

Muslim Women in India: A Struggle for Dignified Existence

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Abstract:

Muslims occupy an important position in Indian society. They are the principal minority of this country. According to 2011 census, Muslims constituted 13.4% of India's total population with majority in Lakshadweep and Jammu and Kashmir. Women empowerment is a contemporary issue for developing countries like India. It is assumed that the development of Muslim society has sustained a setback due to various factors of which the 'Invisible' role and 'Marginal' social position of women in dynamics of Muslim society is very important. The rates of women empowerment are in a vulnerable condition within the largest Muslim minority. Lack of social opportunities for Muslim women is a crucial issue needing urgent Action. This paper attempts to present theoretical analysis of position of women in Islam as advocated by Quran and Hadith and condition of Muslim women in India in comparison to other countries like Turkey, Iran, Saudi Arabia and Afghanistan. It explores into the socio-economic profile of Muslim women in India in the light of personal law and studies the constitutional validity of personal law.

*It concludes that minorities in the minority i.e. Muslim women are still forced to live a secluded and submissive life. According to the Sachar Committee report Muslim women are among the poorest, educationally disenfranchised, economically vulnerable, politically marginalized group in the country. However, the Supreme Court of India has declared the applicability of secular law over Muslims in **Shah Bano's** case but still personal law is continuing itself violating constitutional injunctions of equality and freedom from discrimination. Both state and fundamentalists of Islam are needed to wake up and put robust efforts to bring Muslim women in mainstream by implementing the various laws and schemes framed for them in a proper way.*

Key Words: Muslim Personal Law, Muslim Women, Uniform Civil Code, Minorities' rights, Muslim Women Empowerment.

1. Introduction

Not a single day go spare of news about Muslim women rights violation. Zeid Raad al-Hussein, the United Nations human rights commissioner states about the murder of an Iraqi lawyer, who was promoting women's rights in Iraq by Islamic State Fighters.¹⁷² In another case young British Muslim Women found themselves as silent sufferers and condemned Islamic State for not recognizing their correct place within community.¹⁷³ We have got habitual of witnessing Triple -Talaq and polygamy among Muslims which follows serious repercussions. Partition days cannot be held responsible for blatant violation of Muslim women's rights. It is deeply rooted in the medieval Muslim regime and more vividly in the foundation

¹⁷² World Report, 2018(28th annual review of human rights) (2018).

¹⁷³ Radhika Sanghani, Why young Muslim women are speaking out against the Islamic State on the streets of London, The Telegraph, September 24, 2014, <https://www.telegraph.co.uk/women/womens-politics/11116854/Young-Muslim-women-are-speaking-out-against-the-Islamic-State-in-on-streets-of-London.html> (last visited Mar 5, 2018).

of Islam and its misinterpretation. Islam preaches multiculturalism and group rights which is in contrast to the modern democratic regimes with constitutions advocating principles of individual freedom and equality.¹⁷⁴ Not only religious tyranny but other factors like Hindu right wing chauvinism and political exigencies of both sects (Hindu and Muslim) have casted fear on the protection of Muslim women's interests. Denial of equal citizenship, misconception of Indian Muslims as anti-Indian or terrorists, control of roles and behaviours by Sharia, unenforceability of uniform civil code and preference to personal law over secular law are the causes which have contributed to the plight of Muslim women.

According to a survey conducted by Thomas Reuter's foundation in 2013, Egypt was recognized as the worst country in pursuing women's rights. Except a few countries like Jordan, Oman, Qatar, Turkey, Kuwait etc. Muslim women are forced to survive in deplorable conditions.¹⁷⁵ This is what has been analysed under part third of this essay. Apart from Egypt, it showcases and compares the status of Muslim women in Afghanistan and Lebanon with that of India. Muslim personal law which requires a wife to be monogamous and a husband having right to marry four women is discriminatory and should be reformed. Such other disputes in case of dower, maintenance, divorce and inheritance have been dealt under the essay. We all understand that nothing can be more precious than national integrity so why to destroy unity in the jungle of personal laws.

2. Women in Islam:

2.1. Status of Women in Quran

Quran 4:34: "Men are in charge of women, because Allah hath made the one of them to excel the other, and because they spend of their property (for the support of women) so good women are the obedient, guarding in secret that which Allah hath guarded....."¹⁷⁶ Evaluating above verse alone it is found that women have been portrayed as obedient creatures. They have been connoted as powerless; men possess all authority over them. They have been called weak. However, it seems contradictory when it comes to Quranic verse 74:32 which states -

"Every soul will be (held) in pledge for its deeds."¹⁷⁷
74:38

Social atmosphere in Arabia before the advent of Prophet Muhammad in reform field was anarchic and chaotic and it wanted urgent changes. Prophet is considered to be a light in darkness for bringing divine letter among people. In God's word, men and women both are equal and so has been said in Quran (74:38). But there are immense shortcomings in interpreting the Quran verse consistently. According to religious text,

¹⁷⁴ Ayaan Hirsi Ali, *The Caged Virgin: An Emancipation Proclamation for Women and Islam* (Reprint Edition ed. 2008).

¹⁷⁵ Egypt 'worst for women' out of 22 countries in Arab world, BBC, November 12, 2013, <http://www.bbc.com/news/world-middle-east-24908109> (last visited Mar 5, 2018)

¹⁷⁶ *The Holy Qur'an*, Surah-An-Nisa [4:34], (1934), <https://quran.com/4/34?translations=101,19,84,22,18,21,95,20,17> (last visited Mar 5, 2018).

¹⁷⁷ Chapter (74) sūrat l-mudathir (The One Enveloped), in *The Holy Qur'an* (1934)

"It is my obligation to make eve bleed once every month as she made this tree bleed. I must also make eve stupid, although I created her intelligent".¹⁷⁸ Also, women are prohibited to go mosque for praying. Reason is provided that a women is the closest to God's face and devil approaches her quietly. So she should confine herself inside the house. Spiritual inferences and social outlook of women extracted out of Quranic verses are contradictory. But examining it as a divine word, God made everyone equal without discrimination.

2.2 Status of Women under Hadith

Reports of Prophet Muhammad's activities are called a Hadith. Though, there are number of 'Hadith' which are not based on the sayings and activities of prophet.¹⁷⁹ But a few texts which narrate the prophet's words and deeds for women are important. Al-nisa of Quran discusses about the role of women in Islamic society. Evaluation often leads to a contradiction regarding position of women.

However, Hadith makes it obvious that women are inferior to men. Al-nisa (4) states-

"Men are leaders for women, because God has made some of them (men) excel other (women), and because they (men) spend from their own means."¹⁸⁰

Hadith issued by Abu Al-shaykh and Abd-in humaid states that Hawa (eve) was created from Adam's rib. Hence, she has been seen dependant on men for her needs.¹⁸¹

3. Muslim Women: A Comparative Analysis:

3.1 Egypt

Powerful international norms like CEDAW, 1979 has been ratified by almost all countries in Middle East including North African country that is Egypt.¹⁸² However, contradiction remains as Article 2 of new constitution of Egypt declares Sharia as the main source of legislation.¹⁸³ Some Muslim countries objected for its adoption as being against the principles of Sharia. Impact was that Article - 11 of constitution of Egypt (to preserve liberty and equality of women) turned abstract.¹⁸⁴ Survey of Thomas Reuters foundation declaring Egypt as the worst

¹⁷⁸ John Steinreich, *The Words of God* (2011)

¹⁷⁹ Abdullah Saeed, *Islamic Thought: An Introduction*, 90 (2006).

¹⁸⁰ Maryam Bakhtyar & Akram Rezaei, *Female Leadership in Islam*, 2 (2012), http://www.ijhssnet.com/journals/Vol_2_No_17_September_2012/29.pdf (last visited Mar 4, 2018).

¹⁸¹ Muhammad Husain Qādri, *Al-Amnu Wa al-'Ulā Li Nā`iti al-Mustafā Bi Dāfi`i al-Balā* (Safety And Greatness For Those Who Describe The Chosen One As The Eliminator Of Difficulty) (2010), http://al-adaab.org/default/images/pdf/Imam_Ahmad_Ridha_Khan_Al_Amnu_wal_Ula_English.pdf (last visited Mar 6, 2018).

¹⁸² Sam Brotman et al., *Implementing CEDAW in North Africa and the Middle East: Roadblocks and Victories* (2008).

¹⁸³ Said Mahmoudi, *The Sharī`a in the New Afghan Constitution: Contradiction or Compliment?* (2004), http://www.zaoerv.de/64_2004/64_2004_4_a_867_880.pdf (last visited Mar 6, 2018)

¹⁸⁴ Lama Abu-Odeh Professor of Law Georgetown University Law Center, *Modernizing Muslim Family Law: The Case of Egypt* (2004).

country for women's rights, cases of female genital mutilation, domestic violence, sexual harassment etc. makes clear that country is still plagued under discrimination. Status of Indian Muslim Women doesn't differ much. Religions law merely cannot be a reason for curtailment of women's rights but its selective interpretation.¹⁸⁵ Egyptian constitution does not allow any non-Muslim law to interfere with the existing law contrary to Sharia.

In India, personal laws enjoy independent state. It will be wrong to say that Allah weighs men and women unequal but the patriarchal interpretation of Muslim law is responsible for prevailing discrimination.¹⁸⁶ Women in ancient Egypt kept themselves in purdah, contact with men who were not kin was not permitted. They were expected to bear male child. In modern times, "Purdah" system became more stringent and drop-out rates at the age of puberty increased in schools.¹⁸⁷ Electoral reforms of Gamal Abdel Nasser in 1956 welcomed representation of women and right to vote for them in Egypt's new constitution. Initiative of 1979 to include more women in parliament was a major milestone in history.¹⁸⁸ Decline of Mubarak and Arab spring was being seen driven by the powerful recognition of women's rights among people.

In Egypt, Puberty has been set as an age for marriage i.e. 14 years. A Mahomedan has an exclusive right to give extra judicial divorce unilaterally in Egypt. A women can only operate the Judicial divorce (Faskh) which takes 8-10 years to get complete. In India Talaq-ul-biddat i.e. triple talaq (irrevocable) is a matter of great concern. Muslim women's right to maintenance is suspended. According to Sharia, husband has only financial obligation to provide deferred part of dower and maintenance (Nafaqa) till Iddat lasts. It is contrary to section-125 of criminal procedure code, 1973 which requires maintenance to be given even after divorce to indigent wives.¹⁸⁹ Authoritative and patriarchal interpretation of Sharia to create deterrence over women to obey Allah's word is wrong and needs to be abolished, both in India and Egypt.

3.2 Lebanon

Father holds the supreme position in any Muslim family of Lebanon.¹⁹⁰ However, Lebanon is considered to be literal among all the Muslim countries in Middle East but still in rural regions, women are restricted to the family and children.¹⁹¹ Formerly, Lebanon was one of the colonies of France, got

<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=https://www.google.co.in/&httpsredir=1&article=1031&context=facpub> (last visited Mar 7, 2018)

¹⁸⁵ Rajesh Komath, Religion as a barrier in women's empowerment, *The Hindu*, November 18, 2013, <http://www.thehindu.com/books/books-reviews/religion-as-a-barrier-in-womens-empowerment/article5364865.ece> (last visited Mar 6, 2018)

¹⁸⁶ Priscilla Offenauer, *Women in Islamic Societies: A Selected Review of Social Scientific Literature* (2005).

¹⁸⁷ Amina Abdullah & Abu Shehab, *WOMEN, ISLAM AND MODERNITY*, 2014

¹⁸⁸ Ahmed Zaki Osman, Women's movement: A stop at Egypt's socialist era, *Egypt Independent*, March 19, 2012, <http://www.egyptindependent.com/womens-movement-stop-egypts-socialist-era/> (last visited Mar 7, 2018)

¹⁸⁹ Shayara Bano vs Union of India and Ors., (2017).

¹⁹⁰ Frank D Arwiche, Lebanon Countries and Their Cultures, <http://www.everyculture.com/Ja-Ma/Lebanon.html> (last visited Mar 7, 2018).

¹⁹¹ Sanja Kelly & Sanja Kelly, *WOMEN'S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: PROGRESS AMIDST RESISTANCE* (2010).

independence in 1943.¹⁹² Hereditary political positions still prevail there. Less representation of women in political front due to male dominated parliament, ministries and municipalities has been taken as a challenge by women organizations and NGOs. Women voice has now amplified to secure a better representation in political process of country. Indian scene is somewhat different as it is evolved as one of the colonies of Britain with a distinct political system and social conditions. There are lots of efforts to be made to impart equal participation of men and women in parliament.

Status of Muslim Lebanese women is quite similar to those of India. Marriage is a civil contract in Lebanon. A few important provisions related to Nikaah (in Lebanon)¹⁹³ -

- (a) Wife is entitled to have alimony if marriage was not consummated for one year due to husband's fault.
- (b) Marriage can be terminated if either women or men were found insane.
- (c) Divorce can terminate marriage pronounced by husband or his representative or the Judge.
- (d) Marriage of virgin Muslim Lebanese girl without the consent of her guardians is restricted.
- (e) A Muslim woman cannot marry a non-Muslim man.

Increasing incidents of domestic violence and brutality by family members have also been taken as a wakeup call towards women's right in Lebanon.¹⁹⁴

3.3 Afghanistan

Most of the Muslim countries offer hindrance to the establishment of gender equality as these are governed by patriarchal setup. Afghanistan is one out of them which showcases one of the most inferior positions of Muslim women among all. Similar to some orthodox and conservative communities in India, birth of a girl child is often taken as a cause of second marriage in Afghanistan.¹⁹⁵ Girls are married at very young age of 13-16 years or in certain cases between 10-12 years. They lack right to choose their life partners, which is a task entrusted to the parents/Guardians only.¹⁹⁶ Husband possesses absolute right to break the marriage. Deprivation of rights and claims for children, polygamy etc. are the areas where women are not supposed to have a dignified living and equal status as men in society. Women are ignored of their right to have compulsory elementary education.

¹⁹² Lebanon: A brief history, The Telegraph, February 24, 2003, <https://www.telegraph.co.uk/news/1400004/Lebanon-A-brief-history.html> (last visited Mar 7, 2018).

¹⁹³ Reuters, Unequal and Unprotected Women's Rights under Lebanese Personal Status Laws, Human Rights Watch, January 19, 2015, <https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws> (last visited Mar 7, 2018).

¹⁹⁴ Fatima Moussawi & Nasser Yassin, Dissecting Lebanese Law 293 on Domestic Violence: Are Women Protected? (2017)

¹⁹⁵ Shabnam Rezaï, *Afghani Women's Resistance Their Struggle for Autonomy under the Soviet Occupation and Taliban Rule*, 2017, https://repository.asu.edu/attachments/191103/content/Rezaï_asu_0010N_17208.pdf (last visited Mar 7, 2018)

¹⁹⁶ Priscilla Offenbauer, *Women in Islamic Societies: A Review of Social Scientific Literature Women in Islamic Societies* (2005).

A few points which clarify the legal status of women in Afghanistan are given below.¹⁹⁷ -

- (a) An Afghan can marry more than one women.
- (b) Women are prohibited to marry non-Muslim man though in case of man, it is permitted.
- (c) Pre-marital sex is prohibited.
- (d) A woman can only have divorce, if she gets it approved by her husband with witnesses to testify it in court.
- (e) Bride-price is common among Afghan families.

Position of women in Afghanistan uplifted somewhat during Karzai government. During Taliban's regime 80% of Afghan marriages were arranged by force, has been cited in one of the reports of Amnesty international.¹⁹⁸ Socio-economic conditions of India and Afghanistan reveals a vast difference. It was only in 1919 when formal education sector was opened for women in Afghanistan.¹⁹⁹ Despite of certain distinct features, inferior position of Muslim women can be witnessed both in India and Afghanistan.

4. Muslim women in India:

4.1 Muslim personal law: Black letter law

(a) Dower, Divorce and Maintenance -

Muslim marriage is a civil contract and dower acts as a consideration in it. It is actually more than that; It is "a symbol of respect towards wife".

"Mahr or dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage."²⁰⁰ It's an obligation imposed upon husband as a mark of respect towards his wife. Wife may not become indigent after divorce; dower serves the purpose to keep wife out of such situation after dissolution of marriage.

In *Abdul Kadir v. Salima*²⁰¹, the court discussed the liability of husband to pay dower and nature of dower. It was held that dower is bride's price for cohabitation and right of cohabitation does not accrue to him till he has paid the dower.

Mahr is classified into specified dower (Mahr-i-musamma) and customary dower (mahr-i-nil). Specified dower can be further divided into prompt dower (Ma'ajjal)

¹⁹⁷ Ibid.

¹⁹⁸ Dr. Minakshi Das, Sir Ratan Tata Fellow 2003/04 & Asia Research Centre, Taliban's War on Women: Live Experiences of Afghan Women in Transit on Ethnicity and their Identity (2006), <http://eprints.lse.ac.uk/25198/1/ARCWPI3MinakshiDasApr2006.pdf> (last visited Mar 7, 2018).

¹⁹⁹ Saif R. Samady & UNESCO, Education and Afghan Society in the twentieth century (2001), <http://unesdoc.unesco.org/images/0012/001246/124627E.pdf> (last visited Mar 7, 2018)

²⁰⁰ Rakesh Kumar Singh, Law of dower (Mahr) in India, *Journal of Islamic Law and Culture* 58–78 (2010), <https://doi.org/10.1080/1528817X.2010.528594> (last visited Mar 7, 2018)

²⁰¹ *Abdul Kadir vs Salima*, (1886) ILR 8 All 149

and deferred dower (Mu' wajjal).²⁰² When the amount of dower had been specified before at the time or after marriage by a contract is called specified dower. Prompt dower is immediately payable after marriage on wife's demand after consummation or before. Mahr payable at the time of dissolution or marriage is called deferred dower. Proper dower happens when amount of dower is not fixed.²⁰³

But issue arises is why women should be treated specially in the name of economic security. Giving away Mahr to the bride at the time of marriage implies subordinate socio-economic position of Muslim women. Formerly, Mahr was payable to bride's father as a bride price, now it is received by women herself. It is to reinforce the dependency of women on men and ultimately establish the male autarchy.

Since, a Muslim bride remains constantly under a fear of being given Talaq, Mahr retained its importance. Talaq "can be extra-judicial or judicial. Talaq - i - sunnat is considered in accordance with the dictates of prophet Mohammad. It is further classified into two - Talaq - i - ahasan (most approved) and Talaq - i - ahasan (less approved). A husband can enforce divorce in three other ways also talaq - ul - biddat, ila and zihar.²⁰⁴

Talaq - ul - biddat is regarded as sinful and most - unfavoured in Islamic law. Unilateral, irrevocable divorce by husband is unconstitutional. It transgresses the purpose of Article 14. Also, significant judicial precedents supporting the above issue cannot be ignored. However, ambivalence of legislature and attitude of Muslim extremists inhibited to bring any concrete change in personal law. Muslim countries like Egypt, Iran, Sudan etc. have recognized triple Talaq as unlawful. Determination or constitutional validity or triple talaq in India is essential for the protection of Muslim women rights.²⁰⁵

Arbitrary provision of talaq - ul - biddat restraints women to uplift their poor condition after divorce on the meager amount of Nafaqa (maintenance).

(b) Muta Marriage -

Marriage in Islam is a strong bond; it's not merely a contract but assimilates a devotional element in it. Quran defines "Nikaah" essential for attainment of social goal or reproduction and perpetuation of human race. Muta is an ancient Arabian ritual. It has been defined as -

²⁰² Syed Sahid Ahammad, A Critical Analysis of Dower (Mahr) in Islam, 21 IOSR Journal Of Humanities And Social Science (IOSR-JHSS).

²⁰³ Muslim Marriage and Dower Rights of Women, Muslim- Marriage- Guide.com, <http://www.muslim-marriage-guide.com/dower-rights.html> (last visited Mar 8, 2018)

²⁰⁴ Talaq-i-Tafwid: The Muslim Woman's Contractual Access to Divorce: An Information Kit & Harsh Kapoor, Talaq-i-Tafwid: The Muslim Woman's Contractual Access to Divorce: An Information Kit (1976), <http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/talaq-i-tawfid-eng.pdf> (last visited Mar 8, 2018)

²⁰⁵ Setu Gupta, The Concept of Divorce under Muslim Law Legal Service India, <http://www.legalserviceindia.com/article/l393-Divorce-under-Muslim-Law.html> (last visited Mar 8, 2018).

"Enjoyment, pleasure and delight."²⁰⁶

It's a temporary contract of marriage connotes the desire behind realizing it.

Main ingredient of Muta includes:²⁰⁷

- (a) Spouses do not share any inheritance rights.
- (b) Maintenance is not provided upon divorce.
- (c) Dower is provided to wife.
- (d) Marriage can be extended with the consensus of both parties.

Muta is often seen as legalized prostitution. Ignorant women, minors, orphans, illegitimate children have been victims of this customary practice. It has been understood less like an institution but more to take sexual advantage of women. Muta cannot take place of sacred bond of marriage which involves inheritance. People in civilized society are expected to think of welfare of both men and women than to continue Muta which focuses on pleasure by exempting persons of their responsibilities in a relationship.

(c) Polygamy -

Verse 3 of Sura 4 of Quran (about polygamy) -

"If ye fear that ye shall not be able to deal justly with the orphans marry women of your choice, two or three or four, but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing Injustice."²⁰⁸ It is said that after battle of Uhud many women went widows and destitute. For the welfare of these women, prophet provided for polygamy.²⁰⁹ In present context, polygamy is inconsistent with our constitutional values and principles of natural justice.

It is insufficient to continue polygamy as merely Sharia holds it valid. Most modern Muslim nations have not recognized it e.g. Azerbaijan, Tunisia, Turkey etc. polygamy is a patriarchal practice which recognize women more as a commodity than a respectable being. Muslim women's rights can be best served by renouncing this practice.

4.2 Socio-economic profile of Muslim women in India-

(a) Population

Transformation of demographic profile of Muslims in our country is striking. As per notification generated by central government in 1993, Muslims constitutes 13% of the total population.²¹⁰ Sachar committee used data of census 2001 to study

²⁰⁶ Konina Mandal, CONCEPT OF MARRIAGE AMONG MUSLIMS : A STUDY ON MUTA MARRIAGE, 3 International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212, <http://ijlls.in/wp-content/uploads/2016/02/18.pdf> (last visited Mar 9, 2018).

²⁰⁷ Ibid.

²⁰⁸ Multiple wives (A Quranic view), True Islam, [http://www.quran-islam.org/articles/part_3/polygamy_in_quran_\(P1411\).html](http://www.quran-islam.org/articles/part_3/polygamy_in_quran_(P1411).html) (last visited Mar 9, 2018).

²⁰⁹ Id.

²¹⁰ Ministry of Women and Child Development, An Analytical Study of Education of Muslim Women and Girls in India Available at <http://www.jeywin.com/wp-content/uploads/2009/12/An-Analytical-Study-of-Education-of-Muslim-Women-and-Girls-in-India.pdf> (Last seen on : 9 Apr,2018)

population of Muslims. According to it there are 138 million Muslims out of total 1029 million people. Out of 593 districts, 9 districts possess 75% of Muslim population. Sex ratio among Muslims is higher than any other religions community. It is 982/1000 as compared to 927/1000 among Hindus, as per census 2001. It is estimated that Muslims shall come out to be 18-19% by the end of 21st century.²¹¹

(b) Education

A report of national sample survey, 43 round (1987-88) speaks about Muslim illiteracy in rural areas as 76.1% and 59.5% in urban areas which is highest among all other religious sects of India.

In 2005, former Prime Minister Mr. ManMohan Singh constituted Sachar committee to prepare report on social, economic and educational status of Muslims in India. Some of the findings of Sachar committee describing educational condition of Muslim women are - ²¹²

- (a) Muslim girls have highest dropout.
- (b) Education attainment status of Muslims is approximately similar to SCs/STs.
- (c) Despite of various schemes for raising educational standard of Muslim women, they have failed to read out the benefits. Report cites an increase upto 65% in enrolment of Muslims in schools.,
- (d) Marginal share of Muslims in Post-Graduation courses.

Muslims still rely on Madarasas and Maktabas. As per report, Muslim women are the most backward in education. Madarasas and Maktabas are left to be the only refuge for their education. Bottlenecks of formal education need reform to provide education to weaker sects at affordable price. In addition to this, upgradation of Madarasas and Maktabas is needed for ensuring better learning conditions especially for those who can't afford formal education in schools.²¹³

(c) Health

Pervasiveness of factors like caste, religion, region, language etc. has remained responsible for number of setbacks. Ill health and poverty among Muslims is an example. Sachar committee on the basis of various surveys and estimates reported poor immunization among Muslims.²¹⁴ Inaccessibility of potable water, sanitation and living conditions are the other factors contributing to the poor health conditions. Population increase, unemployment, migration and mushrooming of

²¹¹ Id.

²¹² Ministry of Women and Child Development, An Analytical Study of Education of Muslim Women and Girls in India Available at <http://www.jeywin.com/wp-content/uploads/2009/12/An-Analytical-Study-of-Education-of-Muslim-Women-and-Girls-in-India.pdf> (Last seen on : 9 Apr,2018)

²¹³ Shodhganga, A brief History of Madarasas, http://shodhganga.inflibnet.ac.in/bitstream/10603/52798/7/07_chapter%202.pdf (Accessed on : 9.4.2018)

²¹⁴ Ministry of Women and Child Development, An Analytical Study of Education of Muslim Women and Girls in India Available at <http://www.jeywin.com/wp-content/uploads/2009/12/An-Analytical-Study-of-Education-of-Muslim-Women-and-Girls-in-India.pdf> (Last seen on : 9 Apr,2018)

slum areas in cities are some of the important reasons behind poor health. 16% of villages without medical facilities located in Muslim populated areas. Women's reproductive health is of prime concern. Right to health is an inalienable right of all human beings and it must be realized well.²¹⁵

(d) Employment and Work Participation

According to Sachar committee findings, Muslim women have the lowest work participation. 60% of them are self-employed and localized in handicraft and embroidery work.²¹⁶

Most of them are employed in secondary and tertiary sectors. In manufacturing sectors and industries, Muslim women are involved in employment on meager income and under poor contractual conditions. Education is the way to liberate the Muslim women from poor working conditions; also State should be committed to realize Article - 43 of the constitution for ensuring improved work conditions.²¹⁷

5. Muslim Personal Law and Its Constitutional Validity

5.1 Reform of Muslim Law and Article-25 of Indian Constitution

Secularism does not denote, non-religious state but religious tolerance and respect for all religions equally. Article-25 of Indian constitution states -

"Every person and not only the citizens of India possess freedom of conscience and right to freely profess practice and propagate religion, subject to public order, health and morality."²¹⁸

People of diverse religions have freedom to profess, propagate and practice any religion they have faith on within restrictions. However, in present study, freedom of religion does not mean vindication of rights of a particular gender e.g. Muslim woman. Marriage, divorce, succession etc. matters are still controlled by personal laws in our country. Reform of personal laws should not be seen in contrary to Article-25. Later is all about freedom to worship the lord of choice and not about secular matters like marriage, divorce, inheritance etc.²¹⁹

India is world's largest democracy and emerging fast in every sector of development. One cannot think to drag the personal laws on the back of secular laws for next century. Personal laws are incompatible with the fundamental rights and directive principles. Judicial sensibility and humane judgement in Shah Bano had to suffer because of hard bitten decision of central government for a reason of elections at that time. Religious code regulating matrimonial affairs doesn't fit in present day situation. Reforms cannot be hurried upon but it is Article-44 which

²¹⁵ Id.

²¹⁶ Ministry of Women and Child Development, An Analytical Study of Education of Muslim Women and Girls in India Available at <http://www.jeywin.com/wp-content/uploads/2009/12/An-Analytical-Study-of-Education-of-Muslim-Women-and-Girls-in-India.pdf> (Last seen on : 9 Apr.2018)

²¹⁷ Id.

²¹⁸ M.P. Jain, Justice Jasti Chelameswar & Justice Dama Seshadri Naidu, M P Jain Indian Constitutional Law (8 ed. 2018).

²¹⁹ Id.

shall embark the era of improved status of women.²²⁰ Any fatwa or regime cannot be greater than constitutional values.

5.2 Shah Bano's Case: A Liberal Judicial interpretation of Muslim women Act-

Disclosure of discriminatory provisions of Muslim law for divorced women was not new. However, will power of Shah Bano to fight for justice is applaudable. Justice Chandrachud decided in favour of Shah Bano and it was followed by mass criticisms.²²¹

Verdict was castigated for being anti-Muslim. India is still fighting to establish secularism. Shah Bano's case was a strong march in this transition stage to boost the secular sentiment. She was a 60-year-old divorced women who went to court for claiming maintenance from her former husband. The Supreme Court ruled in favour of her. Justice Chandrachud explained his judgment by stating that 'Mahr' is an amount of money paid to the wife at the time of marriage as a mark of respect towards her and not at the time of divorce.²²²

Muslim extremists reacted negatively over the decision and it had political consequences. Parliament reversed the ruling by passing Muslim women (protection of rights on diverse) Act, 1986. It proved to be transgressing the constitutional spirit.²²³

5.3 Uniform Civil Code and Minority Rights -

It's thought provoking whether secular law can be overridden by religious laws. Whatever may be the political outlook of preserving personal laws but the Supreme Court has continuously been trying to make Article - 44 alive. In *Mohd. Ahmed Khan v. Shah Bano Begum*²²⁴, the Supreme Court held that husband will have an obligation to bear maintenance charges beyond iddat period. In another case of *Sarla Mudgal v. Union of India*²²⁵, court pleaded for a uniform civil code "for the protection of oppressed and promotion of national unity and solidarity." In *Daniel Latifi v. Union of India*²²⁶, Supreme Court ruled against the provisions of Muslim personal law and upheld husband to pay maintenance charges beyond Iddat. Article - 44 which states that -

"The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India"²²⁷ is more than a pious doctrine. But political uproars and communal attitudes over its enactment have been causing to ignore the sensible and human judgements of Supreme court e.g. Shah Bano's case. Former chief Justice of Supreme Court, Justice Shri Gajendragadkar said, "Non-

²²⁰ M.P. Jain, Justice Jasti Chelameswar & Justice Dama Seshadri Naidu, M P Jain Indian Constitutional Law (8 ed. 2018).

²²¹ *Mohd. Ahmed Khan vs Shah Bano Begum and Ors* 1985 AIR 945, 1985 SCR (3) 844

²²² Id.

²²³ Express Web Desk, What is Shah Bano case?, The Indian Express, August 23, 2017, <http://indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/> (last visited Apr 10, 2018).

²²⁴ *Mohd. Ahmed Khan vs Shah Bano Begum And Ors* 1985 AIR 945, 1985 SCR (3) 844

²²⁵ *Smt. Sarla Mudgal vs Union Of India & Ors* 1995 AIR 1531, 1995 SCC (3) 635

²²⁶ *Daniel Latifi & Anr vs Union Of India* ((2001) 7 SCC 740 : 2001 CriLJ 4660)

²²⁷ M.P. Jain, Justice Jasti Chelameswar & Justice Dama Seshadri Naidu, M P Jain Indian Constitutional Law (8 ed. 2018).

implementation of Article -44 amounts to a grave of Indian democracy and sooner we take suitable action in that behalf, the better and in the process of evolving a new secular and order, a common civil code is a must."²²⁸ Beginning is hard but time is to embrace secular laws leaving behind the religion oriented laws so as to make the dead letter, Article-44 of Indian constitution alive.

6. The Triple Talaq Verdict

In a landmark judgement of *Shayara Bano v. Union of India and Ors.*²²⁹, The Supreme Court held that Muslim practice of Talaq-ul-Biddat is “Void” and “Unconstitutional”. Justice Khehar stated that any form of divorce practice which is inconsistent with the tenets of Quran is unacceptable. This far-reaching decision has heralded a new age for the Muslim women empowerment agenda. The Supreme Court has truly set up a secular ruling by this verdict which has held high the constitutional spirit of equality among gender and non-discrimination.

7. Conclusion:

Even after completion of more than six decades of independence, country is chained into the shackles of regionalism, communalism, castesism etc. While women have been granted various rights under Indian Constitution and other laws, they are recognized as vulnerable. Preamble advocates Justice, equality and liberty but unfortunately personal laws are put out of the ambit of “laws inconsistent to constitutional spirit”. Personal laws and its reform forms the core of this debate. Sachar Committee report commendably outlined Muslim women in most of the parts of the country suffering from illiteracy, poverty and below average work participation. They are struggling for an equal citizenship which has continuously been contradicted by personal law. Time is ripe for them to challenge their marginalization under religion. The triple talaq judgement has initiated a major change in the pattern how personal laws governed in India till now. At the end constitutional spirit has to put at apex by implementing Article-44 which best serves the purpose.

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²²⁸ Tahir Mahmood, *The Progress in Implementing Social Directives of the Constitution—A Critical Appraisal*, [http://14.139.60.114:8080/jspui/bitstream/123456789/688/43/The Progress in Implementing Social Directives.pdf](http://14.139.60.114:8080/jspui/bitstream/123456789/688/43/The%20Progress%20in%20Implementing%20Social%20Directives.pdf) (last visited Apr 9, 2018).

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