

MUSLIM PERSONAL LAW AND WOMEN: A CRITICAL EVALUATION

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INTRODUCTION

The Constitution of India enunciates the principle of justice and equality to its citizens in all spheres of human life to a great extent. This supreme document guarantees all the rights and freedoms in such a manner that there is no scope for biasness and arbitrariness. The Constitution also upholds that all citizens are equal before the law and are entitled to equal protection of the law. But in spite of guarantee by the Constitution, Muslim women are subjected to discrimination with regard to marriage, divorce, maintenance, inheritance etc. in the name of Quranic laws. The misinterpretations of this holy text, owing to patriarchal mindsets in the last 1400 years, have resulted in women being treated as second class human beings and it is high time to curb these practices.

There is no safeguard against second marriage by her husband during currency of the first marriage, resulting in denial of dignity and security to her. Muslim women are suffering from injustice so far as personal law is concerned with regard to polygamous marriage and triple talaq. In recent past self appointed custodians such as Muslim Personal Law Board, Jamiat Ulema -i-Hind claims that they are the only arbiters of Islamic laws and no one including the Supreme Court can attack their interpretation. Such kinds of religious orthodoxy are contradictory to justice as well as social reform. Everywhere the rights of Muslim women are curbed with regard to divorce, education, work or inheritance and all others are doing nothing but have remained as silent spectator.

What are the major forces that used to contribute in existence of these irrational practices in the name of personal laws is a question having no answer. The three words talaq, talaq, talaq are simple for the man who utters it, but these words can bring insecurity and indignity to the women who have to hear it. It is the reality that all over the world majority of Muslim women are yearning to be freed from the shackles of personal laws.

It is 21st century and people used to say that this is an era of scientific upliftment, sustainable technological development etc. But it is very pathetic that in this era also we are fighting for issues like polygamous marriage, dowry problems, female foeticide etc. So, these issues must come to an end, otherwise we feel inferiority before the world.

MARRIAGE

Marriage, i.e., Nikah in pre-Islamic Arabia, meant different forms of sex relationship between a man and a woman established on certain terms, In pre-Islamic days, women were treated as chattels, and were not given any right of inheritance and were absolutely dependent. It was Prophet Mohammad who brought about a complete change in the position of women. The improvement was vast and striking and their position is now unique as regards their legal status. Prophet Mohammad placed women on a footing of almost perfect equality of men in the exercise of all legal powers and functions, which stand in hold relief when compared with the state of law amongst the ancient Arabs of the pre-Islamic days. Under the Muslim law marriage is considered as civil contract. After marriage, women does not lose her individuality. She remains a distinct member of the community; her existence of personality is not merged into that of her husband. The contract of marriage gives no power to anyone over her person or property in any way she pleases without any extraneous control of her husband. She can enter into binding contracts with her husband and proceed against him in law courts, if necessary. The women enjoys this position through the injunction of the Quran.

There are four required parties in any Muslim marriage recognised as valid by the Muslim Personal Law: (I) the bridegroom, (ii) the bride, (iii) the Kazi, and (iv) witnesses (two male or one male and two female witnesses).

The requirements of a valid Muslim marriage under Muslim law are:-

- (i) There should be proposal (Ijab) and acceptance (Qubul) made and given at the same meeting.
- (ii) The parties of the marriage should have the capacity to marry or to be married.
- (iii) There must be Mahr (consideration).

In the case of **Abdul Kadir**,¹ Justice W. C. Petheram quoted the words of Mr. Baillie's Digest which speaks that Marriage is a contract which has for its design or object the right of enjoyment and the procreation of children. It is a landmark judgment on Muslim Law which deals with

¹ Abdul Kadir vs Salima and another (1886) ILR 8 All 149.

marriage, dower, restitution of conjugal rights of wife and some matters incidental thereto. The judgment also speaks about inequality of Muslim law towards female.

Thus it is clear that marriage is not just a social practice in Islam, but it is rather a part of religion; it is a part of Sunnah. Hence, it is obligatory for a Muslim to marry. Actual Muslim personal law binds husband to ensure safety, security to his wife in each aspect of her life.

POLYGAMY IN ISLAM

Quran ordains- "Marry such women as seem good to you, two, three or four, but if you fear that you cannot do justice (between them) then marry only one, this is better so that you may not deviate from the right path." (IV: 4).²

"And it is not in your power to do justice between wives; even though you may covet it; but keep yourself not aloof from one with total aversion, nor leave her like one in suspense....."³ Thus it is clear that polygamy is not encouraged and is an exception and not a rule in Islam. It is not the fundamental right of a Muslim to have four wives as per true Quranic verses.

Muslim Feminist also says that polygamy is allowed by Quran only in extraordinary circumstances. Muslims view polygamy as an institution which is to be called into use only under extraordinary circumstances.⁴

Debate on Polygamous system of Muslim marriage is not new because Muslim women used to treat it as serious threat to their life and liberty. This Holy book permits polygamy only if the husband may treat each wife equitably and it clearly says that husband must do justice towards his each wife if he marries more than one. But in society some people used to take unreasonable advantage of this exception and leave his first wife without any reason.

Doing equal treatment and justness towards each of his wife is not possible as the verses of Quran in Sura 4: 129 says that:

*"It is not within your power to be perfectly equitable in your treatment with all your wives, even if you wish to be so; therefore, (in order to satisfy the dictates of Divine Law) do not lean towards one wife so as to leave the other in a state of suspense."*⁵

² *Supra Note 13*, at p. 143.

³ *Ibid.*

⁴ James M. Arlandson, *Polygamy in the Islam*, available in www.answering-islam.org.

⁵ *Ibid.*

Maududi⁶ interprets the verse, writing that it is only natural for a husband to like one wife over another or the others:

“Allah made it clear that the husband cannot literally keep equality between two or more wives because they themselves cannot be equal in all respects. It is too much to demand from a husband that he should mete out equal treatment to a beautiful wife and to an ugly wife, to a young wife and to an old wife, to a healthy wife and to an invalid wife, and to a good natured wife and to an ill-natured wife. These and like things naturally make a husband more inclined towards one wife than towards the other.”⁷

Maududi continues on the topic of unequal affection:

“In such cases, the Islamic law does not demand equal treatment between them in affection and love. What it does demand is that a wife should not be neglected as to be practically reduced to the position of the woman who has no husband at all. If the husband does not divorce her for any reason or at her own request, she should at least be treated as a wife. It is true that under such circumstances the husband is naturally inclined towards a favorite wife, but he should not, so to say, keep the other in such a state of suspense as if she were not his wife.”⁸

This means that wives are the source of a man’s inability to treat all of them equally. One is beautiful, while another is ugly. How can Allah demand super-human strength from a husband under changing circumstances in his wives? No one in this world have supernatural power so that he can treat all people equally while people are themselves are not alike. Better each should dominate his evil instinct and unnatural pleasure and must marry one so that he can give absolute pleasure and worldly peace and happiness to her.

DIVORCE IN MUSLIM PERSONAL LAW

Divorce is a natural corollary which may arise between married couple due to their differences in various aspects of their wed lock. But Muslim divorce system is a subject of age old debate and discussion due to its gender bias nature which is used by Muslim man folk as a weapon of victimization of women in most of the time. It is a general saying that Muslim marriage tie can be thrown by one person merely by uttering the word ‘Talaq’ thrice which causes serious threat

⁶ Abul Ala Maududi also known as Shaykh al-Hadith Maududi was born on 25th September 1903 in Aurangabad and died on 22nd September 1979 in New York. He was an Indian-Pakistan scholar, philosopher, jurist, islamist and imam. His works were written in Urdu, but translated into various languages of the world. He strove not only to revive Islam as a renewer, but to propagate true Islam, available in <https://en.wikipedia.org>.

⁷ *Ibid.*

⁸ *Ibid.*

to the life, liberty, security and dignity of the wife. This right does not exist for the woman. A Muslim woman has no right to divorce her husband through a system similar to the triple *talaq*. She would need to go to a *Darul Qaza* and prove the atrocities committed by her husband in order to get a divorce.⁹ . Modern Feminism also remarks it as symbol of suppression of 'Gender Justice'. It is said that *talaq* is a sword which is brandished by the Muslim husband against his wife with whims and caprice.

But the actual Muhammadan Law is something different than the general saying. The actual law as developed by the Prophet of Islam is strict regarding declaration of divorce. The Prophet pronounced *talaq* to be a most destable thing before the Almighty God of all permitted things. If *talaq* is given without any reason it is stupidity and ingratitude to God.¹⁰

There are two kinds of *talaq* as recognized under Hanafis Mohammedan Law namely;¹¹

- (i) *Talaq-us-sunnat*
- (ii) *Talaq-ul-bidat* or
- (iii) *Talaq-ul-badai*.

Talaq-us-sunnat is affected in accordance with the rules laid down in the traditions, i.e., Prophet *Sunnat* headed down by him or by his principle disciples. On the other hand, the *talaq-ul-bidat* is heretical or irregular mode of divorce which was introduced in 2nd Century of Mohammedan era. In this kind of *talaq*, as a matter of fact, there is capricious and irregular power of divorce, which was, in the beginning, left to the husband, and was strongly disapproved by the Prophet.

1. *Talak ashan*, which consists of a single pronouncement of divorce made during a *tuhr*¹² followed by abstinence from sexual intercourse for the period of *iddat*.
2. *Talak hasan* that consists of three pronouncements made during successive *tuhrs*, no intercourse taking place during any of the three *tuhrs*.
3. *Talak-ul bidaat* or *talak-i-badai* which consists of three pronouncements made during a single *tuhr* either in one sentence, e.g., I divorce thee thrice, - or in a separate sentences, e.g., I divorce thee, I divorce thee, I divorce thee.

The words of divorce must indicate an intention to dissolve the marriage. The following terms can be expressed by husband in divorcing his wife, e.g. "Thou are divorced," "I have divorced thee," or "I divorce my wife forever and render her haram from me."¹³

⁹ Indira Jaising, All unjust personal laws must go, be they Hindu, Muslim or Christian, (The Times of India, New Delhi, 1st July, 2004), p-9.

¹⁰ *Supra Note* 13, at p. 165.

¹¹ *Ibid*.

¹² *Tuhr* is a period between menstruations.

The above proposition of law as regards divorce or talaq primarily emerged from the text of Holy Quran, which is the primary source of Muslim law on the relationship between the husband and the wife as well as pronouncement of divorce by the husband against the wife. A period of waiting (iddat) for three monthly courses is prescribed in order to see if the marriage conditionally dissolved is likely to result in issue. But this is not necessary where the divorced woman is virgin: it is definitely declared that woman and man shall have similar rights against each other.

In the case of **Zeenat Fatema Rashid**¹⁴ after referring to the relevant verses of the Holy Quran, the division bench of Gauhati High Court held that, "The Quran discourages divorce and it permits only in extreme cases after pre-divorce conference. Therefore, a Muhammadan husband cannot divorce his wife at his whim and caprice.

TRIPLE TALAQ : AN OVERVIEW

Triple talaq is a recognized but disapproved form of divorced and is considered by the Islamic Jurists as an innovation within the fold of Shariat. It commands neither the sanction of Holy Quran nor the approval of the holy Prophet. It was also not in practice during the life time of first Caliph Umar's time. Later on Hazrat Umar permitted it on account of certain peculiar situation. When the Arabs conquered Syria, Egypt, Parsia, etc. they found women there much more better in appearance as compared to Arabian women and hence they wanted to marry them. But the Egyptian and Syrian women had insisted that in order to marry them, they should divorce to their existing wives instantaneously by pronouncing three divorce in one sitting. The condition was readily acceptable to the Arabs because they knew that Islam divorce is permissible only twice in two separate period of tuhar and its repetition at one sitting is un-Islamic, void and shall not be effective. In this way, they could not only marry these women but also retain their existing wives.

Holy Quran:- Holy Quran, the paramount source of Islamic Jurisprudence has not ordained that the three divorces pronounced in a single breath would have the effect of three separate divorces. To this effect the relevant verse of the Quran can be relied upon.

“A divorce is only permissible twice; after that, the parties should either hold together on equitable terms or separate with kindness”.

The use of the Arabic term ‘marratane’ in this verse does not mean repeating it but effecting the divorce on two separate occasions. As it is explicit by the apparent meaning of the verse that

¹³ Rashid Ahmad Vs Anisa Khatun 1932 (59) I.A. 21.

¹⁴ Zeenat Fatema Rashid Vs. Md. Iqbal Anwar, 1993 (2) Crimes 853.

even after two pronouncement of divorce on two different occasions, the chances for retaining the wife is very much open before the pronouncement of the third divorce on separate occasions. Virtually this third pronouncement of divorce makes divorce irrevocable and the chance for retention comes to an end while some jurists are of the view that word, marratane means mere repetition of word talaq thrice or uttering three number of talaqs indicate the purpose of effecting divorce.

Judicial Trend:- So far as Indian judiciary is concerned, it has, barring few exceptions, tolerate the triple divorce. In British India, as well as in independent India all the courts are declaring triple pronouncements of divorce in one sitting as lawful and effective. The common phrase used by courts is that the talaq-e-biddat or triple pronouncements of divorce is good in law though bad theology. In the case of **Saiyid Rashid Ahmad and another vs. Mst. Aneesa Khatoon**¹⁵, Ghiyasuddin divorced his wife Aneesa Khatoon by the formula of ‘triple divorce’ in absence of her but in presence of witnesses. After four days, he executed talaqnama stating that he had divorced his wife in abominable form. Later on they started living as husband and wife and there was no proof for the compliance of doctrine of Halala. Five children were to the couple and Ghiyasuddin treated them as legitimate. The privy council agreed with the observation of the lower court by pronouncement of triple divorce at one occasion became effective in breaking the marriage tie then and there.

In **Rahmatullah vs. State of U. P. and others**¹⁶, Justice H.N. Tilhari of Allahabad High Court (Lucknow Bench) observed:

“Talaq-ul-Biddat or Talaq-i-Bidai, that is, giving an irrevocable divorce at once or at one sitting or by pronouncing it in a tuhr once in an irrevocable manner without allowing the period of waiting for reconciliation or without allowing the will of Allah to bring about reunion, by removing differences or cause, of differences and helping the two in solving their differences, runs counter to the mandate of holy Quran and has been regarded as, by all under Islam-Sunnat, to be sinful.”

A survey by Bharatiya Muslim Mahila Andolan released in 2015 found that a majority of women favour an end to triple talaq and instead want codification of Muslim law. The survey conducted among 4710 Muslim women from 10 states reveals that 92% women want a ban on triple talaq, 93% want a legal framework instead of triple talaq, 91.7% women don't want their husbands to marry more than once, 44% women don't have nikahnama so there is no proof of marriage, 82%

¹⁵ (1932) ILR 54 ALL 46.

¹⁶ II (1994) DMC 64

women don't have any property in their name. 73% of women have annual income of less than 50,000, 55% women get married before 18 years.¹⁷

PROVISION OF MAINTENANCE OF MUSLIM DIVORCED WIFE UNDER PERSONAL LAW

The meaning of the word 'maintenance' as is found in the Random House Dictionary of the English Language means of upkeep, support or subsistence, livelihood.

In the case of **Ali Vs Sufaira**¹⁸ the honourable Kerala High Court has quoted the words of "Translation and Commentary on the Holy Quran" written by Abdulla Usaf Ali where the writer widely mentioned various Quranic verses relating to maintenance. The verses relating to Maintenance according to the writer are as follows:

"There is no blame on you if ye divorce women before consummation or the fixation of their dower, but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means; a gift of a reasonable amount is due from those who wish to do the right thing."¹⁹

"And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness and do not forget liberality between yourselves. For God sees well all that ye do."²⁰

"For divorced women maintenance (should be provided) on a reasonable (scale) this is a duty on the righteous."²¹

"Thus doth God make clear his signs to you; in order that ye may understand"²²

Thus Muslim husband who divorced the lady must be very liberal to the women and should give her substantially for her future. From this it is clear that the Muslim who believes in God must give a reasonable amount by way of gift or maintenance to the divorced lady. That gift or

¹⁷ Urvasi Dev Rawal, *Muslim women take on clergy, demand ban on triple talaq, polygamy* (Hindustan Times, Jaipur, 16th November, 2015) p. 9

¹⁸ (1988) 2 Ker LT 94.

¹⁹ Ayat 236.

²⁰ Ayat 237.

²¹ Ayat 241.

²² Ayat 242.

maintenance is not limited to the period of iddat. It is for her future livelihood because - God wishes to see all well. The gift is to depend on the capacity of the husband.

In the case of **Usman Khan Bahamani Vs Fathimunnisa Begum and Ors**,²³ three judges bench of Andhra High Court has stated that for a divorced woman maintenance should be provided on a reasonable scale. This is a duty on the righteous. There is no dispute about the translation of the above Aiyat by Abdullah Yusuf Ali, as is said by the Honourable bench. The concept of a reasonable and fair provision and maintenance arises out of the Quranic verse 241 in which the word "MATA" has been used.

In the above mentioned case the honourable court has referred the verses of "The Hedaya," the classical work of Muslim law applicable to the predominant Sunni sect of Muslim, where it is stated that where a man divorces his wife; her subsistence and lodging are, incumbent upon him during the term of her Iddat, whether the divorce be of the reversible or irreversible kind. The concept of the term 'subsistence and lodging' is wide enough to include the reasonable and fair provision and maintenance. Under the Shafei law, no maintenance is due to a woman repudiated by irreversible divorce unless she is pregnant. The Holy Quran in Verse 228 says: "Divorced women shall wait concerning themselves for three monthly periods. This is the period of iddat."²⁴

The sum and substance of the above discussion is that there is no difference of opinion among the authorities - Sunnis or Shias, that a divorced Muslim woman is entitled to maintenance from her husband only during the period of Iddat.

There is a consensus of opinion among all the eminent authors on Muslim law, such as Tyabji, Ameer Ali, Fyzee and others, that a divorced woman is entitled to maintenance only during the period of Iddat. Apart from Hedaya, which is the classical work of Sunni law, the classical work of Immamia which is a treatise on Shia Law and Baillie which deals both with Shia and Sunni aspects of law are all uniform that a divorced woman is entitled to maintenance for the period of Iddat only. Therefore, when women have the right to marry, they have also the right to be maintained by their husbands.

The law of Muslim maintenance under the Holy Quran, Hadith, Izma, Qyas are subject to criticism in modern legal system as these thousand years old verses are not adequate to fulfill the requirements of modern socio-economic structure. The purpose of modern legal system is to

²³ AIR 1990.

²⁴ In the case of Usman Khan Bahamani Vs Fathimunnisa Begum and Ors, AIR 1990 the Honourable court has interpreted the Quranic verses of 'Maintenance' and consensus of opinion among all the eminent authors on Muslim law, such as Tyabji, Ameer Ali, Fyzee and others, with regard to 'Maintenance'.

protect the rights of all women (which also include Muslim ladies) who have been divorced by, or have obtained divorce from their husbands and to provide adequate protection in matters connected therewith or incidental thereto".

“The Quran gives rights to women but these are being denied by the Ulemas and Maulvis who interpret the religious text in a patriarchal manner, “says Dr Noorjehan Safia Niaz, co-founder of the Bharatiya Muslim Mahila Andolan, in an interview.²⁵

The issues of gender discrimination against Muslim women under personal law, specifically in cases of alimony after divorce is a ground of debate from the time of judicial decision in the famous case of **Mohd. Ahmed Khan Vs Shah Bano Begum and others**²⁶. But the judgment of this case could not be implemented due to some forces coming from Muslim personal law Board.

In the case of **Danial Latiff and another Vs Union of India**²⁷ Supreme Court once again have dealt with various aspects of Islamic system of maintenance and has held as follows:

“A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period.” In **Shah Bano** decision the honourable Court has held that although the Muslim Law limits the husband’s liability to provide for maintenance of the divorced wife to the period of iddat, it does not contemplate or countenance the situation envisaged by Section 125 of the Code of Criminal Procedure, 1973.²⁸ The Court held that it would be incorrect and unjust to extend the above principle of Muslim Law to cases in which the divorced wife is unable to maintain herself.

²⁵ Urvashi Dev Rawal, *Muslim women take on clergy, demand ban on triple talaq, polygamy*, (The Hindustan Times, Jaipur, 16th November, 2015) p- 4.

²⁶ AIR 1985 SC 945.

²⁷ AIR 2001 SC 3958.

²⁸ Section 125 of Cr.P.C. 1973 speaks on Order for maintenance of wives, children and parents.

Section 125 (1) (a) speaks that person having sufficient means has an obligation to maintain his wife, unable to maintain herself, children and parents. If he neglects to do so, then a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

Explanation (b) of Section 125 speaks that, “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

Clause (3) of Section 125 speaks that if any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying fines, and may sentence such person, for the whole or any part of each month's allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

Clause (4) of Section 125 says that, no Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

The Court, therefore, came to the conclusion that 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, she is entitled to have recourse to Section 125 of the Code of Criminal Procedure. In the post **Shah Bano** period also judiciary is trying to curb the evils relating to alimony. If such efforts will be continued then the majority Muslim women will get benefit.

A COMPARATIVE STUDY WITH UNIFORM CIVIL CODE

Article 44 requires the State to secure for the citizens a Uniform Civil Code throughout the territory of India.

In historic judgment of **Sarla Mudgal vs. Union of India**²⁹, the Supreme Court has directed the Prime Minister Narsimha Rao to take fresh look at Art. 44 of the Constitution which enjoins the State to secure a uniform civil code which, accordingly to the Court is imperative for both protection of the oppressed and promotion of national unity and integrity. The Court directed the Union Government through the Secretary to Ministry of Law and Justice, to file an affidavit by August 1995 indicating the steps taken and efforts made, by the Government, towards securing a uniform civil code for the citizens of India.

Noor Saba Khatoun vs. Mohd. Qasim³⁰, the Supreme Court has held that a divorced Muslim woman is entitled to claim maintenance for her children till they become major. The court held that both under the Muslim Personal Law and Under Section 125 of the Criminal Procedure Code, 1973 the obligation of the father was absolute when the children were living with the divorced wife. This ruling was giving by the court while allowing an appeal by Ms. Noor Saba Khatoun challenging the judgment of the Patna High Court which had reduced the amount of maintenance. The Court made it clear that this right was not restricted, affected or controlled by divorced wife. Right to claim maintenance for two years from the date of birth of the children under Section 3(1) (B) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. In the case of **Seema vs. Ashwani Kumari**³¹, the honourable court observed that all marriages, irrespective of their religion be compulsorily registered. The Court felt that, "this ruling was necessary by the need of the time as certain unscrupulous husbands deny marriage, leaving their spouses in the lurch, be it for seeking maintenance, custody of children or inheritance of property."

²⁹ AIR 1995 SCC (3) 635.

³⁰ AIR 1997 SC 3280.

³¹ AIR 2006 (2) SCC 578.

The Law Commission of India recommended in 2008³²: “It is high time we took a second look at the entire gamut of Central and State laws on registration of marriages and divorces to assess if a uniform regime of marriage and divorce registration laws is feasible in the country at this stage of social development and, if not, what necessary legal reforms may be introduced for streamlining and improving upon the present system.”

CONCLUSION

The concept of ‘gender Justice’ requires protection and promotion of social, political, economic, cultural and all other rights of women. It also requires removal of practices which are derogatory to the dignity and well being of women. All persons have their right to life and liberty and no one will be deprived of these rights even in the name of religion. But despite of this Constitutional guarantee Muslim women are more likely to be marginalized from justice mechanism, basically in matters related to marriage, alimony, inheritance, child custody etc. Going by Quranic versions, permission to marry more than one woman, but not more than four was given at a time when there were lots of orphans, widows and captives of war who were unable to lead a dignified life and their strength was far more than the men which gave rise to social problems in the society. Appeal to the people to marry orphans, widows and captives of war was necessitated on account of social inequality, economic distress and like conditions to which women were put to suffer. The mandate issued by Prophet Mohammed was intended to save the destitute and to protect their belongings. Even after fifteen centuries, some people of our country seem to be very particular in following the aforesaid tenets of Islam unmindful as to whether such circumstances exist or not. People of the community contract more than one marriage mostly for their personal pleasure. There is no system in our country to ascertain and decide whether such persons are eligible to contract more than one marriage during the subsistence of the first marriage. Unrestricted freedom to marry women of their choice was enjoyed by men and subsequently to casually pronounce talaq according to their whims and fancies. Indian Parliament must re-look the matter and must evolve a new law with a view to protect and promote the rights of Muslim women.

The Muslim Woman suffers not only when she is divorced or abandoned but lives her entire married life under the dread that her husband has the arbitrary power to divorce her and throw her out of the house along with the children at his slightest fancy. This burden of insecurity colours the entire life of a married Muslim woman. Recently in an interview with the Times of India, Mrs. Sharaya Bano has disclosed that such types of evils are anti-Islamic and they are denied of justice everywhere. She said that she got postal divorce and is not allowed to take

³² Law Commission of India 212th Report on Laws of Civil Marriages in India-A Proposal to Resolve Certain Conflicts, October 2008, available at www.lawcommissionofindia.nic.in.

custody of her kids. She is fighting for justice and requests others not to remain as silent spectator, because no one is there to favour them and thus slowly and silently they are suffering throughout their life.³³

It is said that Muslim marriage is a contract rather than sacrament and no contract can be terminated on one side. But a Muslim husband under all schools of Muslim law can divorce his wife by his unilateral action and without the intervention of the Court. This power is known as the power to pronounce a talaq and it can be considered as inhumanitarian in modern context, as today's era is an era of reform, where law is there to protect basic rights of all persons irrespective of their religion and faith. It is true that holy Quran does not create any conflict between equality and religion, it is the people of our society who used to misinterpret the laws of this holy book and have created imbalance in the society.

All these must come to an end and law should be specific to visualize the life, liberty, security and dignity of Muslim women. Legislature must give emphasis to protect the rights of Muslim women who have been divorced, or is thrown out by her husband after his second marriage. State must initiate step to take affirmative action for the upliftment of downtrodden, illiterate and poor Muslim women and must provide certain preferential treatment to those who are suffering from various grievances relating to life and personal liberty.

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B. REPORT

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