

Legal Rights of Muslim Women in India: Striving for Equality

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Abstract

Women's rights in Muslim personal law are a hotly debated topic. Muslim women, in particular, face discrimination from both Muslim males and women of other faiths. They face discrimination in property, marriage, talaq, and maintenance rights. In comparison to men, Indian Muslim women have historically had lower rights in terms of property ownership. As far as we know, neither the Shias nor the Sunnis have codified the property rights of Muslim women in their personal law. Indian Hindu women, on the other hand, have the same property rights as men in their ancestral property. Despite the fact that the Indian Constitution guarantees equality and freedom from discrimination on the basis of gender or religion, there are still a number of behaviours that are founded on a callous traditional culture. As we all know, most of Muslim personal law is still uncodified and based on Quran and Hadith. The major issue over how Muslim personal regulations should be interpreted has both positive and bad features. Muslim personal laws have provided Muslim women many rights such as marital choice, inheritance, and so on, according to some authors. Others, on the other hand, believe that certain activities are in violation of the Indian Constitution's spirit.

Keywords

Muslim women, marriage talaq, mahr, maintenance, inheritance

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Introduction

The purpose of this study is to examine the ongoing debate in India regarding the implications of Muslim Personal Law and the struggle of Muslim women for equality. In this sense, the judiciary has played a vital role. Furthermore, the focus of this article will be on certain aspects of Muslim personal law reform, such as property rights, polygamy, triple talaq, and post-divorce support, among others.

Property rights of Indian Muslim women, like those of women in any other country, have evolved as a result of a constant conflict between the status quo and progressive forces. As far as we know, neither the Shias nor the Sunnis have codified the property rights of Muslim women in their personal law. The main principles of Islamic inheritance law that mark an advance over pre-Islamic law and have a significant bearing on women's property rights are: (i) the husband or wife was made an heir (ii) females and cognates were made competent to inherit (iii) parents and ascendants were given the right to inherit even when there were male descendants, and (iv) as a general rule, a female was given one half of the inheritance.

The Hindu Succession (Amendment) Act of 2005, on the other hand, amended Section 6 of the Hindu Succession Act of 1956, giving daughters of the deceased the same rights as sons. The daughter and son are both liable to the same responsibilities and disabilities in the case of coparcenary property, or when two persons inherit property equally. Mahr is an essential notion in Islamic law that is strongly linked to Muslim women's right to property and their empowerment. Mahr is an element in deciding whether or not to enter into a marriage contract. Mahr is a mark of respect given by a Muslim husband to his wife upon their marriage, symbolising his sincerity and love for her.

Marriage under Muslim Law

Marriage, according to Muslim law, is a contract that has as its goal the procreation and upbringing of children. Marriage agreements are frequently written down in the form of a *kabinnama*. Failure to prove the *kabinnama*, on the other hand, cannot be used to discredit the marriage. In the case of a Muslim marriage, it should be noted that neither writing nor a religious ceremony are required. All that is required is for a proposition to be made and for an acceptance to be made with thoughtfulness. Polygamy is legal in Muslim countries. In fact, both passages on polygamy, 4:3 and 4:129, should be read together to fully comprehend the Quran's true meaning. Even the first verse, 4:3, demands strict justice for all spouses as a warning. Polygamy should not be practised unrestrictedly in light of such warnings. Other Muslim countries, with the exception of Saudi Arabia and Kuwait, have enacted strong regulations to control it. As a result, a draft law should include such regulatory

measures and describe the circumstances under which a second wife could be taken. Those conditions could include when the first wife is terminally sick or has been medically determined to be infertile or barren, and only with the first wife's and the court's permission. Furthermore, the Quran allowed polygamy to help women in need, such as widows and orphans, rather than to harm them. As a result, individuals who believe that polygamy is a fundamental right of a Muslim male are mistaken. Polygamy is an exception rather than a norm.

Monogamous marriage is seen as best in the relevant Quranic clause on polygamy institution. There is little doubt that this provision is being abused; nevertheless, this may be prevented by enacting law that provides adequate machinery. The Muslim Marriage Act of 1939 provides for the dissolution of Muslim marriages.

In *Itwariv. Asghari*,¹ the Allahabad High Court held that Muslim law in India treats polygamy as an institution to be tolerated but not encouraged, and that the husband does not have a fundamental right to compel the first wife to share her consortium with another woman under any circumstances. A Muslim husband has the legal right to marry a second wife while the first one is still alive, but if he does, and then seeks the help of the Civil Court to compel the first wife to live with him against her will under threat of severe penalties, including property attachment, she has the right to ask whether the court, as a court of equity, should compel her to submit to co-habitation with such a husband. In that situation, the circumstances of his second marriage are significant and material in determining whether his behaviour in choosing a second wife was in and of itself cruel to the first. As a result, Indian law does not recognise various types of cruelty, such as "Muslim" cruelty, "Christian" cruelty, "Hindu" cruelty, and so on, and the test of cruelty is based on universal and humanitarian standards, i.e., conduct by the husband that causes such bodily or mental pain as to jeopardise the wife's safety or health.

Talaq

The issue of triple talaq at one sitting, also known as talaq-e-biddat, is another serious issue. A considerable number of Muslim women in India have suffered as a result of this type of divorce. Worse, it is still in use, despite the fact that the prophet himself condemned it. It is not mentioned in the Quran at all. Quranic divorce involves not just two arbiters, one from the wife's side and one from the husband's side, but also two trustworthy witnesses. According to the Quran, if you are afraid of a schism between the two, select an arbitration from his people and an arbiter from her people. If both parties want to reach an agreement, Allah will bring them together.²As a result of the preceding discussion, it is evident that the Quran itself has laid out the

right procedure for divorce, but that individuals still use a highly casual method to pronounce the *Talaq*, leaving Muslim women helpless. Even fundamentalist Muslim schools have condemned triple *talaq*, which is already illegal in Pakistan, Bangladesh, and much of the Islamic world. In *ShayaraBano v. Union of India*,³ a five-judge Supreme Court Bench ruled that *talaq-e-biddat*, or instant and irreversible *talaq*, is a “manifestly arbitrary” practise that is not protected by Article 25 of the Constitution (freedom of religion). Justices Kurian Joseph and Rohinton Fali Nariman both ruled against the legitimacy of immediate *talaq*, with Justice U.U. Lalit siding with Justice Nariman. The victory of judges who ruled against quick *talaq* is summed up in this. The Bench, led by Chief Justice J.S. Khehar, decided that *talaq-e-biddat* is an inherent part of Article 25. (Freedom of religion). He said that the Hanafis had been following it for over 1,400 years and that it had become a part of their religious practice. He concluded that instant *talaq* does not violate Articles 14, 19, or 21 of the Constitution, and he sent it to the legislature for consideration within six months. Only Justice S. Abdul Nazeer agreed with this viewpoint, making it a minority decision.

The Muslim Women (Protection of Rights on Marriage) Act, 2019, under section 3 declares pronouncement of Triple *Talaq* void and illegal. Section 4 states the punishment with imprisonment for a term which may extend to three years and fine

The wife’s claim to maintenance ends when her husband dies, because her right of inheritance takes precedence in this situation. As a result, the widow is not entitled to maintenance during the *Iddat* of death. However, under Muslim law, a divorced wife has the right to maintenance by her former husband during the *Iddat* period.

The Magistrate is empowered to order maintenance in favour of women under Section 125 of the Criminal Procedure Code of 1973. For the purposes of Section 125, a “wife” includes a divorced wife. As a result, any woman who has been divorced or gained divorce from her husband and has not remarried can seek a maintenance order against her former husband if she is unable to support herself and her former husband has failed to do so despite having sufficient means. The Magistrate can order the husband to pay a monthly allowance if the wife makes such an application (maximum up to Rs. 5000). If he does not comply with the Magistrate’s order, the Magistrate can issue a warrant for the sum specified in the order to be levied. If he continues to evade the order and the debt is not paid in full or in part, the Magistrate may sentence him to imprisonment for up to one month or until the debt is paid in full, whichever comes first. Under Section 127(3), the Magistrate may also revoke the order if the woman I gets remarried,(ii) where she

was divorced by the husband and received the entire sum payable on such divorce under any customary or personal law applicable to the parties, whether before or after the date of the said order; or (iii) where she had obtained divorced from the husband and voluntarily surrendered her right to maintenance after her divorce.

In the cases of *Bai Tahira v. Ali Husain Fidalli*⁴ and *Fuzlumbi v. Khader Vali*,⁵ the Supreme Court recognised the right of Muslim divorce women. The Court found that the divorced Muslim lady has the right to seek support under Section 125 of the Code. In *Mohd. Ahmad Khan v. Shah Bano*,⁶ the Supreme Court re-emphasized its position, arguing that providing maintenance to a divorced wife beyond the 'iddat' term was contradictory to Muslim law, and so avoided the implementation of Section 125. The Supreme Court ruled that a Muslim husband is obligated to maintain a divorced wife who is unable to support herself. The Court also determined that dower is incapable to maintain herself. The Court went on to say that the fact that deferred dower (mahr) is paid at the time of dissolution of marriage does not imply that it is paid on divorce. As a result, mahr is not the amount indicated in Section 127(3)(b). his decision sparked widespread Muslim protests across the country, and it was seen as an infringement on Muslims' personal law. The Muslim Women (Protection of Rights on Divorce) Act 1986 was enacted as a result of the heated debate. It was held that Section 125 of the Cr. P.C., 1973 applies to all irrespective of the religion practiced by the person."It would be incorrect and unjust to extend the rule of maintenance under Muslim Law to cases in which the divorced wife is unable to maintain herself," the court added. "If the divorced wife is able to maintain herself, the husband's liability ceases with the expiration of the period of *Iddat*, but if she is unable to maintain herself after the period of *Iddat*, the husband's liability ceases with the expiration of the period of *Iddat*." The Supreme Court stated in *Danial Latifi v. Union of India*,⁷ maintaining the 1986 Act's constitutionality, that reasonable and equitable provision and maintenance under Section 3(i) (a) is not limited to the *iddat* period, but extends for the divorced wife's entire life, until she marries.

In the case of *Iqbal Bano v. State of U.P.*,⁸ The Supreme Court ruled that the Muslim Women Act of 1986 only applies to divorced Muslim women, and that the claim that no Muslim can file a petition under section 125 CrPC after the Act of 1986 is untrue.

The Supreme Court concluded in *Shabana Bano v. Imran Khan*⁹ that the appellant's plea under Section 125 of the CrPC would be maintainable in the Family Court as long as the appellant did not remarry. The amount of maintenance that can be given under Section 125 of the Cr.P.C. cannot be limited to just the *iddat* term.

Concluding Remarks

Despite the fact that equality is a fundamental right, Muslim women face discrimination from other communities. Polygamy is still practised in our country, although though Hindu women are entitled to an equal part of the property. Our Supreme Court ruled that triple talaq is unconstitutional. Despite the Act of 1986, the Supreme Court has allowed divorced Muslim women to get maintenance under Section 125 Cr PC. The Muslim Woman (Protection of Rights on Divorce) Act of 1986 was hastily drafted and fails to adequately reflect Muslim law concepts. It's ironic that the Act is called the Muslim Woman (Protection of Rights on Divorce) Act of 1986, because it deprives Muslim divorcees of any rights granted by the holy Quran. It fails to offer a viable and practical alternative to Section 125 in order to address the difficulties faced by divorced Muslim women. The Supreme Court affirmed the Muslim Women Act's legitimacy, but awarded maintenance under Section 125 of the Criminal Procedure Code. This raises questions concerning the Act of 1986's applicability and requirements. It is past time for the legislature to consider codifying Muslim law while also considering the rights of Muslim women in order to bring them on par with women in other religions in India

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