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Rights of Muslim Women in India: A Critical Review of Socio- Legal Perspectives

¹Dr. S.S.Das, ²Keertika Singh

¹Faculty of Law, ²Law Scholar

¹ Centre for Juridical Studies, Dibrugarh University, Dibrugarh-786004, Assam,

²School of Law, University of Petroleum and Energy Studies, Dehradun-248007, Uttarakhand.

Abstract

The question of women's rights and obligations, is the most controversial and most complex among all social problems. Many Muslim women successfully have no rights, or recourse, to protect themselves physically, sexually, financially, or otherwise from abuse, especially by husbands. Even in countries where laws protect women, local social traditions can also radically curtail their rights. This paper throws light on the social status of Muslim women in pre - Islamic and post Islamic era. After that the paper focuses on the Indian social, legal and religious status of Muslim women and analyses differences of opinion among individual and institutions.

Key words: Muslim women, Legal status, social status, Islamic Arabia, Mehr, Divorce, Maintenance, Sharia, the qur'anic status.

Introduction:

The question of women's rights and obligations, is the most controversial and most complex among all social problems. According to Carol Travis and Carol Wade (1984), it has always been assumed throughout the centuries by all societies that the difference between males and females is not confined to basic anatomy but in their respective abilities to think and act. A historical study of the existence of differences between men and women in various societies leads to the conclusion that these differences are indications of different values as well. Because of the values and culture of male domination and of discrimination against women, the position of women in the western world was no better than their position in Asia and Africa. What is worse is that women were unaware of their rights even in the west until the beginning of the nineteenth century AD when western women fought for the recognition of their rights denied for centuries and the struggle for their rights came into focus with the suffragette movement in the beginning of the twentieth century. This gave birth to women's liberation movements in various parts of Europe and the Americas. Starting with the Married Women's Property Act 1882 and ending for the time being with the Pension Act 1995, women in the United Kingdom have slowly gained their economic, social, and political freedom denied to them earlier. Unfortunately, the attitude of the Christian church, until the end of the eighteenth-century A.D., was not very friendly towards women and this caused further difficulties. However, the process of reinterpreting Christian texts and the restating of its values in the nineteenth and the twentieth centuries' have been of immense help to Christian women.

In pre-Islamic Arabia the position of women was even worse. Women were treated as nothing but chattel. Married women were treated as heritable property, to be inherited by the heirs of a husband. In this dark era for women, Islamic reforms through the Quran and the Hadith of the Prophet Muhammad (PBUH) were revolutionary. Due to these Islamic reforms, between 610 and 632 A.D. Muslim women gained rights unparalleled in the world. In fact, Muslim women enjoyed more rights than women in any other society until the liberation of women in the western world. The Quran, the principal authority for all Islamic rules and regulations, put women on an almost equal footing with their male counterparts, and the rights conferred on Muslim women by the Quran were supported and supplemented by the authentic Hadith of the Prophet Muhammad.

However, from the very beginning of the Islamic era (610 A.D. onwards) male-dominated Arab society resisted the ideals of sexual equality prescribed by the Quran and the Hadith. By the time Islamic law (Shariah) began to be codified in the eighth century A.D. all sorts of pre-Islamic (Arab) and non-Islamic influences (from the Hellenic and Sassanid culture) had affected the thinking of the Muslim jurist. Conservatives and the traditionalists upheld the status quo of male domination of pre-Islamic Arab society and endeavored to justify their position. Explaining the situation in her book, *Women in the Quran*, Barbara Fryer Stowasser (1994) concludes that to attain the goal of preserving the stable structure of the past tradition of Muslim society prescribing inferior position to women compared to that of men, the conservative Muslim jurists justified through *ijma* (community consensus) of the conservative interpretation of the Quran and of the Hadith. Syed Mohammed Al, (2004) analyses the feminist response to the conservative stand on women, although feeble, began to be noticed in the beginning of the twentieth century and more so in the eighties and the nineties of the twentieth century. The illegitimate imposition of inequality on Muslim women was challenged by pro women groups of scholars and activists despite the hostile reception by conservative Muslim society. The two opposing groups of pro women and antiwomen tendencies in Islamic theology and jurisprudence had their champions in Fatima Mernisi of Morocco, and Abbas Mahmud al- Aqqad of Egypt, respectively. Abbas Mahmud al-Aqqad expresses his total contempt for women of all societies by denying them any role other than raising children. According to al-Aqqad, women have never been a source of ethics or good conduct and men are the sole source of these things. Syed Qutb, a greater scholar of Islamic law, refutes al-Aqqad's hostile opinion against women by asserting the distinction in their primordial nature has no inherent value so far as their capacity to act or think. Fatima Mernissi (1991) boldly challenges the anti-women establishment in Muslim society by asserting the real reason behind the antagonism against Muslim women by the male elite is the conflict of their interests with those of women. Mernissi goes further by stating that the subjective view of these men about the culture and society of Muslims have no sacred sanction either from the Quran or the Prophet Muhammad (PBUH) or even from the early traditions of Muslim society. In Mernissi's book, one has a glimpse of the exalted position of honor and dignity enjoyed by Muslim women in the early days of Islam as the direct result of the mission of the Prophet Muhammad (PBUH). Of course, the Muslim woman's position is far from an exalted one today. This is surprising and unacceptable in light of the rights conferred on women by Islam over 1400 years ago. The main theme of this book is to challenge this current deprivation of Muslim women's legitimate rights by the conservative framers of Islamic law (Shariah).

The collapse of the Rajput government gave rise to the arrival of Muslim rule in India. It was under Muizz-ud-Din that the first Muslim Empire was founded in India. The Muslim invasion of India created a new situation wherein the Muslim rulers or Sultans followed a policy of discrimination against the Hindus. So, the importance of Muslim rule in India was counter-productive to harmony, justice and equality. The Muslim conquerors like Mahmud Ghaznavi and others made frontal attacks on ancient Hindu way of life and religion. With the Mughal rulers, especially with Akbar new era began in the Mughal history of India in the realm of human rights as a result of his policy of 'Universal Reconciliation and Tolerance.' The European travelers who visited Ashoka's empire highly appreciated his zealous regard for rights and justice. His justice-loving tradition followed by his son Jahangir too. The trend initiated by Akbar came to be reversed by Aurangzeb, though the Marathas and the Sikhs opposed and fought the fanaticism of Aurangzeb.

The Shariat Application Act, 1937 in India protects the application of Islamic laws and in individual legal relationships, the state shall not obstruct and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith. The applicability of the Shariat Act has come under debate in the past as well. The issue of protection of women's rights as part of the broader fundamental rights came into clash with religious rights. Most well-known among these is the Shah Bano case. There are four different schools of Islamic law viz. Hanafiyya, Malikiyya, Shafiyya and Hanabaliyya, each of which interprets the writings in the Quran in different ways and consists of varying rules and regulations for the Muslim community world over. Muslim personal law is pre-constitutional. It has been in process throughout the territory of India. Since the Mughal rule down to the British administration of the justice, the Muslim Personal Law was duly protected and implemented. It is resultant from Islam and the Islamic way of life. It manifests the religious faith and cultural philosophy of the Muslim community. It is part of Islamic religion and culture.

The Constitution of India guarantees the religious and cultural independence. The sphere of religious cultural freedom enshrined in part III of the constitution as the fundamental Rights wrap the Muslim Personal Law. Muslims in India, as in other Islamic countries, are guided by Islamic laws with reference to their marriage, divorce, inheritance and property rights. Shariat which contains the governing principles of law for defining and regulating the status of men and women in Islamic society has to be understood in the context of its own historical development and socio-political setting in India. The adjustment of Muslim community in a secular state and secular society has to be understood under different historical context; and also, as to how far certain basic provisions and needs of the Muslim women who want protection from law against injustice which have been perpetuated against them for a long time. Marriage, dower, divorce, maintenance, guardianship, paternity, acknowledgement, waqfs, wills, inheritance are the integral part of the Muslim personal law and these are religious in nature and content. These come within the purview of religious freedom guaranteed under Article 25 of the Constitution of India.

Unquestionably, legislature equality, if made use of, can lead to authentic equality but legal rights without the capability to use it represent equality without essence. This is the factor that has been disadvantage to the advancement of Muslim women in India.

Women in Pre – Islamic Arabia:

Women in pre – Islamic Arabia enjoyed no rights and were not treated like an article of trade. The institution of marriage was only for increasing the number of tribe members and the power of the tribe. Marriage was a stiff and a loose institution which had no strict consistent rules. According to the literary sources and the prohibited forms of marriages in the Qur'an and Sunna, it is possible that following forms of marriages existed in pre-Islamic Arabia at one time or another:

- i. **Marriage by agreement:** It was an agreement between a man and his future wife's family. This form of marriage could be inter – tribal. In inter-tribal marriage, women had more freedom and also retained right to dismiss or divorce their husband at any time.
- ii. **Marriage by Capture:** It was common during times of war. In this type of marriage, women were taken captive by the men from other tribes.
- iii. **Marriage by Purchase:** It was a traditional form of marriage practice. These marriages consisted of a woman's family paying a man 'Mehr ' or a dowry to marry their daughter. In these marriages, women were subject to their husband's control and had little rights or freedom.
- iv. **Marriage by Inheritance:** It was a widespread custom throughout Arabia. This practice involved the possession of a deceased man's wife being passed down to his son. In such case, son had several different options but woman had little or no rights and was subjected to follow orders of her inheritor.
- v. **Temporary Marriage:** The "Mutah" or temporary marriage took place between a man and woman with mutual consent, without any involvement of the women's family. It was a contract between two people involved and allowed for much more freedom for women than other types of marriages practiced during this time.

There were no written laws and only verbal traditions or time privileged customs were prevalent. Child marriage was very common. Polygamy was a common practice. A man could have as many as 100 wives. Wife lending was also prevalent. A man could have as many concubines as he could pay for. Women had no right to divorce, whereas husband could divorce her any time he liked. Women were barred from inheriting family property. Women were usually deprived of their basic rights.

Reflections in The Holy Quran:

Islam has fixed abundant rights to women including property rights and Mehr which no other religion has given. Some rights given to her several centuries ago have not been given to her even in the modern system of law. Men and women are equal in Islam the disparity is created by society and not by religion. Religious scholars who interpreted Quran deprived of women their basic rights given by Islam. Islam provides full protection to the rights of woman. Women are allowed to play an efficient and helpful role in the Islamic Society. Shariat allows them to form their own organization for the uplift of the society. Though such organization did not exist during the time of Holy Prophet (PBUH) but the women used to get together during those days and put before the Holy Prophet (PBUH) the problems which they faced and the Prophet listened to them. Now the state of affairs is different, the Muslim women have to face various difficulties all over the world. Therefore, they can form their own organizations to solve the problems concerning women and children

and they can do a lot for their upliftment. The Holy Quran came to redress the aberrations in thinking and behavior of ancient civilizations and religions as concerns women. It reaffirmed women's human nature: "O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, his mate" (*The Holy Quran, Surat an-Nisa'a, verse 1*)

The Holy Quran also stresses the likeness of creation for both men and women and, therefore, the likeness of responsibility and retribution. None of them holds a higher position than the other, except through good deeds. Women in the Holy Quran are not considered as dependent upon men, but rather as independent human beings. In terms of good or bad deeds, God makes no difference between men and women. What is lawful shall be so for both men and women, and what is wrong shall be so for both men and women. Women are no longer seen as the devil's associates or just objects for sensual pleasure. Unless their feminine disposition prevents them to do so, women should assume their responsibilities in everything just as men do. (*The Holy Quran, Surat al-Aaraf, verse 23*)

Women have the right to a decent life, to education, to owning and acting in property, to marriage, to caring of children, to inheritance, to work and to social respect. There is no monasticism in Islam, no breaking away from social life, no difference between the mother and the father in obedience and reverence:

"We have enjoined on man kindness to his parents: In pain did his mother bear him, and in pain did she give him birth. The carrying of the (child) to his weaning is (a period of) thirty months. At length, when he reaches the age of full strength and attains forty years, he says, "O my Lord! Grant me that I may be grateful for Thy favour which Thou has bestowed upon me, and upon both my parents", (*The Holy Quran, Surat al-Isra'a, verse 23*) "Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents.), "Say not to them a word of contempt, nor repel them, but address them in terms of honour" (*The Holy Quran, Surat al-Ahkaf, verse 15*)

In Islam, men and women are honorable equals in God's sight and are anticipated to fulfill the same duties of worship, prayer, faith, almsgiving, fasting, and pilgrimage to Mecca. Islam generally enhanced the status of women compare to earlier Arab cultures, barring female infanticide and recognizing women's full personhood. Islamic law emphasizes the contractual character of marriage, requiring that a dowry be paid to the woman rather than to her family, and guaranteeing women's rights of inheritance and to own and manage property. Women were also granted the right to live in the matrimonial home and receive financial protection during marriage and a waiting period following death and divorce. The vital premise of equality between the sexes is taken from a verse of the Holy Qur'an where Allah Almighty states he created man and woman from a single source and origin: "O Mankind, Be dutiful to your Lord who created you from a single soul and from it created its mate (of same kind) and from them twain has spread a multitude of men and women". (*The Holy Quran, Surat an-Nisa'a, verse 4*)

Legal Perspective on Women's Rights in India :

In India all women have been protected by uniform law without any discrimination except Personal Law of Muslim. Under this topic legal protection of Muslim women in India will be examined under various specific heads.

Constitutional Rights:

Archana Prasshar (1992) described that in India, those who advocate for reforms in personal laws as well as those who are against the reform, aligned their arguments in the provisions of the Constitution itself. In the Constituent Assembly, the scope of religious freedom vis-a-vis personal law was extensively dealt with. Some of the member (*Constituent Assembly Debates, Vol VII, at540-541*) of the Constituent Assembly suggested that the personal law should be given immunity from state regulation on account of sanctity of religion attached to it. However, the majority of the members of the Assembly rejected the argument and has held that personal laws shall not be given protection from state regulation on account of religion. (*Constituent Assembly Debates, Vol VII, at 781*) Thus the members of the Constituent Assembly were clear in their approach as far as personal laws are concerned, they didn't intend to immunize the personal law from state regulation on account of religious sanctity attached to it.

The rule of gender equality is enshrined in the Constitution of India in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive favoritism in favour of women. M.Divya. (2017) in her paper entitled, "A Study on The Rights and Privileges of Women in India" analyzed about the constitutional protection to the Muslim women. The Constitution of India not only grants equality to women but also empowers the state to adopt measures of positive thoughts about women's and their rights it also a tool for eradicating the problems for women's in India by this way the discrimination in favor of women for neutralizing the cumulative socioeconomic, educational and political disadvantages faced by them. Fundamental Rights, among others ensures equality before the law, equal protection to laws, prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantees equality of opportunity to all citizens in matters relating to employment.

- Article 14 in the Constitution of India - Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women Article 15(3).
- No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex Article 16(2).
- Traffic in human beings and forced labour are prohibited Article 23(1).
- The state to secure for men and women equally the right to an adequate means of livelihood Article 39(a).
- The state to secure equal pay for equal work for both Indian men and women Article 39(d).
- The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength Article 39(e).
- The state shall make provision for securing just and humane conditions of work and maternity relief Article 42.

- It shall be the duty of every citizen of India to renounce practices derogatory to the dignity women Article 51- A (e).
- One-third of the total number of seats to be filled by direct election in every Panchayats shall be reserved for women Article 243-D (3).
- One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women Article 243-D (4).
- One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women Article 243-T (3).
- The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide Article 243-T(4).

This is only brief analysis about women protection under the Constitution of India. It might be an independent topic to study social, economical, political and religious protection to women under the Constitution of India. It gives guarantee to the women against all time discrimination. And it also tries to emancipate women's status in every sphere of life.

Legislative Provisions:

To bring out the constitutional mandate, the state has enacted various legislative measures intended to ensure equal rights, to counter social discriminate on and various forms of violence and atrocities and to provide support services specially to working women. Although women may be victims in any of the crimes be it 'Murder', 'Robbery', 'cheating', or any other crimes, the crimes which are directed specifically against women are characterized as 'Crime Against women'. These are broadly classified under two categories. Various legislative measures have been enacted by the state in order to ensure equal rights, counter social discrimination and different forms of violence, atrocities and the crimes against women so as to provide support specially to working women. The crimes that are committed specifically against women, are characterized as 'Crime against Women'. These are classified under two categories. The first category of crimes is identified under the Indian Penal Code (IPC) that areas follows –

- Rape (Sec. 376 IPC)
- Kidnapping and Abduction for different purposes (Sec. 363-373)
- Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- Torture, both mental and physical (Sec. 498-A IPC)
- Molestation (Sec. 354 IPC)
- Sexual Harassment (Sec. 509 IPC)
- Importation of girls (up to 21 years of age)

The second category of crimes against women are identified under the Special Laws. The Supreme Court of India has played a major role when it comes to rights of women. The Supreme Court has given various guidelines so as to protect women from Sexual Harassment in the case of Vishakha vs State of Rajasthan. Indian Parliament has enacted various legislations for protection of women's rights that go along the fundamental rights that are guaranteed under Part III of the Indian Constitution.

Family courts are also established in order to decide matters related to family law. In common-law jurisdictions "family courts" are statutory creations that primarily deal with equitable matters devolved from a court of inherent jurisdiction, such as a superior court. The Family Courts Act 1987 that was enacted on 14 September 1987 provides for setting up of family courts in order to promote conciliation and for securing speedy settlement of disputes related to marriage and family affairs. The State Government shall establish a Family Court for every area of the state consisting of a city or town whose population exceeds ten lakhs and for other areas in the state as it may deem necessary after consultation with the High Court and by notification. Family courts are the courts subordinate to the High Court, which has power to transfer the case from one family court to the other. The matters that are dealt in the Family Court in India include matrimonial relief which further includes nullity of marriage, judicial separation, divorce, restitution of conjugal rights, declaration as to the validity of marriage and matrimonial status of the person, property of the spouses or any of them and declaration as to the legitimacy of any person, guardianship of a person or custody of any minor children, maintenance of wife including the proceedings under the Criminal Procedure Code.

Various legislations that contain several rights and safeguards for women:

1. Protection of Women from Domestic Violence Act
2. Immoral Traffic (Prevention) Act, 1956
3. Indecent Representation of Women (Prohibition) Act, 1986
4. Maternity Benefit Act, 1961
5. Medical Termination of Pregnancy Act, 1971
6. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
7. Equal Remuneration Act, 1976
8. Dissolution of Muslim Marriages Act, 1939
9. Muslim Women (Protection of Rights on Divorce) Act, 1986
10. Family Courts Act, 1984
11. Legal Services Authorities Act, 1987
12. Minimum Wages Act, 1948
13. Mines Act, 1952 and Factories Act, 1948
14. National Commission for Women Act, 1990
15. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
16. The Muslim Women (Protection of Rights on Marriage) Act, 2019
17. Few other legislation's also contain certain rights and safeguards for women such as Employees' State Insurance Act, 1948; Plantation Labour Act, 1951; Bonded Labour System (Abolition) Act, 1976; Legal Practitioners (Women) Act, 1923; Indian Succession Act, 1925; Indian Divorce Act, 1869; Special Marriage Act (1954); Foreign Marriage Act (1969) and Indian Evidence Act, 1872 with its several Amendments. But this is not exhaustive list of legislative developments of women in India. This paper tries to draw legislative position of Muslim women in India. Sufficient legal protection has been given to them except matter covers under the Muslim personal Laws.

Policies of Empowerment of Women :

There are various government policies for the empowerment of women. Some of them have been discussed below.

National Policy for Empowerment of Women: NPEW was formulated in the year 2001 with the goal of bringing about the advancement, development and empowerment of women. It laid down detailed prescriptions for addressing discrimination against women, strengthening existing institutions that also includes the legal system, providing better access to health care and other services, providing equal opportunities for women's participation in decision-making etc.

Gender Budgeting: Gender Budgeting was introduced by the government in the year 2005-06 so as to ensure that policy commitments are backed up by financial outlays and to ensure that the gender perspective is incorporated in all the stages of a policy or programme.

National Mission for Empowerment of Women: The National Mission for empowerment of women (NMEW) was launched by the government on International Women's Day in 2010 to strengthen the overall processes that promote all-round development of women. It aims to strengthen inter-sector convergence; facilitate process of coordinating all women's welfare and socio-economic development programmes across ministries and the departments. It aims to provide a single window service for all the programmes run by Government for the women. It was named **Mission Poorna Shakti**, that implied a vision for holistic empowerment of women. It focused on –

- access to health,
- drinking water,
- sanitation and hygiene facilities for women,
- coverage of all girls especially those belonging to vulnerable groups in schools from primary to class 12th,
- higher and Professional education for girls,
- Skill development,
- Micro credit,
- vocational training,
- Entrepreneurship,
- Self-Help Groups development,
- Gender sensitization,
- dissemination of information and
- taking steps to prevent crimes against women and a safe environment for women.

National Commission for Women: It was set up as a statutory body in January 1992 under the National Commission for Women Act, 1990 in order to review Constitutional and Legal safeguards for women; recommend remedial legislative measures; facilitate redressal of grievances and to advise Government on all policy matters affecting women. It initiated various steps in order to improve status of women and worked for their economic empowerment. The commission organizes consultations, constitutes expert committees on economic empowerment of women, conducts workshops and seminars for gender awareness and took up publicity campaign

against female foeticide, violence against women, so as to generate awareness in the society against these social evils and human rights of women.

It is evident that the countries that adopt specific measures for protecting women's rights and increasing their access to resources and schooling have less corruption and achieve faster economic growth than the countries which do not.

The Role of Judiciary in Protection of Rights of Muslim Women:

Following are some important judgments that have changed Muslim women's status in India –

Mohd. Ahmed Khan vs Shah Bano Begum and Ors. - In this case Shah Bano Begum, a Muslim woman, was divorced by her husband, Mohd. Ahmed Khan, by virtue of the Triple Talaq system. The issue that came up, was that MsBano had claimed maintenance under the Code of Criminal Procedure 1973, rather than as per the personal laws. The personal laws of Islam state that a woman may be given maintenance for the 'Iddat' period, i.e., a period of three menstrual cycles or three lunar months, along with the 'Mehr', i.e., the money promised to the bride, at the time of marriage. Beyond these two, there is hardly any legally enforceable way of maintaining the woman for life. The Indian law, on the other hand, provides for maintenance for life, barring some exceptions. The court upheld that the plaintiff and the defendant being Muslims, were to be governed by the Muslim Personal Law. However, since the petition was filed under the Code of Criminal Procedure, the lower court, the High Court and the Supreme Court passed their judgements, favoring Ms Shah Bano. However, this judgement was opposed by the AIMPLB (All India Muslim Personal Law Board), as they claimed that adjudication of Personal laws was beyond the jurisdiction of the courts. The Shah Bano's Case had received a lot of varied public stances. Muslim women vehemently defended the Supreme Court judgement of husbands having to maintain the wife. The then government had passed a legislation, termed as 'The Muslim Women (Protection of Rights on Divorce), 1986', and aimed to overturn the judgement of the Supreme Court. According to this legislation, Muslim women were entitled to a 'fair and just' amount of money within the 'Iddat' period, beyond which, the husband was to have no liability.

Ahmedabad Women Action Group (AWAG) v. Union of India- Muslim Personal law allows Muslim men to have four marriages, along with the right to divorce, under the concept of Talaq, whereby, the husband has the authority to divorce by the utterance of the term 'Talaq', without judicial methods, and this may happen without her consent. The Public Interest Litigation (PIL) had been filed by the AWAG, the case addressed both above mentioned issues, along with some others.

The PIL addressed five major issues. They were:

- to declare Muslim Personal Law which allows polygamy as void as offending Articles 14 and 15 of the Constitution.
- to declare Muslim Personal Law which enables a Muslim male to give unilateral Talaq to his wife without her consent and without resort to judicial process of courts as void, offending Articles 13, 14 and 15 of the Constitution.
- to declare that the mere fact that a Muslim husband takes more than one wife is an act of cruelty within the meaning of Section 2 (viii) of Dissolution of Muslim Marriages Act. 1939.
- to declare that Muslim Women (Protection of Rights on Divorce Act, 1986 is void as infringing Articles 14 and 15.
- to further declare that the provisions of Sunni and Shia laws of inheritance which discriminate against females in their share as compared to the share of males of the same status, void as discriminating against females only on the ground of sex.

The PIL rightly raised these issues but the court had not given any reformative decision and on the basis of customary laws decided the case. In the light of above contentions, the court was of the opinion that India and Indian Muslims have been governed by personal laws, regardless of the time period. It was of the opinion that an interference by the court would lead to several undesirable outcomes, as the contrary adjudication of personal laws was beyond the jurisdiction of the courts. The petition was therefore dismissed.

Danial Latifi and others v. Union of India- After the landmark judgement of Shah Bano's case, dismissal of the AWAG case and differences among the Indian Judiciaries, there was a chaos about the Muslim personal law. Further, for nullifying Shah Bano's judgment. The parliament passed and enforced The Muslim Women (Protection of Rights on Divorce) Act, 1986, which provided that under section 3(1)(a), a divorced woman is entitled to reasonable and fair provisions, and maintenance within the 'Iddat' period. The Act of parliament showed appeasement policy of the government. Because of all these reasons so many petitions have been filed in the supreme court and various high courts. These writs (Leading petitioners name Danial Latifi) challenged the above Act, claiming that it was unconstitutional, and in violation of Article 14 and 21 of the Constitution of India. In this case, the petitioner, in his argument said that that the Act is unconstitutional and has the potential of suffocating the Muslim women, and undermines the secular character, which is the basic feature of the Constitution. There is no reason to deprive the Muslim women from the applicability of section 125 of the Cr.P.C. 1973 and present act is in violation of article 14 and 21. To this, the respondent said that personal laws are a legitimate basis for discrimination and therefore does not violate article 14 of the Constitution. The Court thereby held that the said Act was not in violation of Article 14 and 21 of the Indian constitution. But interpreted the Act with corroboration of other laws that some stake holder other than husband are responsible to maintain Muslim women after divorce, specially who are entitled to inherit that woman's property and in absence of them Waqf Board shall be responsible.

Shamim Ara v. State of U.P.- In this case the petitioner was married to the respondent in 1948, in accordance with the Muslim personal law, and subsequently had four sons. The wife filed an application in the court, under Sec. 125 of the Cr.P.C., claiming that her husband had deserted her and that there was cruelty by the husband. The family court denied her maintenance, on the grounds that she had already been divorced. However, a sum of Rs. 150/- was granted as maintenance for one son, till he attained majority. The petitioner denied having been divorced. One of the major points of conflict, was that ‘Is a divorce valid if it is not directly communicated to the wife (In this case the husband said to have dissolved marriage by means of triple Talaq in presence of neighbors) and the said divorce communicated to the appellant become effective from the date of filing the written statement by the husband in the proceeding?’ To this, the Supreme Court was of the view that the mere plea of a Talaq, would not validate the same. The Quranic procedures of obtaining a Talaq need to be fulfilled, i.e., Talaq has to be pronounced in the Quranic injunction. The following case had several reactions, the most popular one being that the concept of triple Talaq was both demeaning as well as cruel to Muslim women. There were several other contentions, however, the idea that triple Talaq was immoral stuck to the minds of people.

Shayara Bano v. Union of India and others- Long battle on the legality of triple Talaq stopped after the verdict of this case. In this case one Rizwan Ahmad (Husband) pronounced “*Talaq, Talaq, Talaq*” in the presence of two witnesses and delivered “*Talaq Nama*” dated 10-10-2015 to Shayara Bano (wife). The wife challenged the same, praying for a writ to be issued by the Supreme Court declaring the divorce as “*void ab initio*” on the grounds that it violated her fundamental rights. As a consequence, constitutional validity of *Triple Talaq* was called into question before a Constitution bench of the Supreme Court comprising of 5 judges.

There are 3 Judgments on the case (Minority Judgments, of CJI Khehar and J. Nazeer, written by CJI Khehar; two Majority Judgments, one written by Kurian J. and another written by Nariman J. on behalf of himself and Lalit J). The focusing issues in this case were the following:

1. Is Talaq-e-Biddat Islamic in nature?

2. Whether the Muslim Personal Law (Shariat) Act, 1937 confers statutory status to the subjects regulated by it or is it still covered under “Personal Law” which is not “law” under Article 13 of the Constitution as per previous the Supreme Court judgments?

3. Is it protected by Article 25 of the Constitution?

The Hon'ble Supreme Court heard the petition for prohibiting the practice of Triple Talaq through a Constitution bench comprising of 5 Judges from different religions - Justice Kurian Joseph, a catholic, Justice UU Lalit, a Hindu and Justice RF Nariman, a Parsi, Chief Justice Khehar, a Sikh and Justice Abdul Nazeer, a Muslim. On August 22, 2017, this bench declared **Triple Talaq or Talaq-e Biddat** as unconstitutional by a 3:2 majority. Justices Kurian, Lalit and Nariman delivered the majority judgement while Chief Justice Khehar and Justice Nazeer dissented with the majority. The minority bench observed that: "*we are satisfied, that this is a case which presents a situation where this Court should exercise its discretion to issue appropriate directions under Article 142 of the Constitution. We therefore hereby direct, the Union of India to consider appropriate legislation, particularly with reference to 'Talaq-e-Biddat'. We hope and expect that the contemplated legislation will also take into consideration advances in Muslim 'personal law' – 'Shariat', as have been corrected by legislation the world over, even by theocratic Islamic States. When the British rulers in India provided succor to Muslims by legislation,*

and when remedial measures have been adopted by the Muslim world, we find no reason, for an independent India, to lag behind". While dissenting the majority view the Minority bench observed as following: *"Till such time as legislation in the matter is considered, we are satisfied in injuncting Muslim husbands, from pronouncing 'Talaq-e-Biddat' as a means for severing their matrimonial relationship. The instant injunction, shall in the first instance, be operative for a period of six months. If the legislative process commences before the expiry of the period of six months, and a positive decision emerges towards redefining 'Talaq-e-Biddat' (three pronouncements of 'Talaq', at one and the same time) – as one, or alternatively, if it is decided that the practice of 'Talaq-e-Biddat' be done away with altogether, the injunction would continue, till legislation is finally enacted. Failing which, the injunction shall cease to operate"*.

Justice Kurian Joseph has boldly shown his disagreement on the Minority view of CJI by stating that: *"I find it extremely difficult to agree with the learned Chief Justice that the practice of triple Talaq has to be considered integral to the religious denomination in question and that the same is part of their personal law."* Majority view of Justices R.F Nariman and U.U Lalit [Majority- Judgment written by RF Nariman] The bench held that the practice of Triple Talaq is arbitrary in nature by observing the following: "It is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the 393 fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act (Muslim Personal Law Shariat Application Act), insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression "laws in force" in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq Since we have declared Section 2 of the 1937 Act to be void to the extent indicated above on the narrower ground of it being manifestly arbitrary, we do not find the need to go into the ground of discrimination in these cases, as was argued by the learned Attorney General and those supporting him."

Taking into consideration the arguments of various religious groups and aggrieved petitioners, the Hon'ble Supreme Court with the majority ration of 3:2 set aside the practice of Triple Talaq or Talaq-e- Biddat by holding it unconstitutional and arbitrary in nature; the Hon'ble Court further directed the Government of Union of India to consider the views taken by the court in the Judgment and lay down a proper legislature to regulate the practice of divorce in Muslim community.

The Muslim Women (Protection of Rights on Marriage) Act, 2019:

The Muslim Women (Protection of Rights on Marriage) Bill, 2017 (Triple Talaq Bill) Taking into consideration the views of the Hon'ble Supreme Court in the Judgment of Shayara Bano Vs. Union of India, the Hon'ble Law Minister Shri Ravi Shankar Prasad took an initiative to present the *Triple Talaq Bill* before the Lower House, Lok Sabha, which was passed by majority by the Lower house on December 28, 2017. The Statement of Objects and Reasons of the Bill notes that the judgment has not worked as a deterrent in bringing down the number of instances of triple Talaq. It explains, "It is, therefore, felt that there is a need for State action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce. In order to prevent the continued harassment being meted out to the hapless married Muslim women due to Talaq-e-Biddat, urgent suitable legislation is necessary to give some relief to them. The Union Government claims that the legislation would help

in ensuring the larger Constitutional goals of gender justice and gender equality of married Muslim women and help sub-serve their fundamental rights of non-discrimination and empowerment. We are constantly moving forward in post-colonial secular India and thus the resistance to pressing reforms in personal laws appear meaningless. A common, modern and secular Special Marriage Act of 1954 has already given all Muslim couples the option to register their marriage under Act. Similarly, Muslim Women (Protection of Rights on Divorce) Act 1986 empowered criminal courts to enforce some of the rights generally available to divorced women under the Islamic law. There is a need of reforms within personal laws to reconcile with gender justice norms of civil code without disturbing the broader framework of Islam and at a time when the political climate of the country is more conducive than counter-productive. The most radical and progressive law of Islam of past cannot be a regressive law for today. Reform is certainly needed, but what would be the nature of reform? The problem lies in not only the non-codification of Muslim Personal laws but also the absence of officially recognized Sharia Court which ultimately result into the administration of personal laws cases by the State courts based on the Indo-Muslim judicial precedents which often produces constitutional and humanitarian crises. Is UCC the magic alternative? The answer is purely dependent upon whose interests would be represented in the new UCC. We don't think that UCC will be the sole solution. The extreme, barrier against the concern of equity across gender is not solely the personal laws but the cultural preferences and pressures of and on the women to follow customary rules without questioning the marital decisions, unilateral Talaq, property disentanglement, polygamous inequity and temporal maintenance in the court of law.

Later, the Muslim Women (Protection of Rights on Marriage) Bill 2018 was proposed which intended to protect Muslim women. The bill was passed in 2018 and 2019 by the *Lok Sabha*, but lapsed after not being passed by the *Rajya Sabha*. On 19 September 2018, noting that the practice of instant triple Talaq had continued unabated despite the 2017 judicial mandate, the government issued The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018. An ordinance introduced into the Indian parliament lapses if either the Parliament does not approve it within six weeks of reassembly, or if disapproving resolutions are passed by both houses. Hence, a new bill named The Muslim Women (Protection of Rights on Marriage) Bill, 2018 was introduced in the Lok Sabha by Union Law Minister, Ravi Shankar Prasad. As the Triple Talaq ordinance of 2018 was to expire on 22 January 2019 and also because The Muslim Women (Protection of Rights on Marriage) Bill, 2018 could not be passed, the government promulgated the ordinance on 10 January 2019. On 12 January 2019, the president approved the Ordinance 2019. The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 was repealed on 31st July, 2019 when the bill was passed by both houses of the legislature, Lok Sabha and Rajya Sabha, and was notified by the President of India in the official gazette, and thus became an Act of Parliament. The Act has 8 sections.

The act statutorily provides:

- a. Any pronouncement of Talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.
- b. Any Muslim husband who pronounces Talaq upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.
- c. A married Muslim woman upon whom Talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.
- d. A married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of Talaq by her husband, in such manner as may be determined by the Magistrate.
- e. An offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom Talaq is pronounced or any person related to her by blood or marriage;
- f. An offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom Talaq is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;
- g. No person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom Talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

Concluding Observations :

Historically, the explanation of Islam has been largely a male venture. Although the first convert to Islam was a woman (Muhammad's first wife, Khadijah), and women played an important role in the spread of hadith (the sayings and deeds of the prophet Muhammad) and the expansion of Sufism, women have generally been marginalized from the male centers of Islamic interpretation, including both scripture and law, and leadership roles in public worship. But this has changed in the twentieth century, the joint spread of literacy; the accessibility and encouragement of public education for both girls and boys; expansion of job opportunities for women; and the rising number of conversions to Islam from other religious traditions, mainly in the West, have added to the aspiration of Muslim women for greater empowerment in the practice and understanding of their faith. As in other areas of life, Muslim women have proven to be inventive, creative, and keen to claiming ownership of and responsibility for their faith lives, both individually and communally. This is in spite of the challenges they have often faced in gaining access to the fitting religious training facilities and establishing reliability with the male religious establishment, particularly conservatives. Today, Muslim women are active in Qur'an study circles, mosque-based activities, community services sponsored by religious organizations, and Islamic education, as both students and teachers. There are a rising number of female Qur'an reciters, Islamic lawyers, and professors of Islamic studies throughout the world. Women are progressively more present in highly noticeable positions of religious prominence, although, to date, few have significant positions in the religious establishment and none have achieved the highest positions, such as grand ayatollah or Mufti.

Modern Muslim women's activism in claiming an interpretive role within the Islamic tradition tend to focus on three key aspects of religious life: reciting, teaching, and interpreting the Qur'an; participating in and leading public worship; and interpreting Islamic law. There is a multiplicity of voices in these debates, some conservative and some self-designated "progressive," with some claiming a position of equality with men and others affirming certain unique roles for men and women. Vibrant, passionate, and often contentious, these debates are among the most important in defining Islam in the 21st century.

The explanation of Islamic law (shariah) is one of the most controversial issues for Muslim women today, as change to the law are viewed as grave to the expansion of women's sensible rights. Because the roles of mufti (person issuing a legal opinion, or fatwa) and judge are limited to men, some women seek to obtain these roles in order to have a voice in the discussions. For instance, in 2006, the American Society for Muslim Advancement structured a conference on Women's Islamic Initiative in Spirituality and Equity that resulted in the configuration of a women's advisory council to provide opinion opinions and claim a voice for women's rights in the field of Islamic law. A select core group of women scholars will examine certain legal issues, but then return the proposed position to the collective group to vote on each recommended position. The mass view would eventually be circulated globally. Anticipated topics to be addressed include dress, equality in the mosque, female imams, honor killings, and the hudud ordinances on the books in countries like Pakistan, Iran, Saudi Arabia, and parts of Nigeria. These ordinances prescribe the death penalty for Zina (sexual activity outside of marriage), and often include rape in the category of Zina.

Gender inequality in India stems from deep rooted cultural patriarchy as it is reflected in context of property rights, without having any religious backing. Such inequality is further endorsed by discriminatory laws. Deep rooted patriarchal mindset which pervades the Indian society, cutting across the religious lines, is the basic reason for gender inequalities. Even though with the Shayara Bano judgement, a ray of hope has lighted that as misconceptions about Talaq disappear, Khula might also get a center stage, it is yet to be seen how the community responds to the judgement. With respect to the despicable condition of the Muslim women in India, the basic reason remains the non-assertion of rights which Shariat already guarantees them. This non assertion of rights is due to complete ignorance of the Usul-al-Fiqh in Muslims, especially women. Popular misconceptions floating around in the media which paint a picture of Shariat as being oppressive towards women, does not help the women at all rather it reinforces the patriarchy already inherent in the society. Absence of codification of Muslim personal law adds to the problem. A discourse on Usul al-Fiqh in India, in absence of codification, is neigh impossibility. It is extremely important that Muslims in India, both men and women, should be made aware of the Usul al-Fiqh so as to lessen the gender inequality existing in the society.

When it comes to Personal Laws of India, the government of India, civil society, and the Judiciary have made many efforts in order to bring about gender equality but cumulative bias and discrimination that have taken place over centuries will take enough time to get to the desired level of acceptance and expectations. The challenges against women of our society is not only the legal framework that needs to be put in place with regard to 'rights' of women among various religions and ethnic populations but the implementations of the existing laws and attitude of the respective societies towards their women folk and the law enforcing agencies. We have also to move away from the 'Patronizing' mindset and move the legislative wheel to come out of the concept that women have to

remain dependent on a male family member from cradle to grave. From being under the custody of father, brother, husband and son during the various stages of her life the women now needs to be treated on the principles of equality and partnership. The modern, emancipated and educated women is no longer willing to accept the status-quo and the yearning of change has now turned into a very strong social and political force and it would be in the interest of our country and society to acknowledge the groundswell of support for change and shape the future. When women are equipped with economic independence, they will be able to take firm decisions against their oppression in families and society. The most important resource that liberates people from poverty and empowers them is knowledge. Literacy of women would lead to more and better economic opportunities and hence better income levels, which in turn would lead to equality and empowerment of women. Even today, the struggle for establishing her independent identity is being pursued through with more vigor. Women were no longer willing to submit to standard set for them by men – the standard that have implied complete subordination and even degradation of all classes of women

In 21st century, the demands of the women's movement are different. Their priorities have changed. In today's world education is the only way which can pull out the women from their cubed, cribbed and confined life of females. Then the second step is a career for women through which she can gain financial independence. After gaining financial independence her social status had changed. All we need is to unite women in order to fight their own cause and free themselves from social vices. We do not want to be mainstreamed into a polluted stream but call for deep and structural changes to the existing global system of devolution of power, role in decision making and resource sharing. This including enacting policies that recognize women's problem and redistribute the unequal and unfair burdens on women and girls.

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