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A STUDY OF MUSLIM WOMEN'S RIGHTS IN INDIA

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Abstract

India's societies are a blend of various religions, governed by the Constitution and personal laws. While the Constitution provides equal rights for individuals, personal laws vary, often leading to disparities in thought and oppression, particularly for women. Muslim laws, derived from the Qur'an and Shariyat, also have personal laws that are biased towards men. These laws suppress women's rights in various aspects of life, including marriage and success. Despite the Quran and Shariah stating equality, women's rights are suppressed in personal laws.

Over the years, societal perceptions have evolved to recognize the equal rights of both men and women. The Supreme Court has been instrumental in driving reforms and empowering women by granting them rights that may be absent in their personal laws. Despite progress, the principle of equality is not entirely manifested in personal laws, leading to instances of oppression and marginalization.

Keywords

Equality, Personal Laws, Rights of Women, Qur'an, Shariyat, and the Constitution of India.

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INTRODUCTION

Societies in India are a combination of several religions and diversity. Part III of the Constitution of India provides fundamental rights to each and every citizen of India. Under this one of the fundamental rights that gives religious freedom under the right to religion, which is Articles 25 to 28. It ensures that every citizen has the right to practice their own religion. Individuals are bound by personal laws that regulate aspects such as marriage, divorce, succession, inheritance, and adoption, among other matters. If we look at women and the treatment related to them, the religious personal laws of every religion have several taboos like patriarchy, and child marriage, which are basically implied on women in religious personal laws. The position of women is weak as compared to men. Like other personal laws, Muslim personal laws are also restricted with respect to women, especially when it has to be executed.² Laws are generally defined as a command that obliges a person or persons to a course of conduct.³ Muslim laws have been derived from various codified and uncodified sources like the Qur'an, Ijma, Qiyas, Custom, Urf, Presidents, equity, and various other legislation. There are four thoughts in school, which are Hanifa, Hamabli, Maliki, and Shafai. They are all somewhat or somewhere talking about the rights and immunity of Muslim women, but do they really all come into practice?

Sir Abdul Rahim defines law as; "that which is established by a communication from God with reference to men's acts, expressive either of demand or in difference, is on his part merely a declaration."⁴

The laws in Islam or Muslim personal law, are derived from the shariat. The meaning of shariat is 'the road to the watering place, the path to be followed'. The Muslims holy scripture If the Quran and Sharia have given equal rights and status to men and women, then why not today's society? The sharia and holy books The Quran clearly states and stands on the concept of equality, that is male and female have equal rights; nowhere in Quran it is stated that the women or females are inferior to the men or males. In holy book Quran man has some extra advantage over women but it is given to them to protect women and make their lives easy.⁵

² <https://www.sbhambriadvocates.com/post/women-and-personal-laws-in-india>

³ Muslim law other personal laws: author Dr. S.R Myneni's

⁴ <https://blogpleaders.in/discriminatory-muslim-laws-women/>

⁵ Verse49:13 of Qur'an

Sharia contains an ethnic guide that says to never make mistakes and always encourages people to do what they have to do and it is stated as a doctrine of duties. According to Shariat there are 5 kinds of religious injunctions which are Fard, Haram, Mandub Makruh, and Jaiz the doctrine of Shariat includes and it is deal with all moral legal ethical theological philosophical and political problem and provide solution of every problem which are religious in nature.

There are several grounds for raising doubts concerning Muslim women's rights and position; even when compared to other personal laws governing marriage, divorce, succession, inheritance, and adoption, they differ significantly.

To protect and grant Muslim women's rights from discriminatory customary law, the “Muslim Personal Law that is Shariyat Application Act, 1937” was introduced but somewhere the absence of codification of Muslim personal law has resulted in many negated and diluted religious texts. Against this, many Muslim women have gathered for the proper codification of personal law.

CONTEXT

Muslim law is governed by two main schools, which are ‘The Sunni school of law’ & ‘The Shia school of law’, but there are some differences and distinctions in their concept and thoughts. In both schools, Muslim women face much discrimination in both legal and social areas. The Constitution of India gives many rights to every citizen of India and it is also called fundamental rights. the important or foremost fundamental right is “Article 14” i.e. right to equality, and “Article 15,” i.e., no discrimination on the bases of sex, race, caste, birth of place, and religion. But still, limited rights are assigned to Muslim women in their law.

In India, Muslim law is applied as a limb of personal law to Muslims in accordance with the schools to which they happen to belong. While Islamic law encompasses comprehensive guidelines derived from the Quran covering various legal domains like evidence, inheritance, marriage, contracts, dower, and divorce, the societal legal standing of Muslim women remains a subject of contention and discussion. It is a complicated issue that involves not only gender bias, but also issues of many things such as freedom, minority rights, and property rights.

Even in the holy scripture of Muslims i.e. Qur’an in the verse 49:13 states that it does not make any distinction on the basis of sex and believes in human equality. “O Mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes that ye may know

each other (not that ye may despise each other)”⁶ The Muslim holy scripture Qur’an and shariyat have given equal rights and status to men and women, and even Muslim personal law say the same but, why it is not in practised in today’s contemporary society?

In India, the status of women is not equal, with the situation for Muslim women being particularly challenging. There exists a discernible bias or disparity in the rights afforded to men and women. It is clearly stated in the holy scripture of Muslim in chapter IV “An Nisa V.:34” that “Men are the protectors (Ghavamoon) and maintainers of Women; because God has given the one more strength than the other and because they support them from their means”.⁷

All India Muslim Woman Personal Law Board, the governing body overseeing the rights of Muslim women in India, was established in December 1972 during a gathering at a convention of Muslim Religious Leaders in Mumbai. The principle aims at its formation were to challenge any attempts to reform the Muslim personal law by legislation or otherwise to promote social reforms amongst Muslims.

DISCRIMINATION AGAINST WOMEN UNDER MUSLIM LAW.

A) MARRIAGE UNDER MUSLIM PERSONAL LAW.

Marriage is generally called matrimony and it is part of the culture and in a legal way it is recognized as a union between 2 people called spouses. In Islam, marriage means ‘NIKAH’ the term ‘NIKAH’ is derived from the Arabic script which means union of 2 people. According to Muslim law, marriage is seen as a civil contract just like the concept of a contract there must be a proposal and acceptance from both the parties or spouses in the case of minors the contract must be made or signed by their legal guardian this is based on Shariat principle which is mentioned in Section 2 of Muslim personal law this principle further states that under this the mutual sexual relation becomes legitimate, and paternity of obligation also become enforceable.⁸ In Muslim personal law, marriage is defined as a contract with the purpose of raising and legalizing offspring. Marriage in Islam is based on three aspects: legal, social, and religious.

⁶ Surah Al- Hujarat Ayat 13(49:13)

⁷ <https://medcrareonline.com/AHOAJ/the-concept-of-responsibility-of-men-and-women-in-islam.html>

⁸ Muslim law other personal laws: author Dr. S.R Myneni’s

In Islam, there is no age limit; it depends upon the age of puberty. In the case *Yunus Bhai Usman Bhai v. state of Gujarat*,⁹ according to Muslim personal law, a girl is eligible for marriage once she reaches puberty or 15 years of age. It is understandable that for marriage, a girl's consent and maturity are not a framework or metric used to determine her permission, although biological characteristics are.

A marriage between two Sunnis requires either two male eyewitnesses or one male eyewitness for the proposal and approval. It clearly identifies the unequal standing of women under Muslim personal law because a male's status is equivalent to that of two females, which is extremely discriminatory. In the case of *Abdullah v. Beepathu*,¹⁰ the court ruled that a marriage was illegal since just two female witnesses were present at the ceremony.

Polygamy is another example of discrimination against Muslim women in India, a study published by the “International Institute for Population Sciences” (IIPS) in 2022 which is based on data from the “National Family Health Survey” (NFHS), showed that polygynous marriage is more prevalent among Muslims around 1.9%. Multiple marriages are called polygamy Muslim Personal Law allowed a male to have 4 wives. In Qur’an it is said that, marry a woman who you think is good for you in twice, thrice or four at a time but if you can’t do justice, marry only one.¹¹ However, Muslim women are not permitted to have more than one spouse; if she marries more than once, her second marriage is declared void, and she would be penalized in accordance with the requirements of the Indian Penal Code. (IPC).

B) DIVORCE RIGHTS FOR MUSLIM WOMEN.

Divorce represents a significant aspect of marital rights. In cases of a valid marriage, the possibility of divorce also exists. A wife doesn't have the unilateral authority to divorce her husband. Instead, she can initiate divorce proceedings only when her husband has granted her this right or through a mutual agreement. When an agreement is in place, the wife can pursue divorce through either Khula or Mubarat.

⁹ <https://indiankanoon.org>

¹⁰ <https://www.the-laws.com>

¹¹ Surah An-Nisa chapter 4, verse 3

MUBARAT

A verse in the Holy Quran runs as follows; it is not lawful for you that you take from women out of that which ye have given them: except (in the case) when both fear that they may not be able to keep within the limits (imposed by Allah), in that case it is no sin for either of them if the woman ransom herself.

KHULA

The term "khula" originally signified actions like "drawing," "digging up," or "taking off," akin to removing one's clothing or garments. It is metaphorically explained that in khula, the couple shed their roles as each other's clothing, effectively parting ways.¹²

Besides these two divorce forms, there are three other categories, as follows:

i) Talaq-i-tafweez: This entails a mutual agreement between spouses, allowing the wife the right to initiate a divorce under certain defined circumstances. This agreement may be formalized either before or after marriage, and the empowerment of the wife with the authority to divorce can be either permanent or temporary, provided it adheres to public policy and is reasonable.¹³

ii) Lian: This entails a husband making an allegation of adultery against his wife, allowing her to file for marriage dissolution and obtain a divorce if she proves the accusation false. Under Muslim law, until a judge delivers a verdict, the marriage remains intact, and both parties retain mutual inheritance rights.¹⁴

iii) According to the Dissolution of Muslim Marriage Act, 1939, Muslim women in India can get divorce using the following methods:

- When a husband is missing for four years, meaning his whereabouts are unknown.
- In cases where the husband has consistently failed to fulfil the financial responsibility of supporting his wife for an uninterrupted span of two years.

¹² <http://www.legalserviceindia.com/article/1393-divorce-under-Muslim-Law.html>.

¹³ <https://legalsarcasm.com/legal-notes/divorce-under-Muslim-personal-law-talaq-and-talaq-e-tafweez/>.

¹⁴ Nikita Aggarwal, How Muslim women can divorce her husband as per the Muslim law, January 7, 2017 <https://blogipleaders.in/split-according-muslim-law/#:~:text=2%5D-.Lian,the%20charge%to20%be%20false>.

In cases where the husband receives a sentence of seven years or more in prison, divorce cannot be granted until the court verifies the sentence. Moreover, if the husband was impotent at the time of marriage and remains so, the court will necessitate the husband to provide justification for this condition. Divorce is also permissible in instances where the husband has been mentally unstable for a period of two years or is afflicted with leprosy or a severe venereal disease. Additionally, if a woman is married off before the age of fifteen by her father or guardian and repudiates the marriage before turning eighteen, divorce is possible, given that the marriage hasn't been consummated. Finally, cruelty towards the wife serves as another valid ground for seeking a divorce.

C) SUCCESSION AND INHERITANCE RIGHTS OF MUSLIM WOMEN.

In India, Muslim personal laws have given diverse rights to Muslim women such as preferences in marriage, inheritance, property, and more.¹⁵ In Islam Mohammedan law do not recognise joint tenancy and the heirs which are common in tenants, can only seek to shares of property that they held in common.¹⁶ In India, Muslims do not have classified property rights; property rights in Muslims are governed by two schools of law, which are the Shia school of law and the Hanafi school of law.

These schools of law are governed by Muslim Shariat Application Act,1937 Women always had full and complete authority over the property that they acquired or possessed.¹⁷ There are different classifications of property in Muslim law for Muslim women which are

- a. Property rights of Muslim wives in Muslim law.
- b. Property rights of Muslim Widow in Muslim law.
- c. Property rights of Divorced Women in Muslim law.
- d. Property rights of Muslim daughter in Muslim law.
- e. Property rights of mothers in Muslim law.

¹⁵ <https://www.legalserviceindia.com>

¹⁶ <https://blogpleaders.com>

¹⁷ <https://doi.1/10.1732/IJLMH.25770-pg/no6>.

RIGHTS OF WIFE REGARDING PROPERTY:

In Islam, Muslim law provides a sort of financial security through marriage, after the marriage, the Muslim wife is entitled to receive share and wealth in form of property or money from her husband, it can also be in form of Maher. As per Mohammedan law, Muslim men cannot give more than 1/3rd share of his property to his wife and in case of no heirs, wife can inherit greater amount in the property than is prescribed by law.¹⁸

PROPERTY RIGHTS OF MUSLIM WIDOW:

- a) In case of children Muslim Widow, she is entitled to 1/4th of her husband properties.
- b) The value of inheritance is determined to widow women after the paying of the subsequent decease loan (if any were taken) and it also include the expenses of husband funeral.
- c) If the widow has children, then the share of her property will be of 1/8th and if deceased husband has more than one wife and the share in property will become 1/16th and in case of ill husband where women has end up marrying ill husband, then the marriage will not be consummated in the first place and if that ill husband has been dies, when the widow is not entitled to any share in his property. However, if the husband who is ill, if he divorced the wife and died, then the widow would be entitled to the share till she remarried.¹⁹

PROPERTY RIGHTS OF DIVORCED WOMEN:

In accordance with Muslim law, a divorced woman is entitled to maintenance from her husband for a duration of up to three months, until the completion of the iddat period. Following this period, the responsibility for the divorced wife's maintenance shifts back to her parental family.

In case of divorced women who have children and if her children are capable of financial stability and can support their mother then the responsibility reverts to them. In section 125 of the Criminal Procedure Code of 1973, it is stated that every woman has right to claim maintenance from her husband. In cases where the husband declines to fulfil his obligation of caring for or providing maintenance to his wife, even if he had sufficient means and a maintainable financial background then he will be charged and he is entitled to maintain wife with monthly payment.²⁰

¹⁸ <https://www.aapkaadvocate.com/blog/what-are-the-property-rights-of-muslim-women-in-india/>

¹⁹ <https://housing.com/news/property-rights-of-muslim-women/>

²⁰ <https://www.aapkaadvocate.com/blog/what-are-the-property-rights-of-muslim-women-in-india/>

PROPERTY RIGHTS OF THE MUSLIM DAUGHTER:

Islamic law for inheritance, the share of a daughter is 1/2 part of the son's; as female in Islam is considered half of a male. Though daughters have rights of residence in their parents' house, and the parent has duty to maintain and even the daughter have right to maintain until her marriage. Daughter can acquire property in their wills or inheritance but it must not exceed 1/3rd of the total property of whoever who made the will.²¹

PROPERTY RIGHTS OF MOTHER:

Muslim mother is eligible to receive financial support and maintenance from her children, provided they are independent and capable of themselves, in case that her child or children dies She is eligible for 1/3rd part of the property share. And if she has grandchildren, she will be eligible for 1/8th of the property share.²²

RESPONSE OF THE JUDICIARY IN LANDMARK CASES WHICH HAD BRING REFORMS IN MUSLIM PERSONAL LAWS.

In India, Muslims are subject to Personal laws, while Article 25 of the Indian Constitution guarantees the right to practice and propagate any religion. However, these Personal laws exist separately from the Constitution, and the Supreme Court has the authority to make decisions to protect the rights of Muslim women over time. Some significant Supreme Court judgments that have shaped history include:

a. Mohd. Ahmed Khan v. Shah Bano Begum and Ors.²³

One of the significant rulings within the Indian legal system that left a lasting impact on the history, particularly about Muslim women, was the Shah Bano Begum Case. A Muslim woman, she confronted divorce through the Triple Talaq system initiated by her husband, Mohd. Ahmed Khan. The central concern in this case focused on Shah Bano's decision to pursue maintenance under the provisions of the Criminal Procedure Code, rather than adhering to personal Islamic laws. These personal laws specify that a woman is entitled to maintenance during the 'iddat' period, which spans three menstrual cycles, in addition to the 'mehr,' the financial support promised to the bride

²¹ <https://www.aapkaadvocate.com/blog/what-are-the-property-rights-of-muslim-women-in-india/>

²² <https://www.aapkaadvocate.com/blog/what-are-the-property-rights-of-muslim-women-in-india/>

²³1958 SCR (3) 844

at the time of marriage. Following this period, the responsibility shifts to the woman's parents to provide support to their divorced daughter.

Judgment: The ruling in this instance determined that both the complainant and the respondent, being of the Muslim faith, should be subject to Muslim Personal Law. Even though the case was presented under the Criminal Procedure Code, decisions were rendered by the district court, the High Court, and the Supreme Court, all in favor of Ms. Shah Bano.

However, despite her legal victory, Shah Bano Begum faced real-life challenges because the government at that time passed a law known as the Muslim Women (Protection of Rights on Divorce) Act was enacted in 1986. This measure sought to reverse the Supreme Court's decision. According to this statute, Muslim women were entitled to receive a reasonable and just amount of financial assistance throughout the iddat period, after which the husband had no more legal responsibility.

b. Danial Latifi and anr. v. Union of India²⁴

After the Shah Bano Begum case, another significant legal precedent was set in the Danial Latifi case. In response to the preceding judgment, the Indian Parliament introduced The Muslim Women (Protection of Rights on Divorce) Act. The objective of this act was to address the financial rights of Muslim women following a divorce.

These judgments highlight the complexities surrounding the legal status of Muslim women's rights in India, especially concerning personal laws and constitutional guarantees of religious freedom. In 1986, the Indian government introduced a law, Section 3(1)(a), which granted divorced women reasonable provisions and maintenance during the 'iddat' period. Danial Latifi, a member of the council, challenged this law, arguing that it was unconstitutional and violated Articles 14 and 21 of the Constitution.

Judgment: The petitioner contended that there was no valid reason to exclude Muslim women from the provisions of Section 125 of the Criminal Procedure Code, and the present law contravened Articles 14 and 21. Conversely, the respondent argued that personal laws were a legitimate basis for differentiation and thus did not infringe upon Article 14 of the Constitution. The Court ultimately ruled that the Act did not violate Articles 14 & 21.

²⁴ (2001) 7 SCC 740

c. Shayra Bano v. Union of India.²⁵

It stands out as a significant judgment that impacted Muslim personal law. Shayara Bano, a resident of Uttarakhand, initiated a public interest litigation (PIL) after experiencing constant abuse from her husband and being divorced through Triple Talaq in one go. Her PIL offered hope to countless women who had suffered due to the unjust practice of Triple Talaq.

Judgment: On August 22, 2017, the Supreme Court issued a verdict where a 3:2 majority deemed the practice of Triple Talaq as unconstitutional. Following thorough deliberation, the majority concluded that Triple Talaq was not an integral religious practice, although a minority bench held a contrary view.

CONCLUSION

Even though more than seven decades have passed since gaining independence, the nation remains entangled in the grip of regionalism, communalism, and caste-based division. Despite various rights granted to women by the Indian Constitution and other Laws, they still face vulnerability. While the preamble advocates justice, equality, and liberty, personal laws have unfortunately been exempted from the scope of “laws inconsistent with the constitutional spirit.” The focal point of this discussion revolves around personal laws and the need for their reform. The Sachar Committee report admirably highlighted the plight of Muslim women in many parts of the country, where they continue to struggle with illiteracy, poverty, and below-average participation in the workforce. These women are striving for equal citizenship, a pursuit often thwarted by personal laws rooted in religion. The time has come for them to challenge their marginalization based on religious grounds.

The landmark triple talaq judgment has set in motion a significant shift in how personal laws are administered in India. Ultimately, the implementation of Article 44, which emphasizes the importance of constitutional principles, must take precedence to serve the greater purpose of achieving justice, equality, and liberty for all.

Though India has progressive laws for Muslim women, the policies, laws and Acts can only be implemented when the government and the society come together and help to improve the law. Women should be motivated to overcome socio-economic and religious barriers and adopt

²⁵ (2017) 9 SCC 1.

effective contraception. “for me, the equal right and justice should consistent with women’s commitment to ensuring. I believe unequivocally in equal rights of women and the rights they choose.”

