

Empowering Indian Muslim Women

Date of Paper Submission: 15/04/2020, Acceptance Date: 29/04/2020, Publication Date: 30/04/2020



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Abstract

The recent Supreme Court judgement on triple talaq or instant divorce has been instrumental in many ways but the aspect which got comparatively less attention is that it reverses the narrative of the oppressed Muslim women. It's significant that this battle was won by determined Muslim women themselves and this fact should help alter the narrative of the singular stereotype – the shadowy figure behind the veil, disempowered and left to fend for herself. Rather she possesses the capability of articulating and fighting for her right to be an equal citizen. With all the hype and media attention, it's the right time to assess that how far we still have to travel to provide gender equality and empowerment to Muslim women.

With the advent of Globalization, women have become equal participants in many respects at all levels of society and in the coming times we could see more women venturing into areas traditionally dominated by men as women have moved away from their traditional roles of homemaker and child rearing to social and business solutions.

As far as the rights of Muslim Women in India, we are a way backward as there is a conflict between her rights and personal law. We boast as a nation being the world's largest democracy, constitutionally guaranteeing the protection of equal rights to all our citizens while boldly holding the flag aloft of being a secular nation. But, underneath all these big claims, lies the cruel underbelly of discriminatory and tyrannical personal laws which tear apart the foundation of equality upon which our great nation was built. Though the practice of triple talaq or instant divorce is the most heinous form of tyranny to which Muslim women have been subjected to. But there are other outrageous personal laws and customs like Polygyny, Nikah Halala, and other practices regarding Marriage, Divorce, Maintenance, custody of children, adoption, guardianship, etc. which reflect nothing but outright discrimination. The author here shall examine the status of Muslim women in India, the protection afforded to her by constitution and other laws in the light of decided cases, proposed bills and make pertinent suggestions.

Keywords: Globalization, Muslim Women, Women Rights, UNO, Islamic Law.

Introduction

Therefore, at all the forums including United Nation Organization, women rights and issues regarding women empowerment are being discussed. All the countries have been forced to draw out their women from parochial culture and trying to utilize as a skilled human resource. https://shodhganga.inflibnet.ac.in/bitstream/10603/142452/10/10_chapter%201.pdf

Government of India has initiated various policies and legislations for women empowerment considering as development of capacities, powers and skills to make a person more confident, more self-reliant and able to take self-decisions from the time of independence but unable to reach towards the proper destination, Illiteracy, communication gap, male dominant society, less political participation in decision making process, cultural boundaries, social negligence, are some of the problems of women empowerment.

http://mospi.nic.in/sites/default/files/reports_and_publication/cso_social_statistics_division/Constitutional&Legal_Rights.pdf

Education is playing vital role in women empowerment. The developed countries of the world are more advanced in empowering women than the rest of the world. Without proper education, guidance, environment no country could be achieved the full potential development of the women society as well as empowerment.

<http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue10/Version-5/D0201051924.pdf> According to Census 2011, 42.7% of India's 180 million Muslims are illiterate – higher than scheduled castes at 40.9%. When you break up the data on gender, 48% of all Muslim women are illiterate which is higher than the national average of 44%.¹

Muslim Personal Law in India

<https://www.hindustantimes.com/columns/triple-talaq-verdict-what-empowerment-of-muslim-women-really-means/story-PLo56wnSS2G65p7bgrCLgO.html>

The Muslim Personal Law (Shariat) Application Act, 1937 is applicable to all Muslims citizens living in India. This law deals with marriage, succession, inheritance and charities among Muslims. The Dissolution of Muslim Marriages Act, 1939² deals with the conditions or situations in which Muslim women can obtain divorce. The Muslim Women (Protection of Rights on Divorce) Act, 1986³ deals with the rights of Muslim women who have been divorced by their husbands and to provide for matters connected therewith. In state of Goa, Goa Civil Code is applicable for all persons irrespective of their religion, so these laws are not applicable. These laws do not apply also to Muslims who have married under the Special Marriage Act, 1954⁴. While other religious communities in India have codified laws, Muslim personal law is not codified in India.

Empowering Muslim Women in India

The concept of empowerment flows from the power. It is vesting where it does not exist or exist inadequately⁵. Empowerment is used to transform social relations, social institutions, laws and public policies⁶. We find that it has been very low in 18th and 19th centuries in India and elsewhere when they were treated like 'objects' that can be bought and sold. For centuries, <http://www.yourarticlelibrary.com/essay/essay-on-women-empowerment-in-india/31317>

In addition to the above rights, in India, there were extensive reforms by the way of legislative measures to abolish the customs of purdah system, female infanticide, child marriage, sati system, dowry system and the state of permanent widowhood, which were either totally removed or checked to an appreciable extent.

Though there has been incredible rise in the position and status of women all over the world in the 20th century but still when these legislations apply to all women the position of Muslim women is still low. Today, the issues of women rights in Muslim personal Law is highly controversial. Specially, Muslim women rights relating to triple talaq divorce, inheritance, maintenance has got much attention now days. Though, Indian Constitution has guaranteed equality and freedom from discrimination based on gender or religion, but yet there are various practices which are based on dispassionate conservative culture. The Muslim Personal Law to a large extent is still uncoded and the basis of most of the legal decision pronounces by the courts is the norms mentioned in Quran and hadith. The key debate on interpretation of Muslim personal laws has both positive as well as negative connotations. There have been few authors

who have supported that, Muslim personal laws have given various rights to Muslim women like choice in marriage, inheritance etc. but on other hand, many believe that there are various practices accepted and honored in Muslim Personal Laws which is against the spirit of Indian Constitution.

Restraints on women's liberties have been usually introduced and fortified by men. In modern societies, women's rights are governed and protected by constitutional decrees but even in such societies blinkered administrations occasionally attempt to override women's rights by bringing alterations to the constitutional system.

Empowerment of Muslim Women in India through Judicial Decisions

The Quran is the foundation of Islamic Law. The sunnah (the hadith and example of the Prophet) is used as a secondary source for further clarification and guidance. Where the Quran and sunnah leave a question unanswered or unresolved, Muslim scholars resort to Ijtihad (the science of interpretation and rule-making). Under recognized principles of Ijtihad, if the Qur'an and sunnah have no pronouncement on a matter, it is permitted (among other things) to have recourse to local custom, as long as that custom is consistent with the Qur'an and sunnah. In the legal arena, this meant that it was permissible to supplement religiously-based law with customary law⁷. These supplements espoused patriarchal values of one form or another. In the end, Ijtihad, and in fact the judiciary became predominantly the domain of men. Thus, the woman's voice was ultimately reduced to a whisper in this arena.

Freezing Culture and Silencing Internal Dissent is the mode adopted by Muslim women to claim their rights. During the early period of Islam, Muslim women were held in high esteem and they occupied exalted positions and in the days of Holy Prophet Mohammad, a Muslim woman was given in the society a position of equality with the opposite gender. Equal treatments were meted out to the women. The ladies of the family of the Prophet were noted for their learning, their virtue, courage and their strength of character⁸. Few women have approached the Supreme Court for asserting their rights related to Muslim family law. Hence, opportunities for courts to give judgments protecting Muslim women's rights have been limited. Fewer women have obtained judgments in their favor, which also lay down a law or interpret legal provisions. Some of these judgments have sparked protests from patriarchal forces within the community.

Dissolution of Marriage or Divorce

https://shodhganga.inflibnet.ac.in/bitstream/10603/40548/5/11_chapter2.pdf

<http://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html><http://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html>

<https://mail.google.com/mail/u/1/#inbox?projector=1> Before 1939, a Muslim wife had no right to seek divorce except on the ground of false charges of adultery, insanity or impotency of the husband. But the Dissolution of Muslim Marriages Act 1939

provided some more grounds on which basis a Muslim wife may get a divorce from the court. There are two main classes of divorce under the Muslim law, extra judicial divorce and judicial divorce. <http://www.legalserviceindia.com/article/I393-Divorce-under-Muslim-Law.html> Under Talaq-i-tafweez or delegated divorce, recognized by both, the Shias and the Sunnis, the Muslim husband is free to delegate (absolutely or conditionally, temporarily or permanently) his power of pronouncing divorce to his wife or any other person. A permanent delegation of power is revocable, but a temporary delegation of power is not. This delegation must be made clearly in favor of the person to whom the power is delegated, and its purpose must be specifically stated. The power of talaq may be delegated to his wife and as Faizee observes, "this form of delegated divorce is perhaps the most potent weapon in the hands of a Muslim wife to obtain freedom without the intervention of any court and is now beginning to be fairly common in India".⁹

Originally, 'khul' was meant to be an equitable solution. According to Prophetic precedent, a woman who does not like her husband through no fault of his own has the option of leaving him, so long as she returns to him the *mahr* (usually translated as dowry) he gave her. <http://pujy.resoplucel8.fr/divorce-in-islam.html> file:///C:/Users/abc/Downloads/26791-29446-1-PB%20(5).pdf Women's right to initiate divorce is very limited compared with that of men. According to Sharia law, there are two reasons for a wife to be divorced: when she can prove that the husband did not have intercourse with her for more than two months or if the husband does not provide her with what she needs for living such as food and shelter.

But all the right to divorce is only in books and has been futile in reality. To address this Dissolution of Muslim Marriages Act 1939 was passed with an objective to protect the Muslim Women's rights at the time of dissolution of marriage. Section 2 of the Act states, a woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds;

http://chdlsa.gov.in/right_menu/act/pdf/muslim.pdf

Supreme Court in its recent judgement¹⁰ has opined on forms of divorce under Islamic Law. Under Islamic law divorce is classified under three categories.

Talaq	-	By Instance of husband
Khula	-	By instance of wife
Mubaraat	-	By mutual consent

Talaq, that is, divorce at the instance of husband is also of three kinds 'talaq-e-ahsan', 'talaq-e-hasan' and 'talaq-e-biddat'. The first two forms of talaq have provision of gestation period or period of abstinence or Iddat during which the said talaq can be revoked until the third pronouncement is made and no revocation is made during the period of Iddat after third pronouncement. But in the case of talaq-e-biddat, or commonly called instant talaq, three simultaneous pronouncements of talaq are made and

the divorce is effective forthwith. The instant talaq is irrevocable at the very moment it is pronounced.

The weirdest form of divorce is the triple talaq which has become hot topic in recent times. In A.S.ParveenAkthar v. The Union of India, the court stated that under Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 in so far as it seeks to recognize and validate Talaq-ul-Biddat or Talaq-i-Badai form of divorce as void and unconstitutional.

<https://indiankanoon.org/doc/835249/https://www.lawyerservices.in/?ReturnUrl=%2FMember%2FError404%2F>

<https://indiankanoon.org/doc/1899853/https://indiankanoon.org/doc/9448430/> though the main disputation here was of maintenance, the dissolution of marriage was by pronouncement of triple talaq.

<https://www.scribd.com/document/31> while the proceedings were pending in court, Abrar stated in court that he had divorced Shamim orally by triple talaq in July 1987, and that therefore she was not entitled to any maintenance. The Supreme Court decided that no legally valid divorce had taken place, either in 1987 as the particulars of the alleged talaq were not stated, and the witnesses to the alleged pronouncement of talaq did not testify in court. The Supreme Court also stated that making a reference to talaq in court documents is not a valid form of divorce recognized under Muslim law. Hence the court directed Abrar to Judgments on Muslim Law & Women's Rights 21 continue paying maintenance to Shamim until the obligation comes to an end in accordance with law.

Last year a group of muslim women, namely ShayaraBano, AafreenRehman, Gulshan Parveen, Ishrat Jahan and Atiya Sabri, who were victim of such instant talaq or triple talaq, approached Supreme Court for relief.

The Supreme court judgement on triple talaq¹¹ sets aside instant talaq as a "manifestly arbitrary" practice. In order to protect Muslim women from arbitrary discriminatory and inhuman treatment, the government drafted a bill as The Muslim Women (Protection of Rights on Marriage) Bill, 2017 and tabled in the parliament making the pronouncement of talaq-e-biddat "void and illegal". The bill also proposes punitive provisions making pronouncement of triple talaq a non-bailable offence and a man who pronounces talaq on his wife will be punished with a jail term and a fine.

<https://www.banglajol.info/index.php/>

In India, Muslim men and women choose their personal law then general law. However, post divorced maintenance has been subjected to heated discussion. Section 125 of CrPc. states that is any person neglects or refuses to maintain his wife¹², who is unable to maintain herself, upon proof, order for such allowance to be paid. Moreover, section 127(3)(b) states that where an order has been made under section 125 in favor of the divorced wife the court shall cancel such order if satisfied that she has received, before or after divorce, the whole of the sum which is either under the personal or customary law applicable to parties, was payable on such divorce.

Muslims understood this to mean that they were exempted from the operation of Section 125 once dower has been paid.

The famous explosive case *M. Ahmed Khan v. Shah Bano*¹³, in which the lady was from Indore whose husband divorce her by giving irrevocable triple talaq after 40 years of marriage, citing provisions in Muslim law that he was liable to pay maintenance only for Iddat period and that he had already paid amount of dower, and hence refused to pay her lifelong alimony. She filed a criminal suit and going against Muslim Personnel Law. The Supreme Court upheld the decision of the lower court which had directed her husband to pay a maintenance amount under the alimony provision of Indian law applicable to all communities. <https://indiankanoon.org/docfragment> In *Javed&Ors.v. State of Haryana& Ors.*¹⁴, a three judge bench (Justice R.C. Lahoti, Justice Ashok Bhan and Justice Arun Kumar) opined that practice of polygamy is injurious to public morals and can be superseded by the State just as practice of 'sati'. It also commented that conduct rules providing for monogamy irrespective of religion are valid and could not be struck down on the ground of violation of personal law of Muslims.

In *Bai Tahira'sv. Ali Husain*¹⁵, the supreme Court did not turn to the Holy Quran but confined itself to Section 125 considering it as a secular provision and came to the conclusion that as long as the spouse had not remarried and had no means to maintain herself, the claim of maintenance by the divorcee was inextinguishable irrespective the husband is Hindu, Muslim or others.

As per 35th verse of chapter 33 (sūrat I-ahzāb) (33:35)¹⁶. For Muslim men and women, for believing men and women, For devout men and women, For true men and women, For men and women who are Patient and constant, for men and women who humble themselves, For men and women who give In charity, for men and women Who fast For men and women who Guard their chastity, and For men and women who Engage much in Allah's remembrance For them has Allah prepared Forgiveness and great reward.¹⁷ However, in post-Islamic period, it is seen that the degradation and degeneration set in, in the status of women. In male-dominated world, Muslim women were pushed to the whims and fancies of the men- folk and this is reflected primarily in the case of dissolution of marriage, i.e., divorce, which is known as Talaq in Arabic meaning. The doctrine of talaq-ul-bidet (triple talaq is one form of talaq) was evolved as a convenient divorce to dissolve the marriage at the will and whims of the Muslim husband. The Muslim Personal Law Board opined that the Supreme Court was wrong in interpreting the Holy Quran. Because of the extreme pressure from the religious leaders the decision could not be enforced. This led to passing of Muslim Women (Protection of Rights on Divorce) Act, 1986.

In *Ali v. Sufaira*¹⁸ it was held that u/s 3 (1) (a) of the Act, a divorced Muslim woman is not only entitled to maintenance for the period of Iddat from her former husband, but also to a reasonable and fair

provision for the future". But there was inconsistency in the decisions of various High Courts as to amount and period of maintenance. It was in *DaneilLatifv. UOI*¹⁹, which confirmed that 'reasonable and fair' provision meant lifelong post divorced maintenance to be paid by the husband during the period of Iddat. If any of the relatives is unable to maintenance, then Magistrate may direct the Wakf Board to pay the maintenance. Moreover, 1986 Act has met with severe criticisms from the women's organizations and human rights groups since the time of enactment²⁰.

Conclusion

<http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue10/Version-5/D0201051924.pdf>http://www.india-seminar.com/2008/583/583_shahida_lateef.htmThe Muslim women (Protection of Rights on Divorce) Act, 1986 in spite of some shortcomings is by and large in consonance with Muslim law of maintenance and secures maintenance rights of Muslim married women to a great extent. The recent bill i.e. The Muslim Women (Protection of Rights on Marriage) Bill, 2017, a clear sign that it's the time to move away from the previous hesitant tendencies and take a definitive step in the right direction.

Its worth mentioning that an organization named Bharatiya Muslim MahilaAndolan (BMMA)has sent the final draft of a law seeking equality and freedom for Muslim women to the Prime Minister which makes following recommendations:

<https://www.thenewsminute.com/>

<https://www.thenewsminute.com/>

The Qazi should demand authentic proofs from both parties to ensure submission of divorce papers or death certificate in case needed before conduct of any marriage ceremony to avoid fake marriages and Muslim marriages should be registered with local state bodies like the Panchayat/Block/District/Ward/Registrar Office under the relevant Marriage Registration Act.

Mehar which is a sum of money or property gifted by the bridegroom to the bride, should not be less than the annual income of the bridegroom and should be for the exclusive use of the wife with no interference whatsoever from either set of parents and relatives.

Make Nikah Halalaa serious offence – Halala is a deplorable and horrible practice where a woman is compelled to consummate a nikaah (marriage) with another man, even if it is only for a night, to go back to her former husband.

Endnotes

1. The wire available at: <https://thewire.in/63286/census-literacy-religion/>
2. "the Dissolution of Muslim Marriages Act, 1939". indiankanoon.org. Retrieved 1 December 2017
3. [http://lawmin.nic.in/ld/P-ACT/1986/TheMuslimWomen\(ProtectionofRights onDivorce\)Act,1986.pdf](http://lawmin.nic.in/ld/P-ACT/1986/TheMuslimWomen(ProtectionofRights onDivorce)Act,1986.pdf)
4. <http://lawmin.nic.in/ld/P-ACT/1954/A1954-43.pdf>
5. *DhrubaHazarika*, „Women Empowerment in India: A Brief Discussion”, *International Journal of Educational Planning & Administration*, vol. 1, (2011), p. 200

6. Abdul Waheed, et. al., „Empowerment of Muslim Women in India: A Sociological Analysis“, *Bangladesh e-Journal of Sociology*, vol. 11, July 2014, p. 41.
7. Azizah al-Hibri, „Islam, Law and Custom: Redefining Muslim Women 's Rights“, *American University International Law Review*, vol. 12, issue 1, 1997, p. 6.
8. S.A.Kader, „Muslim Law of Marriage and Succession in India“, p. 80-81.
9. <http://www.legalserviceindia.com/article/l393-Divorce-under-Muslim-Law.html>
10. SC Writ Petition (C) No. 118 of 2016 with *Suo Motu Writ (C) No. 2 of 2015*, *Writ Petition(C) No. 288 of 2016*, *Writ Petition(C) No. 327 of 2016*, *Writ Petition(C) No. 327 of 2016*, *Writ Petition(C) No. 43 of 2017*
11. http://www.thehindubusinessline.com/multimedia/archive/03194/Supreme_Court_judg_3194881a.pdf
12. U/S 125(b) of Cr.P.C. „A wife includes divorced wife and has not remarried“.
13. AIR 1985 SC 945.
14. SC Writ Petition (C) No. 302 of 2001
15. AIR 1979, SC 362.
16. <http://corpus.quran.com/translation.jsp?chapter=33&verse=35>
17. 35th verse of chapter 33 (sūrat l-aḥzāb)
18. 1988 (2) KLT 94
19. 1997 SCC 740
20. Uma & Soumya, „Muslim Women Right to Maintenance in India“, *Law and our Rights*, *The Daily Star*, January 30, 2005