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Rights of Muslim Women in India

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ABSTRACT

“And for women are rights over men similar to those of men over women.”

- (Qur'an, 2: 228)

The only and holy scripture of Muslim personal law give women and men equal rights and status then why not today's world? Constitution of India protects each and every citizen of this country, not only give equal rights but ensure them to practice in real life. Here, religion has been governed by personal laws. Article 25 to 28 of the Constitution protects the rights to religion. India is a secular country which means that State shall provide equal status to all religion, neither religion is above anyone. The lives of girls and women continue to be controlled by the patriarchal belief systems and structures. Men take all decisions for women. The process of gender discrimination begins even before birth and continues throughout the life of a female. Though Muslim personal laws in India have never been systematically codified but the execution of new law is a step towards ensuring gender equality and strengthening constitutional, fundamental and democratic rights of the Muslim women. Not only Parliament but Indian Judiciary with change give such landmark judgment which really protects the right of Muslim women.

Keywords: Rights, Muslim Personal law, Islam, Muslim women.

I. INTRODUCTION

Muslims constitute India's largest minority as well as the second largest Muslim population in the world after Indonesia. Educationally, Muslims constitute one of the most backward communities in the country causing concern. In India Muslims are governed by Muslim personal laws and most of them are uncodified and can only be found in primary source of law. In India, Muslim personal laws always been debatable and political issue, always considered as sensitive subject-matter and topic of controversy. There is some misconception about the term equality between the Muslim men and women. There are some grounds which proves that rights of Muslim men and women are equal in every aspect of life and law. The law which governs Muslims and their life is “Shariyat” and in Shariyat law nowhere it is

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mention that women are inferior to men or men are superior to women. Even in holy Qur'an the laws related to inheritance, marriage, custody and Adoption are based on mathematical fraction not on Sexism. India is a secular country and its citizens deserve to be happy, content and should always have the right to equality and justice. The very fact that the Hon'ble Supreme Court of India has chosen to acknowledge the rights of those who truly deserve it, is commendable and a positive step towards the injustice that women are subjected to.³

II. RIGHTS PROVIDED IN SPIRITUAL TEXT

Pre-Islamic period of Arabia was deeply rooted in evil doings and immoralities, also known as Jahiliyyah period where birth of a girl child considered as sin and infanticide were much more prevailed. With the origin of Qur'an, status of women are elevated and recognized as same as men. Large part of Muslim Personal law is still uncodified and still rely on the Qur'an, Sunna and Hadith which are valid and legitimate sources of Muslim Personal Law. In Muslims Qur'an is the very essence of the religion and this holy book gives rights to the women and they are considered as equal as man.

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".

- An-Nisa, 4:1

Further the Qur'an has stated that-

He (God) it is who did create you from a single soul and there from did create his mate, that he might dwell with her (in love)...

Al-A'raf, 7:189⁴

According to this holy source man and woman are created from one origin and neither of them is superior or inferior to each other, so their right should be equal. They are created from one and have same essence of life. Both are equal in the eyes of the Supreme Authority that is Allah (God).

III. MARRIAGE AND DIVORCE RIGHTS

In Islam Marriage is recognized as base of the society and consider as contractual union of two parties where the consent is most important ingredient of valid marriage. *The Arabic*

³ Anubhav Pandey, Top five judgment on Legal Rights of Muslim women in India, June 19, 2017, <https://blog.ipleaders.in/muslim-women-rights/>.

⁴ The status of woman in Islam, Dr. Muhammad Tahir-ul- Quadri, <https://www.minhaj.org/english/tid/2934/The-Status-of-Women-in-Islam.html>.

term 'Nikah' is used to describe marriage which means "the Union of Sexes" which became a civil contract in Muslim Law, as intended by the Prophet Mohammed. In Islam marriage give women higher social status. Islamic law gives to the woman a definitely high social status after marriage.

a. Restricted Polygamy

Polygamy is only encouraged by the Quran where it concerns "oppressed or the orphans among women", if justice can be done by marrying more than one. If justice cannot be done by marrying more than one from among the "oppressed (yatama)" class of women, then the Koran suggests monogamy as the ONLY acceptable marriage bond in Islam. "...THEN MARRY ONLY ONE!" - (Qur'an, Surah An-Nisa, 4:3).

Islamic laws are not restricted to strict monogamy but a person has to treat all his wives equally with love and affection. For a human, it is not possible to treat each and every women equally and do justice with them. In India, a man can have four wives not more than. If a man wants to marry fifth wife than he has to divorce anyone among four existing wives, otherwise the marriage will consider as voidable.

b. Age of Puberty

In case the girl married during minority, she is entitled to a dissolution of her marriage before attaining the age of 18 years. Even the consummation of marriage before the age of puberty does not deprive the wife of her right of repudiate the marriage.

c. Right to get Maher

One of the important right of woman who is getting married is entitlement of Dower (Maher). Maher is the necessary condition to the marriage. If it is not specified than it is void. Where the marriage is consummated, the wife is entitled to the whole mount; if not, to the half dower.⁵

d. Divorce rights

Divorce is another important feature of marital rights. Where there is a valid wedlock, the right of divorce parallel exist. A wife cannot divorce her husband of her own accord. She can divorce the husband only when the husband has delegated such a right to her or under an agreement. Under an agreement the wife may divorce her husband either by **Khula or Mubarat**.

A verse in the Holy Quran runs as:

⁵ Mulla, Islamic Law, Page No.269, Lexis Nexis: Buttersworth Publications.

"And it 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."

The word khula, in its original sense means "to draw" or "dig up" or "to take off" such as taking off one's clothes or garments. It is said that the spouses are like clothes to each other and when they take khula each takes off his or her clothes, i.e., they get rid of each other.⁶

Apart from these two kinds of divorce there are three other categories which are as follows:

- i) **Talaq-i-tafweez:** - An agreement made between the parties to marriage whereby it is provided that the wife should at liberty to divorce her in specified contingencies is valid. Such an agreement can be entered before or after marriage. Such delegation of power of divorce to the wife may be permanent or temporary that is for a specified duration. But the condition should not be opposed to public policy and should be a reasonable condition.⁷
- ii) **Lian:** - **It is an allegation of adultery to the wife by the husband** who entitles her to file a suit for dissolution of the marriage and get a divorce if she proves the charge to be false. According to the Muslim law, till a decision is passed by the Judge, the marriage subsists and there are mutual rights of inheritance if, either should happen to die before the decree is passed.⁸
- iii) **By Dissolution of Muslim Marriage Act, 1939:** - As per the rules, here are the ways in which a Muslim woman in India can divorce under Dissolution of Muslim Marriage Act, 1939 –
 - **When a husband goes missing for a period of 4 years** that is, whereabouts of the husband have not been known for a period of four years.
 - A divorce can be granted when the husband has neglected or has failed to provide for her maintenance for a period of two years.

⁶ Setu Gupta, The Concept of Divorce under Muslim Law, <http://www.legalserviceindia.com/article/1393-Divorce-under-Muslim-Law.html>.

⁷ Swetha Ravidas, Divorce under Muslim Personal law talaq and talaq-e-tafweez, April 25, 2020, <https://legalsarcasm.com/legal-notes/divorce-under-muslim-personal-law-talaq-and-talaq-e-tafweez/>.

⁸ Nikieta Aggarwal, How Muslim women can divorce her husband as per the Muslim law, January 7, 2017, <https://blog.ipleaders.in/split-according-muslim-law/#:~:text=2%5D-,Lian,the%20charge%20to%20be%20false.>

- When the husband has been sentenced to imprisonment for a period of seven years or upwards. No divorce is to be granted until and unless the sentence is proved by the proper court.
- When the husband was impotent at the time of the marriage and continues to be so provided the court will call the husband in this case to justify his stand.
- When the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease.
- When woman having been given in marriage by her father or another guardian before she attained the age of fifteen years, repudiate the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated.
- Cruelty toward wife is also a ground for divorce.

IV. PROPERTY RIGHTS

In India, Muslim do not have classified rights over property. They are governed by Shia and Hanafi School of law. They are governed by Muslim Shariyat act law, 1937. Woman had always full and absolute control over the property which she acquire by any way. There are some classification of property which may acquire by Muslim woman as follows: -

a. Property rights of Muslim daughter

In inheritance, the daughter's share is equal to one half $1/2$ of the son's in keeping with the concept that a woman is worth half a man. Daughters have rights of residence in parent's houses, as well as the right to maintenance until they are married. They may acquire property by the wills but it must not exceed $1/3^{\text{rd}}$ of the total property of the person who made the will.

b. Property rights of Muslim Wife

Islamic law provides financial security to a Muslim woman, by virtue of marriage. At the time of marriage, a Muslim wife is entitled to receive total money or property from her husband which is also known as Dower (Maher). A Muslim cannot give more than $1/3^{\text{rd}}$ of his property by will, through this the wife may inherit a higher amount of will when there are no heirs for the estate as prescribed by the law.

c. Property rights of Muslim Widow

In Islamic law, widow gets $1/8^{\text{th}}$ share in case there are kids and $1/4^{\text{th}}$ share when there are no children. If more than one wife, the property share may come down to $1/16^{\text{th}}$.

d. Property rights of Muslim Divorced Woman

A divorced woman, after *talak*, is eligible for maintenance up till 3 months by her husband till the *iddat* period is over. Post which, the responsibility for maintenance reverts to the women's parental family. If the divorced woman has financially independent children, who are in a position to support the mother, the responsibility is again on them. Section 125 of Criminal Procedure Code, 1973 states that every woman can claim maintenance from her husband. Husband who has sufficient means and who refuses to take care of his wife or maintain her whoever needs it the courts makes it mandatory for such husbands to maintain their wives with monthly payments.

e. Property rights of Muslim mother

A Muslim mother qualifies to receive and inherit from her children, provided they are independent and capable to earn for themselves. If her dead son had children, she is eligible to get 1/6th of his property. If the dead son has no children, she is eligible for 1/3rd share of the property.⁹

V. CONSTITUTIONAL RIGHTS

These rights given to each and every citizen of the country without any discrimination. Fundamental Rights Article 14 confers on men and women equal rights and opportunities in the political, economic and social spheres. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste and sex. Article 15 (3) makes a special provision enabling the State to make affirmative discrimination in favour of women. Article 16 provides for equality of opportunities in matters of public appointment for all. Article 21 provides for protection of life and personal liberty. Article 51 makes it a fundamental duty of all Indian citizens to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional and sectional diversities, to renounce practices derogatory to the dignity of women. Article 21 A (The 86th Constitutional Amendment Act 2002) makes education is now a fundamental right of all children of the age of 6-14 years.

Article 25 -28 gives right to practice, profess and propagate religion. Articles 29 and 30 of the Constitution of India defend the rights of the minorities to conserve the language, script and culture and to establish and administer educational institutions of their choice whether

⁹ M.M. Kotwal, Property rights of Muslim Women in India, September 3, 2020, <https://www.pathlegal.in/Property-Rights-Of-Muslim-Women-In-India-blog-2385975>.

based on religion or language¹⁰

VI. RESPONSE OF THE JUDICIARY AFTER INDEPENDENCE

In India, Muslims are governed by Personal laws, but article 25 of the Constitution of India provides the provision regarding right to religion which include right to profess, practice and propagate any religion. However, Constitution is supreme law of the land but it fails to apply when comes to personal laws. Supreme Court with change in time and circumstances with their ability give such a decision and judgment which could protect the right of Muslim women. Here is some landmark judgment of the Supreme Court which have change the Indian history: -

a. Mohd. Ahmed Khan v. shah Bano Begum and Ors.¹¹

One of the landmark judgment of the Indian Judicial system which change the history, pertaining to Muslim women was Shah Bano Begum Case. Shah Bano, a Muslim woman, was divorced by her husband, Mohd. Ahmed Khan, by virtue of the Triple *Talaq* system.

The issue raise in this case, was that Shah Bano had claimed maintenance under the Code of Criminal Procedure, 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, along with the 'mehr', i.e., the money promised to the bride, at the time of marriage after that it is duty of parent to Maintain their divorced daughter.

Judgment: -The plaintiff and the defendant being Muslims, were to be governed by the Muslim Personal Law. Since the petition was filed under the Code of Criminal Procedure, the district court, the High Court and the Supreme Court passed their judgements, favouring Ms Shah Bano.

Though Shah Bano Begum won the case in the court but lose in real life because 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 Act, 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.

b. Danial Latifi and anr. v. Union of India¹²

Another landmark judgment was Danial Latifi case. After the Shah Bano begum case the parliament passed and enforced The Muslim Women (Protection of Rights on Divorce) Act,

¹⁰ Constitution of India, 1950

¹¹ 1985 SCR (3) 844

¹² (2001) 7 SCC 740

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. One of the council, i.e, Danial Latifi challenged the above act, claiming that it was unconstitutional, and in violation of Article 14 and 21.

Judgment: - Petitioner challenge that there is no reason to deprive the Muslim women of the applicability of section 125 of CrPC and present act is in violation of article 14 and 21. Contrary to this issue, 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.

c. Shayara Bano v. Union of India and Ors.¹³

Landmark judgment which change and affect the Muslim personal law is Shayara Bano case. The PIL was initiated by Shayara Bano, a resident of Uttarakhand, who was constantly abused by her husband and eventually divorced by way of Triple *Talaq* at one go. The PIL filed by Shayara Bano has led to a ray of hope for millions of women who have suffered because of immoral and unfair practice of Triple Talaq.

Judgment: -The Supreme Court laid down this judgment on August 22, 2017 in 3:2 majority holding the practice of *Triple Talaaq* unconstitutional. The majority upon lengthy discussion came to the conclusion that *Triple Talaq* is not an essential religious practice but minority bench found this practice to be an essential religious practice.¹⁴

VII. SUGGESTION AND CONCLUSION

Muslim Girls and women are lagging behind their male counterparts and as compared to other religious minorities except those listed under "Others" in the Census 2001. We live in a Country that believes in Equality but sometime the term "equality" seems to be vague as it does not able to give that status to the woman which she deserves. The rules, regulations and laws are only made by the appropriate authority but very less came into existence. Half of the public is still unaware of their rights and duties and still believes in orthodox and dogged custom which imposes upon them that man are superior not women. The Status of women in different human societies of the world is different. Whether, it is developed, developing or under developed societies. Muslims occupy an important position in Indian society. They are the principal minority of this country. According to 2011 census, Muslims constituted 13.4%

¹³ (2017) 9 SCC 1

¹⁴ Hemant Varshaney, Shayara Bano v. Union of India – Triple Talaq – Case summary, August 24, 2018, <https://lawtimesjournal.in/triple-talaq/>.

of India's total population with majority in Lakshadweep and Jammu and Kashmir. If we really want to know about Muslim women's rights, we need to ask Muslim women. Not a single day go spare of news about Muslim women rights violation. In 21st Century till today,¹⁵ Muslim women are fighting for their rights. This is the high time to implement Article 44 i.e. Uniform Civil Code in India instead of regulated by uncodified and different different personal laws according to one's religion. It concludes that minorities in the minority i.e. Muslim women are still forced to live a secluded and submissive life.

¹⁵ Ministry of Women and Child Development, An Analytical Study of Education of Muslim Women and Girls in India Available at <http://www.jeywin.com/wp-content/uploads/2009/12/AnAnalytical-Study-of-Education-of-Muslim-Women-and-Girls-in-India.pdf>.