



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Laws for the upliftment of Muslim Women

Rishabh pandey

B. ALL. B

Law college dehradun, uttaranchal

Introduction

The women's status in society was never a settled issue and has been different in different societies. The reality is that nearly in all societies males form the dominating part while females remain in the passive state. Considering the women's position with respect to Islamic laws they have been continuously struggling to get a respectable position. Though the Islam always favoured that men and women all always treated at same footings and thus gave all the rights which man posses to women's. Islam is the only religion which improved the improved the condition and status of women by instituting and providing them with rights of possessions, ownership, inheritance, education, marriage and divorce. The holy text of the Muslim the Quran came up with a declaration that men and women are equal and women's rights are equal to their duties but due to absence of any proper codified law the position of women alays remains the depressed class.

MUSLIM WOMEN AND MARRIAGE

The religion of Islam never differentiated between men and women rather in several parts it is seen that holy Quran speaking in favour of women. Instead it consists of a particular chapter under the title The Woman (Surah-al-Nisa). Marriage under Islamic law is neither a 'Samaskara' (purificatory ceremony) as in the classical Hindu law, nor a sacrament in its pristine form as among Roman Catholics.¹ It is far from the modern

¹ N.R. Madhava Menon (ed) National Convention on Uniform Civil Code for all Indians, (1986), 83

notion of 'non-marital cohabitation' and 'one-parent family' of the West.² It was Prophet Muhammad who brought about a complete change in the position of women. He advocated for almost equal rights for women in the exercise of all legal powers and function. Marriage is defined as contract which has a object of breeding and upbringing and legalization of children's. marriage among the Muslims is solemnized by the persons familiar laws relating to marriage and in front at least two competing witness. Quran states that men and women are apparels of each other and it implies support and equality for each other. The Muslim women has similar right as men to chose their better half and her consent is considered as a must and is under no obligation. It is interesting to see that Islam has recognised women's with a great sense of pride. The leading case of *abdul Kadir v. Salima* it was held that marriage is not a sacrament but purely a civil contract although it is solemnised with recitation of certain verses from the Quran.

There are certain conditions which need to be fulfilled before the solemnisation of Muslim marriage , they are:

1. Sound mind and
2. Puberty (bulugh)

With respect to puberty, it is to be known as physical phenomenon to be ascertained by evidence and in the absence of evidence to the contrary, it is generally presumed that a person who has completed the fifteenth year of age, has attained puberty.³

Marriage guardianship(Witlyat-e-nikah) is the authority of a person to contract the marriage of another who is incompetent to contract his or her own marriage. marriage-guardian (Wali-e-nikah) is the person having such authority.

As seen above the character of Muslim marriage is that of Civil Contract, hence there is there is always a proposal (Ijab) by either party or acceptance (Qubul) by the other party. In case the parties to marriage are

² Tahir Mahmood, *Personal Law in Islamic Countries* (1987) 268.

³ *Mt. Aliqa Begum v. Ibrahim*, AIR 1916 PC 250, as quoted in Tahir Mahmood: *the Muslim Law of India* (1980) at p. 49.

not competent to contract their own marriage then the proposal and acceptance can be made by their respective marriage guardians.

Going through the history of Islam it can be traced that unlimited polygamy was prevailing in Pre-Islamic Arabia, but after the advent of Islam, the prophet introduced limited polygamy which fixed the limit of four wives at a same time. But it is very pertinent to not that it is only a permission given by the Holy Quran to contract a polygamous marriage and it is not a compulsion. Only when he can deal with them justly and equitably a Muslim male can marry more than one woman subject to a maximum of four. But with the passage of the Dissolution of Muslim Marriage Act, 1939, a right is given to the Muslim women, a Mohammedan wife can file a suit for divorce against the husband, on the ground that her husband, having more than one wife, is not treating her equitably⁴

There exists certain prohibitions in the Muslim marriage such as: Absolute prohibitions on the ground of polyandry of the woman, the ground of consanguinity (blood relationship), on the ground of affinity (through earlier marriage) and on the ground of fosterage. But A marriage between two Muslims is not absolutely prohibited: on the ground of unlawful conjunction, on the ground of polygamy, on the ground Iddat period, on the ground Difference of Religion, on the ground absence of witnesses and, on the ground of Divorce.

The Muslim women has a specific right to dower (mahr) from her husband which is a sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage. There has been certain conflicting remarks regarding dower as a consideration or not they consider it as an obligation imposed upon the husband as a token to respect for the wife. The Dower may be Prompt Dower which is payable at the time of marriage or Deferred Dower which may be paid at the time of death of the husband or on the dissolution of marriage. The Quantum of dower depends on the status of the husband and wife.⁵

There is concept of muta marriage in Shia community which is considered as the temporary form of marriage for enjoyment but that form of marriage is considered as void in Sunni community.⁶

⁴ Zubaida Begum v. Sardar Shah, AIR 1943 Lah. 310

⁵ Abdur Rahim, Mohemmedan Jurisprudence p. 334.

⁶ Baillie, I, 18; The Hedaya, 33.

On the basis of discussions made above regarding the marriage it is quite apt to remark that in a Muslim marriage, the female plays an important and almost an equal role as compared to the males but however she enjoys a very fragile marital life as the Muslim husband is vested with an almost absolute right to divorce the wife at any time by resorting to Triple Talaq' method. It is not to say that every Muslim husband is invoking his right to divorce his wife indiscriminately but only to point out the possibility of its misuse.

Divorce

Gradually the main aim is that marriage it should always subsist and should not be dissolved. Prophet declared that divorce being an evil, it must be avoided⁷. A marriage in Islam may be dissolved by following ways:

1. by act of God i.e. due to death of the husband or wife, or
2. by act of the parties i.e. divorce

MUSLIM WOMEN- DISSOLUTION OF MARRIAGE

(a) Divorce by husband

The word talaq is usually rendered as repudiation. A Muslim husband of sound mind may divorce his wife whenever he so desires without assigning any cause. The pronouncement of talaq may be either revocable or irrevocable. The revocable form of talaq is considered as approved and irrevocable form is treated as disapproved form. Forms of talaq

A. Talaq ul sunnat

- i) Ahasan (most approved)
- ii) Hasan (approved)

B. Talaq ul biddat (disapproved)

- i) Three declaration at one time
- ii) One irrevocable declaration.

⁷ See Tyabji; Muslim Law; Fourth Edn. p. 143

Wife's right to divorce

Khula

Wife's right to Khula is almost same and parallel to the men's right of talaq⁸. A divorce by khula is a divorce with the consent and at the instance of the wife in which she gives or agrees to give a consideration to husband for her release from the ties of marriage. It happens that when a wife thinks that it is no more possible for her to live with her husband, she would simply tell him that she needs a divorce and when the husband is reluctant, the wife may straightaway proceed to the court for a decree of Khula. Here the husband may demand of the wife to relinquish her claim to dower. Khula is extremely liberal and pro-woman law.⁹

Divorce by mutual agreement

This type of divorce is called mubara'at in which there is a mutual agreement between them. In this the aversion is mutual and both sides desire separation. It involves an element of mutual consent. In this mode the offer may be either from the side of husband or wife and when it is accepted it becomes irrevocable divorce and iddat is necessary.

Delegated Divorce (Talaq-e-Tafweez)

A Muslim husband has power to delegate his own right of pronouncing divorce to third person or to his wife. A stipulation that under certain specified conditions the wife can pronounce divorce upon herself has been held to be valid. The delegation of power of divorce may either be permanent or temporary. A temporary delegation of power is irrevocable but a permanent one may be revoked by the husband.¹⁰ This form of divorce is perhaps the potent weapon in the hands of Muslim wife to obtain her freedom without intervention of the court.

Ila (vow of continence)- in this the husband swears by God not to have intercourse with wife and abstain for four months or more. After the expiry of the said period the marriage is dissolved by legal process.

⁸ A.A. Maududi, Haquq al-Zawjayan, 10 (4th ed. 1964)

⁹ Tahir Mahmood, Personal Laws in Crisis, (1986) p. 78.

¹⁰ D.F. Mulla; Principles of Mohammedan Law; 18th Edn. p. 332

Zihar- in this the husband compares his wife to his mother or any other women in prohibited degree. After such oath the wife has right to go to the court and obtain divorce or restitution of conjugal rights on expiration.

(e) Judicial Divorce

It is a type of divorce by the order of the court of law on several grounds.

Lian (mutual imprecation)- it is mentioned in Quran in this a husband accuses his wife of adultery but is unable to prove the allegation thus in such cases the wife is entitled to file a suit for dissolution of marriage.

Faskh- it means annulment or abrogation. It refers to the power of the Muslim Qazi to annul a marriage on the application of the wife.

MUSLIM WOMAN AND SUCCESSION

The Muslim Law of Succession which has been derived from the rules of succession to be found in the Quran or in traditions as well as from such of the pre-Islamic customs approved by Prophet and is basically different from the other indigenous systems of India. The most prolific and astonishing feature of Muslim law of succession is that no woman is excluded from inheritance only on the basis of sex. Like the men, women's also have the right to inherit property independently, not merely to receive maintenance or hold property in lieu of maintenance.¹¹ Like the men every woman who inherits property is its absolute owner. The concept of either stridhan or women's limited estate is not there. The Muslim law of succession which is unmodified, makes no distinction between a property of deceased male or female. Position of women in Islamic Law:

The main reforms by Islam may be stated briefly as under.¹²

1. The husband/ wife were made an heir.
2. Females and cognates were made competent to inherit
3. Parents and ascendants were given the right to inherit even when there were male descendants
4. As a general rule, a female was given one half the share male.

¹¹ Dr. Tahir Mahmood: The Muslim Law in India, (1980) at p. 243

¹² A.A.A. Fyze: Outlines of Mohammedan Law (4th ed), at 390.

Under the Hanafi Law of Inheritance only four females are included among the residuary in the form of Full sister, consanguine sister, the daughter and the son's daughter how low so ever. However it may be noted that wife takes normally $1/8$ the share in the property of the husband but the husband takes $1/4$ the share in the property of the wife i.e. double the share of the wife in similar circumstances. Among the Shias, there is no separate class of heirs corresponding to the distant kindred of Sunni law.

MAINTENANCE OF WIFE UNDER MUSLIM LAW

Maintenance is called nafqah and it comprehends food, lodging and raiment. The maintenance of wife and children is a primary obligation. Husband has right to maintain his wife and that is absolute right of the wife, in any circumstance the husband is bound to maintain his wife. Kharcha-i-pandan means betel box expenses and is personal allowance to the wife customary under Muslim families.

The husband is bound to maintain his wife irrespective of being Muslim, non –Muslim, poor or rich .The husband's liability to maintain his wife arises if the following conditions are satisfied: (i) She has attained puberty or (ii) She places and offers to place herself in his power so as to allow free access to herself at all lawful times and obeys all his lawful commands. But the Muslim wife is not entitled to maintenance in few of the conditions like

- (i) If she abandons the conjugal domicile without any valid cause;
- (ii) If she refuses access to her husband without and valid cause;
- (iii) If she disobedient to his reasonable commands;
- (iv) If she refuse to live with her husband without any lawful excuse;
- (v) If she has been imprisoned;
- (vi) If she has eloped with somebody;
- (vii) If she is a minor on which account marriage cannot be consummated.
- (viii) If she deserts her husband voluntarily and does not perform her marital duties, and
- (ix) If she makes an agreement of desertion on the second marriage of her husband.

On the death of her husband, the wife's right to maintenance ceases. The widow is not entitled to maintenance during the Iddat of death. But under Muslim Law, a divorce wife is entitled to be maintained by her former husband during the period of Iddat.

Section 125(1) of CrPC 1973 was enacted, which laid down that for the purpose of maintenance wife includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried. Then Muslim Women (protection of rights on Divorce) act 1986 was passed with aim to protect the rights of Muslim Women who have been divorced or have obtained divorced from their husbands and to provide for matters connected. The act of 1986 does not totally bar the application of section 125-128 of CrPC.

M.A. Khan v. Shah Bano Begum AIR 1985 SC 945- in this case it was held that it does not contemplate or countenance the situation envisaged by CrPC. If the divorced wife is unable to maintain herself, the husband's liability to maintain may arise even after the period of Iddat

Conclusion

The situation of the Muslim women is not that to cope up with the progress made by the other religions. The personal laws belonging to Muslim women need to be improved to enlighten the condition of the Muslim women. The Islam has raised women's status in the society by providing various laws in the hands of muslim woman like giving them the right of liberty in respect to marital choice, right to inheritance, succession, divorce, etc. Thus it has accepted the status of Muslim women as responsible member of the society.

Reference

- <https://www.scribd.com/document/330317290/10-chapter1>
- <https://www.scribd.com/document/83053742/Socio-Legal-Prospective-of-Marriage-as-an-Institution-in-India-Final>
- <https://books.google.com/books?id=xXknEAAAQBAJ>
- https://www.academia.edu/47923940/PAPER_PRESENTATION_ON_THE_TOPIC_DIVORCE_UNDER_FAULT_AND_NO_FAULT_THEORY_
- <https://www.lawyersclubindia.com/experts/mutually-389921.asp>

- <https://www.coursehero.com/file/p3na6j1/Broad-principles-of-inheritance-in-Muslim-law-Till-1937-Muslims-in-India-were/>
- <https://indianlegalsolution.com/muslim-property-transfer-rights/>
- Aldo Leopold, A Sand county Almanac, Oxford University Press ed.(1948).
- Churchill, R. R., & Lowe, A. V., The Law of the Sea. Manchester, UK: Manchester University Press, (1988)

