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Travesty of Rights of Muslim Women in Marriages: Are the Centuries Old Qur'anic Verses Prejudiced or Misinterpreted?

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ABSTRACT

The Muslim Women (Protection of Rights on Marriage) Act, 2019 draws its roots from the centuries old Islamic law and presents an alleviating stance on the condition of Muslim women in India. Muslims are a minority in India and the current act looks promissory in the front of being a symbolical representation of India's stand against gender discrimination. This piece of legislation is regarded way ahead for the Muslim women as it tries to correct the wrongs perpetrated against them and thereby end the various forms of discrimination. The old scriptures and texts act as solid evidence that women in Islam had a strong footing and were considered equals to their male counterparts. But the translations throughout the years change all of that to males overpowering females and the laws being biased. The Muslim Women (Protection of Rights on Marriage) Act, 2019 presents a threshold of laws to deal with every single principle which is prejudiced in its essence.

Keywords: Muslim Women, Rights, Marriage, Islam.

I. BACKGROUND AND INTRODUCTION

The applicability of personal law in India differs from person to person and religion to religion. Muslim women have been combating for equal rights under the Islamic Law that governs the sacred ceremony of marriage and the rights that come along with it for decades together. The All India Muslim Personal Law Board is one of the pivotal and influential body amongst Muslim community and it has faced mixed receptance of appreciation as well as criticism. Time and again, the board have rejected the proposal to modify the Muslim personal law as it is a common belief that it might infringe or hinder the basic principles of Islam whereas, on the other hand, Quran does not welcome a system that is based on a patriarchal system. Muslim law with respect to rights within marriage, divorce and inheritance has encouraged numerous

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Muslim women activists to claim and fight for their rights.

*“Personal laws in India and especially Muslim personal law has been a major political and controversial issue and has been extensively debated. Since independence it has been a rallying point for not only Muslim organisations, but also for Hindu rights-wing politics.”*³

As per the common belief in Muslim law, marriage is a contract where the main objective of the parties is procreation and legislation of children. They are referred to be a kabinnama and failure to prove the Kabinnama cannot possibly be held to disprove the marriage.

*“In the case of the marriage under the Muslim law, it is to be noticed that neither writing nor any religious ceremony is essential. All that is necessary is that there should be a proposal and an acceptance in the presence of witness.”*⁴

In Islam, all marriages are solemnised by making the women the principal contracting party as well as the object of the contract.⁵ Marriage may be established with the help of direct proof or by indirect proof i.e. by presumption drawn from certain factors. If the conduct of the parties is inconsistent then the presumption is not allowed. Further on, one of the most important and well-established principles of Islamic law is that nikah cannot be performed without the free consent of the bride. She has the right to agree or refuse certain terms and conditions in marriage. However, the issue arises regarding how to ensure the free consent of the Muslim women as many Muslim women who do not want to give the consent are forced by their respective families for the same. Therefore, there is an increasing need to apply and follow all the holy verses of Quran in letter and full spirit.⁶

After the 1986 *Shah Bano Case*⁷, and the enactment of the Muslim Women (protection of Rights on Divorce) Act thereafter, the debate has assumed a central position, and majority identity politics have gained mileage, evident in the weakening of centrist secular parties. In the absence of a proper codified law resulting in the ambiguity of various rights and interpretations of the holy Quran, Muslim women are at a far more vulnerable position.

Various efforts and attempts have been taken to comprehend the factual situation and one of such is the ordinance of The Muslim Women (Protection of Rights on Marriage) which is passed to be declared as a bill. The bill covers an arena of aspects related to divorce but fails at

³ Razia Patel, Indian Muslim Women, politics of Muslim personal Law and struggle for life with dignity, Economic and Political Weekly, page 44, Vol. 44, No 44 (Oct, 2009).

⁴ Dr. Nanda Chiranjeevi Rao, presumption of marriage under Muslim Law, Indian bar review, page 133, Vol. 39, issue 4, 2012.

⁵ Potzgerald, Mohammedan Law, 1932 Edn., p. 34

⁶ C.M. Trivedi vs C.B.L. Bhatnagar, (1959) 61 BOMLR 450

⁷ Shah Bano vs Union of India, AIR 1985 SC 945.

presenting the crux of other arguments.

II. CONDITION OF WOMEN IN ACCORDANCE TO ANCIENT ISLAMIC LAWS

The proposal identifying with the role of Muslim women in the past has been showcased sketchy where the fundamental practice was to externalize every pertinent datum from the Qur'an, the Hadiths, and the Sharia Law. Islam is a down to earth and practical faith. It views women as deserving individuals of regard, honour and respect. It sets out the beliefs, desires and guidelines of both the genders as moral norms administering equality and balance between the two. Previously, women took motivation from the significant other of the Prophet who in her actual pith was a given Islamic woman who adhered and carried out all her rights within the norms of the religion.

As Citrine remarks:

“The Islamic principles require a woman to be mindful of family duty and careful of her personal conduct, and with these fundamentals assured, they are not in any way restrictive of her activities, and endow her moreover with equal human rights. (1966:1)”⁸

The deterioration of Islamic civilization in the Middle Ages was conveyed by a downfall of the social condition of women. Their place in society was severely restricted. It was made resolute rigidly through writing and not by the spirit of the Qur'an. In view, it has been verified that the curtailed status and demeaning role conferred to Muslim women throughout the ages is cultural and not Islamic in origin. Islam has never shaped discrimination between men and women in the fields of education or work, though the ongoing culture of interpretation has created it. If there is any objection to a woman playing a dynamic role in the society, this is conferred to the temperament of the Eastern traditional men who seek to feel superior and "responsible" for his women. In brief, it is the customs of extra-Islamic culture that assume this behaviour and not the religion of Islam.

III. MODERN INTERPRETATION OF QURANIC VERSES

In *Le Harem politique*, English translation *The Veil and The Male Elite: A Feminist Interpretation of Women's Rights on Islam*, the Moroccan Sociologist Fatima Mernissi attacks the age-old conformist focus on Women's Segregation as a mere institutionalism of

⁸ Ruud, Inger Marie. *Women's status in the Muslim world: a bibliographical survey*. In Kommission bei EJ Brill, 1981.

authoritarianism. In Mernissi's reading of *Qur'an and Hadith*, Muhammed's wives were dynamic, influential, and enterprising members of the community, and fully involved in the Muslim Public Affairs.

The historical archives show that Muhammad consulted women and mused their opinions seriously. As per records, *Umm Waratah*, being one of the wives of the Prophet, was given *imam* (lead a prayer in the mosque) over her domiciliary. Women contributed significantly to the beatification of the Qur'an. A woman is identified to have reformed the authoritative reigning of Caliph Umar on dowry. Women could pray in mosques similar to men, involved in hadith transmission, gave sanctuary to men, engaged in marketable transactions, were invigorated to seek knowledge, and were both mentors and aides in the early Islamic period.

Muhammad's last wife, *Aishah*, was a renowned expert in medicine and history. The Quran refers to women who swore an oath of adherence to Muhammad independently of their male kinfolds. Caliph Umar prearranged women to aid as officials in the market of Medina. Biographies of eminent women, especially in Muhammad's household, show that women behaved comparatively unconventionally in early Islam. In Sufi circles, women were recognized as teachers, advocates, "spiritual mothers," and even successors of the spiritual secrets of their fathers.

Islam is the initial religion in the world which identified women as a legal entity and bestowed upon them all the rights that men relished. Islam brought about liberation of women from bondage and gave them identical rights establishing their inclusion. Islam enhanced the status of women by inaugurating rights of possessions, ownership, inheritance, education, marriage and divorce. The Qur'an came out with a thorough and in-depth assertion that men and women are equals, and women's rights are equal to their responsibilities. Till today, because of conflict of the ulama and jurist, this basic principle continues to be in midpoint.

Nevertheless, the standing of women in premodern Islam is in general adapted not to Quranic ideals but to predominant patriarchal cultural norms. As a result, development and enhancement of the status of women became a major issue in modern, reformist Islam.

IV. RIGHTS OF MUSLIM WOMEN IN MARRIAGES

A. BEFORE MARRIAGE

The foundation of marriage in Islam comprises of three aspects: Legal, Social, and Religious. Legally, it is a contract and not a forfeit. The social aspect of marriage has two important factors: Islamic law gives women an undoubtedly high social status after marriage; In fact,

marriage is an indication of gift from Allah.

One of the most important and well-established principle of Islamic law is that nikah cannot be performed without the free consent of the bride. She has the right to either agree or refuse to certain terms and conditions in the marriage. However, the concern is with respect to ensuring the free consent of the Muslim women as many Muslim women are forced into it by the pressure exerted by their respective families.

In India, Marriage amid all sets of Muslims are usually solemnized by individuals familiar with the obligations of law and are chosen as the *Kazis* or *Mullas*. Two individuals are formally allotted for the said purpose and thereby act on behalf of the contracting parties in the presence of witnesses. The Qur'anic depiction of both the parties in a marital bond: "They are your apparels and you are their apparels", depicts proximity, support and equality.

Ma-hr is a key concept in Islamic law which is unswervingly connected to the right and title to property of Muslim women. It is symbolically called as a present which is assumed to be due from the husband to his wife on marriage as a token of his admiration, honesty and love for her.

The subject affair of *ma-hr* can be given in the form of wealth or any other material having value, depending upon the acceptance of the wife. The ownership of the given entity or property lies with the wife exclusively. Moreover, the award of absolute ownership of *ma-hr* to the Muslim wife portrays the idea behind Muslim personal law to vest women with the property rights to guarantee them an unbiased marital status.

Women's issues in the purview of marriage are rooted in the idea of her as a dependent individual from the custody of her father to that of her husband, but according to Islam, women enjoy equal rights of selection or choice. A Muslim woman has the liberty of marital choice wherein her assent is vital for the validity of a marriage contract. A woman of legal age shall be asked to convey her consent where her acceptance can also be in the form of her silence but her oral declination or refusal to the said proposal will eliminate all other existing options or choices. The Islamic laws have accepted women as independent and responsible members of the society and have assigned them a practical position. Muslim wives maintain their distinct individuality even after marriage.

B. DURING THE COURSE OF MARRIAGE

Muslim academics are yet to initiate measures for drafting a comprehensive law duly codified which will embody the Quranic spirit. Triple Divorce and unregulated polygamy have often been the cause of attacks on otherwise quite progressive Islamic personal law. Polygamy may

not be abolished completely but strictly regulated as directed by the Quran. In fact, both the verses on polygamy i.e 4:3 and 4:129 should be read together to understand the Quran's real intent. Even the first verse, i.e., 4:3 demands justice to all wives by a warning that states "if you cannot do equal justice then marry only one". The second verse, i.e, 4:129 makes it clear that equal justice is humanly impossible. Given such a warning, polygamy should not be practised unregulated. Thus, a draft of a comprehensive law in accordance to the holy verses should introduce such regulatory measures and specify circumstances under which one could take a second wife.

Those situations or circumstances could be when the first wife is terminally ill or medically proved to be infertile or barren provided the consent of the respective wife and the court of law is present without fail. The consecutive major hindrance is that of triple. This form of divorce has caused a ton of desolation to many Muslim women in India. The Prophet reserved the power of divorce held by a husband and gave the women the right of obtaining partition on a reasonable ground.

If the marriage was consummated, the wife may marry another person after the completion of the *iddat* period whereas if the marriage was not consummated, she is free to move on immediately. If the matrimony was consummated, the wife is rightful to immediate payment of the whole of the unpaid dower, both on time and overdue. If the marriage was not consummated and the sum of dower was precise in the contract, she is eligible to a aforementioned part of that amount.

The divorced wife has the right to maintenance and accommodation till her period of *iddat* expires. Therefore, not only the husband can part with his wife if he feels that the matrimonial alliance has been broken down, but the wife is also entitled to get rid of her undesirable husband subject to certain conditions.

Talaq-i-Tafweej is a form of divorce at the instance of a wife. The husband may delegate his right of divorce to his own wife and authorise her to pronounce Talaq. According to Fayzee, this form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain her freedom without the intervention of any court and is now beginning to be common in India.

Khula and *Mubarat* are other two forms of divorce by joint consent. *Khula* means release and *Mubarat* means mutual separation which are given by the wife with the assent of her husband. In *Moonshee Bazul-un-Rahim vs Luteefutoon Nissa*, the privy council described:

"A Divorce by *Khula* is the divorce with the consent and the instance of the wife, in which she

gives or agrees to give consideration to the husband for her release from the marriage tie.”⁹

The Muslim Personal Law (Shariat) Application Act 1937 also recognized the rights of the wife to acquire divorce on two further grounds, i.e. (I) *Ila* & (ii) *Zihar*. The divorced wife is entitled to get maintenance from her ex-husband till she is observing her *Iddat* which varies from case to case. There are no terms for the maintenance of a divorced wife in Muslim law after the period of *Iddat* or the period after delivery and birth of the child. For instance, the Court held that, Talaq to be effective, must be explicitly pronounced. Further on, the court held that, “a mere plea taken in the written statement of a divorce having been pronounced sometimes in the past cannot by itself be treated as effectuating talaq on the date of the delivery. Hence, judgment seeks to provide some norms and parameters within which the husband can pronounce a talaq. The very concept and right of unilateral triple talaq has however being assailed. Hence, from the above cases it becomes abundantly clear that court had played a very vital role for the protection of the women’s rights under Muslim personal law”.¹⁰

Islam condemns both the husband and wife from using divorce as a mockery and takes extra precaution for the welfare of wives. A former Supreme Court Judge Justice Krishna Iyer remarked that “a deeper study of the subject discloses a surprisingly rational, realistic and modern law of divorce. A few distortions seem to have crept in dispensing justice in British India and even in the decision of Privy Council, which decreed Muslim husband’s right to divorce his wife at whim. Such misguided views have had sustenance in the opinion of ill-educated maulvis who had already been serving their clientele with their faulty understanding of the Quranic law of divorce.”¹¹

C. AFTER MARRIAGE

Reasonable and fair provision of maintenance is to be made and paid to the wife within the *Iddat* period by her former husband.

A Muslim has a personal obligation to maintain his children, but it is not an absolute obligation. A father is bound to maintain his female children until they are married. A Muslim widow has no right to maintenance out of her husband’s estate in addition to what she got by inheritance as his wife.

Maintenance of the wife is incumbent upon the husband because after the marriage the wife must shoulder new responsibilities and consequently some more rights become vested in her

⁹ Moonshee Buzl-un-Ruheem v. Luteefutoon-Nissa (1861) 8 Moo Ind App 379.

¹⁰ Syed Jamaluddin vs Valian & Anr, (1975) 2 APLJ 20.

¹¹ Furqan Ahmad, *UNDERSTANDING THE ISLAMIC LAW OF DIVORCE*, 45 JOURNAL OF THE INDIAN LAW INSTITUTE 484–508 (2003).

which she can assert at any time as and when the occasions arises. The husband is required to maintain his wife irrespective of his financial position. The wife is entitled to maintenance from her husband though she may have the means to maintain herself

A Muslim husband is legally bound to maintain his wife. In this connection Syed Ameer Ali says: "It is incumbent on the man to maintain his wife, says, the *fatawa-i-kazi Khan*, whether she is Moslemah or non Moslemah, poor or rich, whether there has been copula or not; whether grown-up (adult) or young, so that intercourse with her is possible."

If a wife lives separately because of the cruel behaviour of her husband, she is entitled to be maintained by him and the same was observed in the case of *Amir Mohd. Vs Mst Bushara*.¹²

In *Mohammad Moinnuddin v. Jamal Fatima*¹³, Mehndi Hassan had married thrice before he and his father had entered into an anti- nuptial agreement with Jamal Fatima, the prospective bride providing that in case of disunion or dissension between the couple, Mehndi Hasan would be certain to pay to the women an allowance of Rs. 15/- per month for her life and certain properties hypothecated to ensured payment of such allowance. There were disagreements between the couple and the husband divorced the wife. Wife filed a suit for claiming the allowance. The court held that the contract was valid, and the divorced wife was entitled to receive the allowances as provided in the contract. The court further said.

"The marital rights ended with the divorce, but the contract subsists till the plaintiff dies or breaks it, so long as the right to maintenance lasts, it cannot be treated as devoid of consideration or opposed to public policy"

Kharach-i-Pandan is the absolute property of the wife and she is at liberty to use it according to her sweet will and the husband has no control over that money. In *Nawab Khwaja Muhammad Khan v. Nawab Hussaini Begum*¹⁴, the marriage was held during the infancy of the children. It was agreed by the parents of the spouses that the father of the son will pay Rs. 500/- per month in perpetuity to his son's wife. The payment was known as "*Kharach-i-Pandan*" and no conditions were laid down for its payment.

In *Syed Ahmad v. Parveen Begum*, the Mysore High Court, while upholding the wife's right to separate maintenance observed: "Neglect or no neglect, the petitioner (husband) in this case is liable to pay separate maintenance to his wife on the sole ground that he had taken the second

¹² Amir Mohammed v. Mst. Bushra, AIR 1956 Raj 102.

¹³ Moinuddian v. Jamal Fatima, AIR 1921 All. 152 at p. 153.

¹⁴ Nawab Khwaja Muhammad Khan v. Nawab Hussaini Begum, ILR 32 All. 410.

wife”¹⁵

In 1986, The Muslim women (Protection of right on divorce) Act was passed. The Act has consolidated and coordinated the different schools of the Muslim law in the stuff of payment of maintenance to the wife on divorce. The preamble of the Act spells out the objectives of the act as the protection of the right of Muslim women who have been separated by, or have obtained divorce from, their husband Sec. 3 of the Act speaks of ‘provision and maintenance’ while Sec. 4 talks only of maintenance.

V. THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

The Muslim Women (Protection of Rights on Marriage) Act, 2019 is a small piece of legislation with just eight sections in total but is bound to have large ramifications for a simple reason. It brings in criminal law into the horizons of family law. How far the law goes in alleviating the Muslim women is a question that can only be answered with the help of an impact study done in future. At present, the analysis of the law can only be rooted in theory and whatever little data is available on the subject.

The various sections enlisted in the aforementioned act, acts as a mere brush up on the existing veil of the Islamic laws but ensures a ray of hope for the upcoming generations. The law straightened a few old norms pertaining to Muslim marriages. The real task is to alleviate the social standing of Muslim women and give them their designated place in the society.

Where society is appreciating the steps taken by the government, ground reality is a little difficult some people have the notion that this act is meddling with their religious rights and customs. But all these arguments are in vain as we compare them to the current trends of awareness and destigmatising these old societal standards.

In this act, criminalization of pronouncement of talaq by section 4 is the core of controversy for the simple reason that it defies the settled principles of criminalization like principle of legality¹⁶, proportionality¹⁷ and principle of minimal criminalisation.¹⁸

Drawing upon the post-current grant the subjectivity of the Muslim ladies must be comprehended to be built inside the same socio-social setting. For instance, devout Islamic

¹⁵ Syed Ahmad v. Parveen Begum, AIR 1958 Mys. 125.

¹⁶ According to the principle of legality, the law must be clear, capable of being obeyed and be readily available to the Public. See Jonathan Herring, *Criminal Law: Text, Cases and Materials* 9 (7th ed., Oxford University Press, Oxford, 2016)

¹⁷ According to the principle of proportionality, the sentence accorded to a crime should reflect the seriousness of the offence.

¹⁸ According to the principle of minimal criminalization, criminal law should prohibit something only if absolutely necessary. Also see Andrew Ashworth, “Is Criminal Law a Lost Cause?”, 116 *Law Quarterly Review* 225 (2000)

ladies may challenge man centric administrations of Qur'anic elucidation home, while in the meantime articulating a kind of worldwide solidarity. It must be comprehended that the personality of a Muslim lady is characteristically connected to her Muslim-ness and can't be stripped from it. In this way the law changes can't consider the straight story of exploitation through the male centric Muslim people group yet rather likewise needs to give space to declaration of multi-layered personalities like these.

In the after of all the discussions in regard to this act, a popular conclusion should be directed towards favouring such life altering judgments and laws which remain uniform and systematized. They have proved to be a helping hand with vivacious technique to invalidate to some degree the disparities in the current individual Muslim laws.

VI. SUGGESTIONS / CONCLUSION

The general definition of marriage under Muslim law can be conferred by the words of *Mahmood J* as he said that “*Marriage according to Mahomedan law is not a sacrament but a civil contract*”¹⁹

The extreme debate about the provisions and existing rights also focuses that there are steps being taken in favour of Muslim women. The courts are denying the absolute texts related to sharia laws and are giving more importance to texts based on facts and ground reality the Muslim Women (Protection of Rights on Marriage) Act, 2019 is a living factual representation of this assertive theory. Drawing upon the post-current grant the subjectivity of the Muslim ladies must be comprehended to be built inside the same socio-social setting. For instance, devout Islamic ladies may challenge man centric administrations of Qur'anic elucidation home, while in the meantime articulating a kind of worldwide solidarity. It must be comprehended that the personality of a Muslim lady is characteristically connected to her Muslim-ness and can't be stripped from it.

In this way the law changes can't consider the straight story of exploitation through the male centric Muslim people group yet rather likewise needs to give space to declaration of multi-layered personalities like these. Subsequently, after the talk of every above viewpoint it can be reason that, popular conclusion should be guided into favouring such liberal judgments and certain uniform systematized laws which help in a vital method to invalidate to some degree the disparities in the current individual Muslim laws. Accordingly, there is have to dispatch a mindfulness battle against the abuse of a different Muslim women rights identifying with

¹⁹ Abdul Kadir v Salima, (1886) ILR 8 All 149(154): 1886 All WN 53.

marriage, separate, property rights and so forth polygamy.

There are some hefty steps being taken for the upliftment of muslim women and the urge for them to get the rights is real, but the question is again about ground reality and mentality and how we all as a society should deal with it.

Taking everything into account, Islam has brought ladies' status up in the general public by giving numerous laws to secure them and give them a respectable and stately life. Muslim individual laws have given differing rights to Muslim ladies, for example, inclination in marriage, maintenance, property rights, etc. Islamic law provides for the ladies a high societal position after marriage. The Muslim lady has the freedom of conjugal decision, her consent is essential for the legitimacy of the marriage contract. Islamic laws have acknowledged ladies as a free and dependable individual from society. The reaction of the legal executive on the status of ladies under the Muslim individual law has been reluctant. A considerable lot of the cases give the instinct that the job of our legal executive has been solid and good. It is intriguing to take note that, there have been significant decisions positive to Muslim ladies regardless of whether not in milestone class, however truly impressive.

The deep-rooted discussion of Muslim Women and their privileges is started from time to time, ladies, when all is said in done, are exposed to a great deal of cruel and unrefined substances by the general public regardless of their sexual orientation, over that in India Muslims are a minority and their Women all the more so. During that time of writings, references and books it is achievable to state that Islam has constantly secured and appreciated ladies however the cutting-edge understandings go astray an excessive amount of. Man, in his actual embodiment is an animal that occupies change and change as for the frame of mind of open with respect to Muslim Women is truly necessary.
