approach the court for dissolution of marriage and would sometimes resort to conversion to end an unhappy marriage. Faced with the problem of conversion, the *ulema* petitioned the Government for a change, resulting in the passing of the Dissolution of Muslim Marriages Act of 1939, proving that the *Shariat* is not that final even for the *ulema*. But now that fundamentalism is on the rise in Muslim countries, the threat of conversion is no threat — the Muslim law of apostasy would take care of it.

Another form of divorce is called *Ila* (vow); this too we have mentioned. In this form, a husband swears to abstain from carnal knowledge of his wife for four months if she be a free woman, or two months if she be a slave. If he keeps the vow, *Ila* is established and the marriage is automatically

cancelled. But if he fails to keep the vow he retains the wife after making some expiation.

There is also another form of divorce called *Zihar* (back) which is now only of historical importance. In this form, one said something like this to his wife, "you are like the back or belly or thigh of my mother or sister." In the pre-Islamic Arabia, it was a popular form of divorce, but the Prophet allowed that a contrite husband could retain the wife and *Zihar* could be expiated by emancipating a slave, or distributing alms, or even by undergoing a fast. The *Hidayah* adds other refinements. It says that *Zihar* could be pronounced singly upon one wife or collectively upon all the wives; but it has no effect if it is pronounced upon a female slave: firstly, because "the legality of a female slave is of a secondary or dependent nature" and secondly, because "*Zihar* is an imitation of divorce, and divorce does not take place upon a slave." Similarly, *Zihar* pronounced by a Mussulman alone is valid, that pronounced by a *Zimmi* or infant is nugatory.

There is also another form of divorce called *Laan* or imprecation. It operates when the husband brings a charge of adultery against his wife, and there are no witnesses available. They both testify, confirming their testimony by an oath. It involves, on the part of the husband, if his accusation be false, the curse of Allah; and, on the part of the wife, the wrath of Allah, if it be true. Then the divorce becomes effective.²⁰ They cannot marry each other again according to

²⁰The case throws no light if the roles were reversed, i.e. if the wife complained of adultery in a husband and even offered to produce four witnesses and did it. Probably no such case happened. The fact is that in most Semitic societies, while adultery in a woman was punished, it was overlooked in man, particularly if his victim belonged to a lower order. In Europe even long after it became Christian, if a feudal master "covered" his serf-maid "without her thanks" (that is against her will), he paid the court three shillings, as Will Durant tells us in his *The Age of Faith*.

Imam Abu Yusuf; they can according to Ammu Abu Hanifa and Imam Muhammad, if the husband acknowledges that he falsely laid adultery to her charge. The rule of *Laan* does not apply or applies in a modified form when one or both the parties are slaves, infidels or *Kitabees*.

In some cases, *Laan* provides a happy escape door. The *Shariat* punishes adultery (*zina*) with lapidation, or stoning to death (*rajm*); it also prescribes eighty lashes for a man who brings this accusation against a married woman without being able to prove it with the help of four witnesses (*gazf*). And yet sometimes a husband may have precisely this charge, true or false, against his wife who, again, may be innocent or guilty. If the charge is true, the woman is stoned to death; if it is false, the man gets eighty lashes. But *Laan* provides a lucky escape and makes it possible for them to separate without punishment.²¹

Laan for obtaining a divorce seems close to the method that was sometime ago practised in Western Christian countries too where adultery provided the sole ground for divorce till recently.²² For example, in England, not long ago, couples who had other reasons for separation confessed to adultery in order to procure a divorce. Now England has changed its laws on divorce but Indian Christians still follow

21. The Quranic verses that allow this course are: "As for those who accuse their wives but have no witnesses except themselves; let the testimony of one of them be four testimonies, swearing by Allah that he is of those who speak the truth. And yet a fifth, invoking the curse of Allah on him if he is of those who lie. And it shall avert the punishment from her if she bear witness before Allah four times that the thing he said is indeed false. And a fifth that the wrath of Allah be upon her if he speaketh truth" (24. 6,7,8,9).

22. Under strict Christian law adultery was no ground for divorce. It could procure separation but no right to remarry. Annulment of a marriage could only be had from the Church if it involved impotency, lunacy, or lack of "form" (witnesses), or by proving that the marriage was uncanonical in some way and in the very first place should not have taken place at all. But the process involved greasing many palms and was a costly affair.

the old British laws incorporated in the Indian Divorce Act of 1869.²³

Custody of Children

Divorce often involves children, the problems of their custody (*bizanah*) and care. In Muslim law, in cases of separation, the custody of infants belongs to the mother while their maintenance (*nafaqah*) is the obligation of the father. Tradition makes the Prophet give a divorced woman the care of the infant with the words, "thou hast a right in the child prior to that of thy husband."

The period of custody differs from school to school. It is two years according to the Shia practice. It lasts till puberty according to some jurists, but, more generally, it ceases at seven years after which the father takes over. But if it is a female child, custody lasts until the first appearance of the menstrual discharge, or sometimes even before that when she begins to feel carnal appetite which according to the Muslim divines commences sometime before the menstrual discharge, at between eleven and twelve years of age.

There are also other restrictions. The mother loses the right to the custody of the infants if she apostatises, or marries a stranger, or changes her domicile. She has an exclusive right to an illegitimate child.

A *Zimmi* mother is also entitled to the custody of her child, but this lasts only as long "as the child is incapable of forming any judgement with regard to religion, and whilst there is no apprehension of his imbibing an attachment to infidelity."

23. According to the provisions of this Act, while a Christian husband could seek divorce by merely establishing adultery on the part of the wife, a Christian wife had to prove bigamy, cruelty, desertion or incest, in addition to the husband's adultery for procuring a divorce. Currently, a new Act, the Christian Marriage Act, is in the offing which would make divorce possible by mutual consent and will lay down equal grounds for divorce for both men and women.

Though a mother has her child's custody, she cannot handle its property. For even though she has love for the child, she is regarded as deficient in discretion, thus disqualifying her for looking after the property interests of the child.

Foundlings

Here we may also mention the problem of a foundling (*laqet*). In the language of Islamic law, the term signifies "a child abandoned by those to whom it properly belongs, from a fear of poverty, or in order to avoid detection in whoredom." The law says that "taking up of a foundling is laudable." Its maintenance is to be defrayed from the public treasury. But even in cases where the child is maintained by him who brought him up, he owes his benefactor nothing "since in maintaining him he acts gratuitously". If a child is found in a Muslim territory, he is a Muslim, but *Zimmi* if he is found in a *Zimmi* land.²⁴

The Muslim *Fiqh* on foundlings is humane but it seems that some other law, customary or otherwise, is also at work. In October, 1982, a new-born child was found in a mosque in Karachi. A mullah on seeing a crying baby on the stairs of the mosque gave a *fatwa* that the child was illegitimate and should be stoned to death. The first stone was thrown by the mullah himself. Thereafter a mad crowd showered the child with stones.

24. By contrast, Christian practice has been less humane and equitable. During Medieval Ages, a child left at the door of the church — which was allowed — was brought up as a serf on the ecclesiastical property. Things have changed since then for the better in some respects. But orphans thus left or acquired or even bought as Missionaries once did in China and other colonial countries (it led to such brisk trade in "orphans" that children began to be kidnapped on a large scale) are brought up in Christian faith. In fact, this is their avowed motive in running orphanages. Mother Teresa brings them up as Catholics.

The Problem of Reform

There seems to be something missing in the Muslim institution of marriage and, as our discussion shows, it seems to touch no higher chord. It has the advantage of being 'realistic', as we ordinarily understand the word. But it lacks the dimension of the sacred which has its own satisfaction. Matrimony in Islam is dominantly a secular activity and is contractual in approach; it lacks that note of a deeper commitment and obligation which fulfils a profound psychic need. These differences arise from the fact that in Islamic tradition, the centre of marriage is a physiological man commanded to be fruitful and to multiply and make the *Ummah* numerous; but in many other traditions, particularly like that of Hinduism, marriage must also take into account the psycho-spiritual man and his nature and needs. Here the centre is *dharma*. Men and women come together in *dharma*. Here I need not mention another Hindu spiritual tradition that sees in human marriage a heavenly pattern, a reduplication of union between *purusha* and *prakriti*, and the need to recreate as much of this pattern as possible under earthly conditions...

There are other related differences. In Hindu tradition, a married life has its own restraints and code. According to Hindu teaching on the subject, *brahmacharya* remains an important category in the background even for men and women united in marriage. Marriage should never degenerate into licentious living.

And beyond the life of a householder, there is the stage of *vanaprastha* and *sannyasa* where sex drops altogether. Islam lacks the categories of the sacred and the heavenly in matrimony, of *dharma* and *brahmacharya*, and that accounts for the difference of ethos in the two traditions.²⁵

25. Christianity has its own ethos. Though its religious categories are Judaic, in man-woman relationship it has drawn its inspiration from other sources. For example, in its emphasis on celibacy, Hindu-Buddhist influences, possibly indirect ones through Jewish Essenes communities and through Therapeutae of Egypt, are easily discernable, though Christianity gives the concept its own turn. In Hindu-Buddhist tradition celibacy is treated psychologically and spiritually, in Christianity ideologically and theologically. In the latter tradition, sex is closely connected with sin and is, in fact, another name for it. Marriage is recommended in so far as it is a remedy against some of its more unregulated expressions.

Celibacy has a high place in Christian apoclypsia and eschatology. Early Christians believed that the end of the world was "at hand", and that they were living in "the last days" (*eschaton*) and there was no time left either for marrying or for giving in marriage (Mt 22.30). Paul's reasons for marriage were minimal and negative. It was to avoid immorality or literally "fornication". "To avoid fornication, let every man have his own wife, and let every woman have her own husband," Paul says. The New Testament under some non-Old Testament influences preached celibacy; it even praised men who made themselves "eunuchs for the kingdom of heaven's sake" (Mt 19.10). Many Christians took the teaching seriously and some even literally and several renowned persons like Origen, and Leontius, Bishop of Antioch, got themselves mutilated. The Valerians, a religious sect, followed Origen's example and regarded self-castration as a duty. The practice was suppressed with a strong hand, but it went underground and reappeared at different times and different places. One could see it widely practised in Russia in the 18th and 19th century by men and women known as Men of God, or more popularly by their detractors' name as Skoptsi (skopets, eunuchs) and Khlysti. They interpreted the reference to 144,000 virgins in Revelation (14.1-4) as the "castrated ones". They were brutally punished by the authorities.

Thus celibacy was exalted and marriage denigrated. In the next centuries, men and women in droves took the vow of celibacy and, not unexpectedly, they often failed. But the show was kept and they lived together in "spiritual marriage" as brothers and sisters. Priests, monks and even anchorites in the desert lived with their "sisters". These women, *agapatae* ("beloved ones"), or *synetsaktol* as they came to be known later on, often served both as maids as well as mistresses. St. Jerome of the fifth century called them "one-man harlots". He tells us how "they lived in one and the same house and bedchamber—nay oftentimes, in one bed—and they call us suspicious if we bode anything amiss here." The system was widespread and caused much scandal. These women were denounced by successive Councils. The Spanish Synods even ordered that they be sold as slaves. But the system survived. When the Christian

In the foregoing review, we have not gone into these larger questions but have merely presented a rough and ready outline of Muslim laws on marriage and divorce and other connected subjects like polygamy and dower. One can however easily see that these laws are not a patchwork but they reveal a great inner consistency. They have grown out of a particular conception of man and woman and they subserve that conception.

They also show that the problem of raising the status of woman in Islam is a big problem. It requires more than providing pecuniary aid to indigent divorcees under some section of the Constitution. It requires work at a deeper level and on a wider front. It requires a change of mind, a more humane and less theological approach.

Shah Banu's case is painful and it strikes a sympathetic chord in every heart not hardened and made insensitive by theology and motivated politics. Her case is also a typical

clergy were disallowed to marry, they lived with concubines. And their flocks preferred it that way. Sometimes they even revolted openly against priests who had no concubines. Their own women-folk were safer with priests who had concubines than with those who did not have. We have the same problem among Christians everywhere including India. Recently one K.A. Verkey, aged 82, belonging to the old Roman Catholic Syrian Christian flock of Muvattupuzh Parish in Kerala, declared that in his long life he saw "frequent violation by unmarried priests of Commandments six and seven" which lay down, 'Thou shall not commit adultery' and 'Thou shall not covet another man's wife'. He said that violation often happened through the institution of Confession and through appointments of lady teachers in schools and colleges run by the Church. Mr. Verkey was shocked. Perhaps he did not know that it was happening all over the Catholic world. Perhaps he had never heard of H.C. Lea's standard work on the subject, *A History of Auricular Confession and Indulgences in the Latin Church* (3 volumes). In his *The Priest, the Woman, and the Confessional*, Chiniquy quotes the confession of a priest who had heard 1500 married and unmarried females in the confessional, how he had scandalized 1000 of them by questioning them on the most intimate details of their sex life for the simple pleasure of gratifying his own carnality (Freud tells us of oral and auricular sexuality, of gratification in speaking of and listening to sexual subjects), and had seduced 95 of them. Confession has a harmful effect both on the penitent as well as the confessor. But the Church cannot give it up, for it is a most powerful instrument of domination.

case which tells the story of thousands of Muslim women in similar plight. Muslim males should learn to look at the problem as parents and brothers too and not merely as husbands. This will generate sympathy for a more constructive approach.

Muslim women too should play a greater role than they have hitherto done in their struggle for more freedom and dignity. They should revolt against ideas and institutions that have kept them down so long.²⁶

26. Recently, Taslima Nasrin, a brave young lady of Bangladesh, a medical doctor by profession, has set an example. Endowed with courage and conviction, she has spoken for Muslim women who have not many spokesmen. Though under great pressure, she refuses to be silenced. She says that women in Islamic countries "are exposed to male domination as a rule rather than as an exception...If anyone protests against such malpractices, as I have done, you are sure to be branded as a witch or a nymph." She further says that she is "not in favour of free sex or adultery. But changing bed-partners should not be as easy as throwing out left-over food. What I demand is freedom for women from male domination and a uniform code... If that can be construed as blasphemy, I cannot help it." (*The Sunday Observer*, October 3-9, 1993). She needs support from her sisters and brothers from across the border and other parts of the world.

However what makes her still more outstanding is that she has spoken for the sorry plight of persecuted Hindus in Bangladesh. Muslim world has its feminists though not many, but none who would speak about what it has done and what it still does to its minorities or even majorities if they are infidels. Taslima herself was allowed to continue so long as she restricted herself to the feminist cause though it could not make her popular with Muslim religious authorities. But as soon as she showed sympathy with persecuted Hindus, there was a great uproar; her book *Lajja* was banned and there was a prize on her head. But she has spoken, and that makes her exceptional. Persecution of Hindus, whether in Fiji or Bangladesh or in their own country, Kashmir, is no one's concern — not even of the Hindus themselves. Who will speak for those who do not speak for themselves? This explains why not even Amnesty and other such Civil Rights bodies which speak on every subject under the sun have been so eloquently silent on this one. Some readers in the West now know Taslima as a feminist but not many know her as the author of *Lajja* in which she describes the condition of the Hindus of her country. That made no press copy and the matter was simply not reported in the Western press.

Her depiction of the terror under which Hindus live in Bangladesh has angered not only her Muslim compatriots but has also embarrassed the pseudo-secularist Hindus of India — sympathy for persecuted Hindus is no part of the creed they know and practise. Thus though she is, under the *fatwa* of death declared by the fundamentalists of her country, it has made her earn no popularity with Hindu-hating Hindus of India. However,

Perhaps Muslim reform movement could be helped from outside by Indian liberals. But they are a most phoney lot and as their history shows they have merely been aids and abettors of Muslim Leaguers and Muslim fundamentalists.

Reform

The task of Islamic reform is a difficult one. Very few have an idea how it is to be tackled. What the Muslim society needs the most is a new intellectual lead deriving from a different concept of man and woman and even of deity. It is a moot-point whether any significant reform can be achieved within the ideational and ethical framework of its traditional theology. Any durable work will require the leaders of the new intellectual movement to question the basic ideology and assumptions of their society, its thoughts and practices. Indeed, they will be called upon to question Islam itself. We have the example of Europe where another similar faith with its own brand of fundamentalism prevailed not long ago. But the break came not with Lutherism which was no better than Christian Wahhabism but with rationalism and science which offered a different world-view, an alternative ideological frame-work. True, the new world-view was insufficient and to some extent even falsifying but it was necessary to liberate the mind from the narrow, Semitic theology that had imprisoned it. Islam has yet to undergo this Rationalist Revolution.

Some liberal Muslims seek reforms and amelioration in

another India is coming up, the India of Hindu-loving Hindus, and that India gratefully acknowledges her role.

Today she writes from a feminist and humanist viewpoint. These are great viewpoints from which to look at prophetic religions. But a more comprehensive viewpoint and criterion would also take into account man of a deeper definition and more spiritual needs. It is possible that someday Taslima would see that Islam's anti-woman and anti-infidel credos derive from its inadequacy as a proper spiritual religion and that she would then write about its basic categories like its exclusive and jealous god, its prophetism, and self-suggested revelations, its concepts of *darul Islam*, *darul harb*, *ghazwah*, *jihad*, and *jizya* and other such barbaric concepts.

the condition of Muslim women, but perhaps playing safe they do it in the name of the Quran and some hitherto undiscovered "true" Islam. They brazenly proclaim that Islam was the first to raise woman's status. This falsifies history; Islam was never a liberator but an enslaver of women just as it was an enslaver of the "infidel" humanity. This falsification can never take these reformers very far in their intended reforms. On the other hand, it will strengthen the hold of the very ideology which has kept woman down for centuries. The position of Muslim women would improve only when Muslim males are less Muslim.

Therefore, serious Muslim intellectuals will have to proceed in a different way. They will have to reject a good deal of the fundamentals of Islam and would be called upon to provide a new ideological lead. Quoting stray verses from the Quran in support of a reform of the day will not do, though being easy, mind-sparing and safe, the approach has its appeal. Even the Indian Supreme Court adopted it without much reflection at the instance of some liberal Muslim lawyers. In support of its judgement on maintenance for Shah Banu, it quoted a stray verse from the Quran: "For divorced women a maintenance in reason, a duty on those who fear" (2.241). The verse may mean what the Supreme Court supposes it does but this meaning is not supported by the overall spirit of the Quran, nor by the life of the Prophet and his Companions, nor by any *Fiqh* school. It is worth noting that in the long history of Islam, no Islamic court ever granted a maintenance to a divorced woman for life or till she was remarried; there is also no record if this verse was ever cited by the Muslim divines and legists for this kind of doctrine. Though well intentioned, the Supreme Court, it appears, overdid its work. In order to show that its decision was in consonance with the teachings of the Quran, it became its interpreter, a task which traditionally belongs to another

quarter. It was enough for the integrity of the Court if its decision interpreted the law of the land and was in consonance with human moral law and conscience. The Quran's laws on marriage, like its laws on neighbourliness with infidels,²⁷ are no models to follow, and it is no part of Indian Courts to enforce those laws and pretend (a la the Calcutta Quran Petition Case) that they are as good as or even better than the *Shariat* courts of some Muslim countries.

27. Antipathy towards heathens and females are at bottom related. It is common to all prophetic religions and they lack a larger charity towards them both. For example, a pious male Jew offering his morning benedictions to the Lord daily repeats:

Blessed art Thou Who has not made me a heathen.

Blessed art Thou Who has not made me a female.

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THE AUTHOR

Ram Swarup graduated from the University of Delhi in 1941 and has been an original writer and thinker ever since. He participated in his country's struggle for independence, courting imprisonment. For some years, he was a close associate of British-born Mira Behn (Miss Slade), Mahatma Gandhi's adopted daughter. In the fifties he led a movement warning against the growing danger which international communism presented to the newly won freedom of the country. Around 1957, he took to a life of meditation and spiritual reflection, and since then he has made a deep study of the scriptures of different religious traditions.

Mr. Swarup is a noted writer in many fields. His previous books and brochures include *Communism and Peasantry: Implications of Collectivist Agriculture for Asian Countries*, *Foundations of Maoism*, and *Buddhism vis-a-vis Hinduism*. His *Gandhism and Communism* stressed the need to raise the struggle against communism from a military to a moral and ideological level. The brochure caught the attention of several US Congressmen, and some of its ideas were adopted by the Eisenhower administration in its agenda for the Geneva Conference in 1955. His *Gandhian Economics*, small but seminal, shows that the present industrial production system suffers from *circularity*, a deep internal technological contradiction — coal and iron, and a hundred other commodities symbolized by them, producing and consuming one another in a crescendo, round and round. His magnum opus, *The Word As Revelation: Names of Gods*, is on linguistics, philosophy, Vedic exegesis, and Yoga. It shows how a religion of 'many Gods' represents authentic spirituality.

Mr. Swarup's latest book, *Understanding Islam through Hadis: Religious Faith or Fanaticism*, has played an important role in opening up Islam for discussion, hitherto a tabooed subject in India.

Mr. Swarup is a distinguished spokesman of renaissance Hinduism which, he believes, can also help other nations to rediscover their spiritual roots.

SOME RELEVANT PUBLICATIONS

- The Life of Mahomet
with an introduction from Ram Swarup
by William Muir
- Mohammed and the Rise of Islam
with an introduction from Ram Swarup (second reprint)
by D.S. Margoliouth
- Hindu Temples: What Happened to Them,
Volume I: A Preliminary Survey
(second rearranged and enlarged edition)
by Sita Ram Goel
- Hindu Temples: What Happened to Them,
Volume II: The Islamic Evidence
by Sita Ram Goel
- The Calcutta Quran Petition, third revised
and enlarged edition compiled with an Introduction
by Sita Ram Goel
- Theory and Practice of Muslim State in India
by K.S. Lal
- Hindu View of Christianity and Islam
by Ram Swarup
- Negationism in India: Concealing the Record of Islam
by Koenraad Elst
- Myths of Composite Culture and Equality
of Religions (reprint)
by Harsh Narain
- Jizyah and the Spread of Islam (reprint)
by Harsh Narain

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