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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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MUSLIM WOMEN IN INDIA: A SOCIO-LEGAL STUDY

“No society can be free, fair or just until its women enjoy freedom and justice and opportunity for unfoldment of their full potential.”¹

AUTHORED BY - HENA DEWAN

The status of women in Indian society is a much-debated subject. There are points of view put forth defending or condemnatory the position occupied by or imposed upon women in the Indian subcontinent. The conclusion of every research is women condition is not, as it should be. Alike the other women, the condition of Muslim women is also at an alarming stage.

Today in the 21st century, the majority of the Muslim remains unaware of the true Islamic law relating to different aspects of life. Muslims sometimes awfully misuse their personal law, more in sheer ignorance than deliberately for selfish ends. The issue of women in Islam is a topic of great misunderstanding and distortion partly due to lack of understanding and also partly due to misbehaviour of some Muslims who have been taken to represent the teachings of Islam. Not only this, but there is a great dearth of information about the status of women in the Indian society in general. The lack of information, particularly about the actual status bestowed upon woman by Islam and as being practised in India, has resulted in creating and perpetuating certain pre-conceptions and stereotype regarding the status of the Indian Muslim women.²

The Muslims in India in their personal matters are governed by Muslim law or the Shariat. This has been done primarily through the Muslim Personal Law (Shariat) Application Act, 1937. Thus, in matters relating to succession, marriage, gift, guardianship and wakfs, Muslim personal law is applicable. On the other hand, the general laws of India are applicable in all other matter.eg. The

¹ V.R Krishna Iyer , “Women and the Law in Modern India: A Plea for Gender Justice ”, *Religion and Law Review*, vol. VII, (1998) ,p 1

²Rehana Siddiqui, “Socio-legal Status of Muslim Women In India: Some Observation of A social Scientist” *Religion and Law Review*, vol.VII . (1998) p. 59,

Indian Constitution, Indian Penal Code, Juvenile Justice Act, Domestic Violence Act and others. Apart from these there are some statutes which specifically deals with the protection of Muslim women rights like, the, *Dissolution of Muslim Marriages Act, 1939*, the *Muslim Women (Protection of Rights on Divorce) Act, 1986* and *Muslim Women (Protection of Rights on Marriage) 2019*.

Not only this but the Indian Judiciary has even played a vivacious role in the upliftment of rights of Muslim women. Some NGO's also deals with protection and promotion of women's right in India. The present article deals with these aspects under different heads.

MUSLIM WOMEN AND THE RELATED STATUTES

In India there are various *Statute*³ which provide secular application to women irrespective of personal law for instance *Indian Constitution, Indian Penal Code, Code of Criminal Procedure, Special Marriage Act, 1954, Protection of Women from Domestic Violence 2005 etc.* There are personal laws which are especially applicable to Muslim women like *Shariat Act 1937, Dissolution of Muslim Marriage Act, 1939, Muslim Women (Protection of Rights on Divorce) Act 1986 and Muslim Women (Protection of Rights on Marriage) Act 2019.*

MUSLIM WOMEN AND THE INDIAN JUDICIARY

The Indian judiciary has also played a tremendous role in upliftment of Muslim women rights through various judgements:

i) Maintenance and the Indian Judiciary

In the famous case of *Ahmed Khan v. Shah Bano Begum*⁴ the Muslim woman's right to maintenance under Section 125 of the Criminal Procedure Code was challenged.⁵ But the SC upheld the right of divorced Muslim women to claim maintenance under this provision and thus given a new positive hope for a better future. Ever since the Shah Bano case, the Supreme Court has given a series of

³ For detail visit the SITE: <https://www.indiacode.nic.in/>

⁴ AIR 1985 SC 925

⁵ Manoranjan Ahlyat, "Role Of Indian Judiciary In Upholding Gender Justice In The Matter Of Right Of Maintenance Of Muslim Women", Available at: http://www.academia.edu/1402203/Role_of_Indian_Judiciary_in_Upholding_Gender_Justice_in_the_Matter_of_Right_of_Maintenance_of_Muslim_Women , (accessed on 15/3/2018)

judgements that give secular laws precedence over personal or religious codes. In *Humeera Khatoon v. Md. Yaqoob*⁶ it was reiterated that maintenance for a divorced Muslim women and her entitlement to amount of maintenance awarded under section 125 of Cr.P.C cannot be restricted for the iddat period. It extends for entire life till her remarriage . On 16 April, 2015 in the case of *Shamim Bano v. Ashraf Khan*⁷ coincidentally just days before the 30th anniversary of the Shah Bano judgement a two-judge bench ruled that Muslim women are entitled to maintenance beyond the Muslim personal law-mandated iddat period. In the case of *Jubair Ahmed v Ishrat Bano*⁸ of 18 Oct 2018, the Allahabad High Court held that “cumulative reading of the relevant portions of judgments of this Court in *Danial Latifi*,⁹ and *Iqbal Bano*,¹⁰ would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry.

ii) Polygamy and the Indian Judiciary

In the case of *Javed and others v State of Haryana and others*¹¹ The Honourable Supreme Court decided that under Article 25 freedom is subjected to social harmony, dignity, and wellness. Muslim law allows for the marriage of four women, but it is not compulsory. Earlier, in *Khursheed Ahmad Khan vs State Of U.P. & Ors*¹² on 9 February, 2015 another two-judge bench, upholding an Allahabad high court judgement, ruled that although Muslim personal law granted men the right to have four wives, polygamy “was not integral part of religion”.

iii) Triple Talaq and the Indian Judiciary

In India the practice of triple talaq is very often and so women are easily thrown out of the matrimonial house. The Indian Judiciary through its various judgements has tried to overcome this problem. It has declared that, talaq given without a valid cause, which is not preceded by an attempt at reconciliation between the nominees of the spouses, is invalid. Thus made talaq al-bid‘at (as it is spelled in India) as both invalid and ineffective so that women’s future can be protected.

⁶ AIR 2010 (NOC) 707 All

⁷ *Shamim Bano v. Ashraf Khan*, Criminal Appeal No.820 Of 2014
Available at: <http://indiankanoon.org/doc/41104432/> (accessed on 24/3/2019)

⁸ 2019 SCC All 4065, decided on 18-10-2019

⁹ (2001 AIR SCW 3932)

¹⁰ (2007 AIR SCW 3880)

¹¹ AIR 2003 SC 3057

¹² *Khursheed Ahmad Khan v. St of UP*. Civil appeal no.1662 OF 2015 Available at: <http://indiankanoon.org/doc/180745750/>, (accessed on 24/3/2018)

In Marium v. Md. Shamsi Alam,¹³ the Allahabad High Court held that “divorce pronounced thrice in one breath by a Muslim husband would have no effect in law, if it was given without deliberation and without any intention of affecting an irrevocable divorce; such divorce is a form of talq-e-ahsan, and thus is revocable by the husband before the iddat expires.”

In Rahmat Ullah v. State of U.P.,¹⁴ the Lucknow Bench of the Allahabad High Court declared the triple talaq invalid.

In Masroor Ahmed v. State,¹⁵ Badar Durrez Ahmad, J., of Delhi High Court observed that harsh abruptness of triple talaq has brought about extreme misery to divorced women and even men who are left with no choice to undo the wrong or any scope to bring about reconciliation. He ruled that a triple talaq should be regarded as one revocable talaq.

Another novel Indian concept regarding triple talaq is that talaq must be “for a reasonable cause.” This was first held in Jiauddin Ahmed v. Anwara Begum¹⁶ by the Gauhati High Court. Two other grounds were also added by the court. These were that talaq must be preceded by “attempts at reconciliation” by the nominees of the spouses, and it “may be affected” if the said attempts fail.¹⁷ The court held that the talaq allegedly given by the husband was invalid under Islamic law and the wife was entitled to maintenance. Jiauddin was a single bench decision but was subsequently endorsed by many Indian High Courts,¹⁸ as well as the Supreme Court.¹⁹

¹³ AIR 1979 All. 257

¹⁴ Writ Petition No. 45 of 1993

¹⁵ See details of the case in Tahir Mahmud, *A Revolutionary Judgment on Divorce: Comments on a Recent Delhi High Court Decision*, 12 Amity L. Watch: H. J. of Amity Inst. of Adv. Leg. Stud, 9–10 (Nov. 2007).

¹⁶ (1981) 1 GLR 358

¹⁷ Attempt at reconciliation before talaq is undoubtedly Islamic but is not a pre-condition for talaq to be effective

¹⁸ High Court’s decisions that endorsed and elaborated Jiauddin include: Mst. Rukia Khatun v. Abdul Khaliq Lasker, (1981) 1 GLR 375 which was divisional bench’s decision of the same High Court; Zeenat Fatema Rashid v. Md. Iqbal Anwar, 1995 AIHC 416 (Gau.); Saira Bano v. Mohd. Aslam, 1999 (3) Mh. L.J. 718; Dagdu Chotu Pathan v. Rahimbi Dagdu Pathan, 2002 (3) Mh. L.J. 602. This is a full bench decision of the Bombay High Court in which it was held that talaq must be for a reasonable cause and must be preceded by attempts at reconciliation between the husband and the wife, by the arbitrators, but the talaq may be affected if the attempt fails. Other cases are Najmunbee v. Sk. Sikandar, 2003 (2) Mh. L.J. 958; Saheda Khatoun v. Gholam Sarwar, 2002 Cri. L.J. 4150 (Cal.).

¹⁹ The Supreme Court endorsed the law laid down by the High Courts, especially in the Jiauddin case in Shamim Ara v. State of U.P. (2002) 7 SCC 518. Five years later, the Supreme Court reaffirmed the Shamim Ara decision in Iqbal Bano v. State of U.P., AIR 2007 SC 2215

The Hon'ble Supreme Court of India, in its recent landmark judgment of Sayara bano Vs. Union of India²⁰ pronounced on August 22, 2017, has set aside the practice of Talaq-e-Biddat or "Triple Talaq" with the majority ratio of 3:2. The Judgment by the minority bench further directed the Government of Union Of India to lay a proper legislation in order to regularize the proceedings of divorce as per shariat law and the Muslim Women (Protection of Rights on Marriage) Act 2019 was passed which invalidated the concept of triple talaq.

ROLE PLAYED BY SOME NGO'S

Since the 1990s, several individuals and groups have emerged across India and are working to change the situation of Muslim women by claiming their right to represent themselves. Two networks that are diversifying the political field are the Muslim Women's Rights Network (MWRN) and the Bharatiya Muslim Mahila Andolan (BMMA) both networks emerged in the last twelve years and are challenging the notion that Muslim women are voiceless victims by asserting their political agency.²¹

Suggestions

- 1) It is important to understand the role of society as much as that of religion. Women are oppressed not so much by religion as by society. In order to bring about change in the plight of Muslim women it would be equally necessary to bring about change in socio-economic conditions of Muslims. If Muslims remain poor and illiterate, it will be very difficult to improve conditions of Muslim women. Education among Muslims can make them aware of changing society and need for change in the position and status of Muslim women.
- 2) Today when world is undergoing a drastic change, simply repeating, defending and stagnating will create discord between the Islam laws as found in the holy Quran and Sharia on one hand, and the rules of the modern world as per requirement of the times, on the other. In order to bring real change in the Muslim women's condition, there is great need to have encounter with

²⁰ (2017) 9 SCC 1

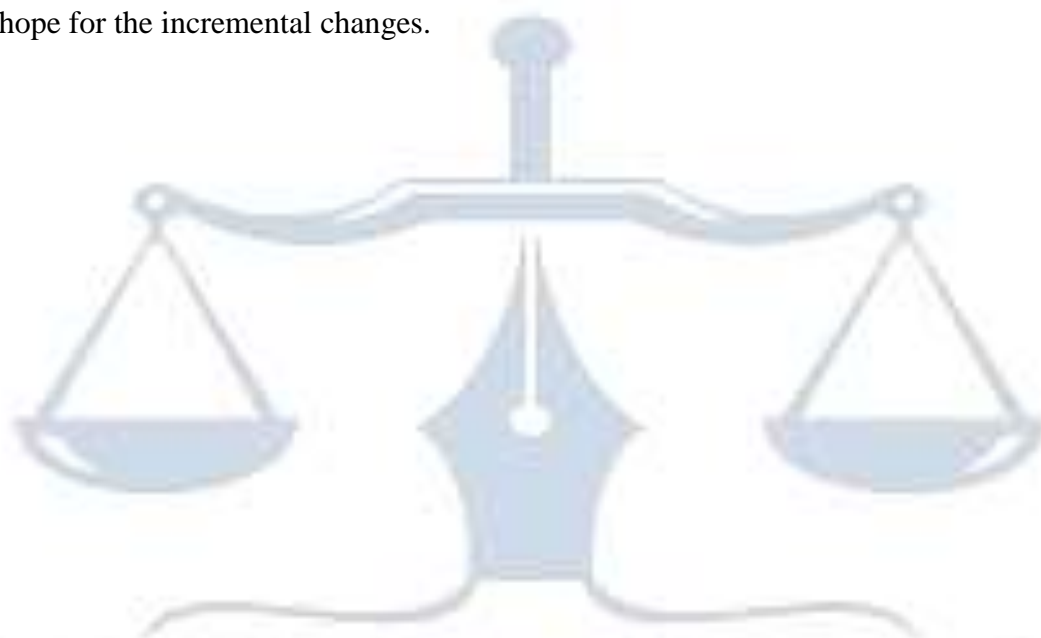
²¹ Reilly Niamh and Stacey Scriver, "Religion, Gender and the Public Sphere, Routledge," 2013, Available at : https://books.google.co.in/books?id=4Ek3AgAAQBAJ&pg=PT254&lpg=PT254&dq=ngo+and+networks+dealing+with+the+protection+of+muslim+women+in+india&source=bl&ots=a5NTLJePg&sig=_z08DwQqTNjHpBsJF85mxXQecP8&hl=en&sa=X&ei=ISVNVduGLdHguQTq24DIBg&ved=0CEoQ6AEwBw#v=onepage&q&f=false, (accessed on 26/ 3/2019)

traditional thoughts in respect of women.

- 3) India being a secular democratic country there is much more political and social space available to Muslim women in India as compared to the women in many other Muslim countries. The steps taken by the Indian government by formulating new Acts and Legislation for the protection of women is no doubt a hope for a positive change but still there is need for a proper implementation.
- 4) The statutes like Dissolution of Muslim Marriage Act, 1939, though provide grounds for divorce to women but she has to knock the door of the court to seek the remedy. Muslim women are not so much financially independent to approach to the court, so a provision should be added in this respect.
- 5) 5) Muslim Women (Protection of Rights on Marriage) Act, 2019 is too having few loopholes which should be looked into and tried to be removed. For instance, when husband will be in jail who will look after his family. There should be some state responsibility in this respect.
- 6) Most of the Muslim countries have abolished polygamy. India is the only country with second largest population of Muslims, which still hold the existence of, polygamy without any reasons. It is very unfortunate that later theology and Muslims treated this highly restricted permission as general licence for marry more than one wife. It is the time that polygamy should be abolished and one marriage becomes the rule of law.
- 7) 8.) In case of Muslim law where the age of marriage is not fixed and puberty is the deciding factor for marriage, the age of marriage should be raised to 21years for both bride and the bridegroom. Child marriage should be banned and discouraged.
- 8) 9.) Divoce or Talaq should not be enforceable in case of intoxication or if given in anger rather a suitable reason must be there and it must be in written form. Court interference should also be there to look into the reasons for talaq.
- 9) 10.) The law of maintenance rises directly on husband. Wife in no case is liable to maintain her husband. A provision is required by which wife also become liable to maintain her husband under some exceptional cases.
- 10) 11.) Enacting uniform civil code is the need of time but enforcing it directly may affect the communal harmony of the country. It would be better to prepare a draft code and place it before the public so that one can debate over its merit and demerits for a suitable outcome.
- 11) 12.) Muslim intelligentsia should work within their own community for progressive reform

and the codification of Islamic laws. Islamic law is basically quite progressive and an effort can be made in this area.

Thus, we can see that in Islam a compassionate and dignified status is given to women and it is not a law which is meant to degrade women status or her dignity. It is a law to safeguard her, to protect her, to guide her and to help her to deal with many other aspects of life. The thing which is lacking is the correct interpretation in the right direction. Though one cannot expect drastic changes in the plight of Muslim women in the near future but one can certainly hope for the incremental changes.



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