

Gender Justice in Muslim Personal Law With Special Reference to Divorce

SUMMARY OF THESIS

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SUMMARY

1. Introduction

India is a land of diversity in religions. Hindu, Buddhists, Jains, Christians and Muslims all lives together in Indian society. Each community and religion has its own personal laws. All the individuals are free to be governed by their own personal laws in the matters of marriage, divorce, property, succession and other family matters and not the law which would be applied in the local territory. Under the Indian Constitution the state has distanced itself from the religion, but the Constitution has given protection to the different religions by including religious rights as fundamental rights. Under Article 25 of the Constitution all persons are declared equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. Under Article 29 minorities have right to protect their language script and culture. At the same time Article 14 gives right to equality and Article 15 give protection from all kind of discriminations and these rights are available to all the persons irrespective of their religion. But it's a great challenge to Indian legal system to treat all the citizens fairly and equally. Major problem is due to various personal laws.

Nothing is static expect that which is dead and lifeless. Laws can never be static. Changing society needs changing laws. It is very unsafe for a country if law does not change as per the need and requirements of the society. This change comes either through peaceful process of legislation or by revolution. Society has seen various changes from time to time in Hindu law. Abolition of Sati (Prevention) Act 1987, Prohibition of Dowry Act 1961, Hindu Marriage Act 1955, Adoption and Maintenance Act 1956, Indian Succession Act 1956 and Domestic Violence Act 2005 are the examples of changes in Hindu Personal Laws. But the Muslim society has not brought changes as per the needs of the time and the society. As a result, we have seen discontent and unrest in Muslim society in case of female rights. From last two years there is a constant debate going on the issue of gender justice in Muslim Personal Law. For example, the case of triple talaq and the rights of Muslim women in case of unilateral triple talaq are the creating historical unrest among Muslim women.

Keeping in the mind the secondary treatment of women in Muslim society researcher decided to work on Gender Justice in Muslim Personal Law. And here comes the need of research and analysis of Gender Justice in Muslim Personal law with special reference to divorce.

The importance of study of Muslim Personal Law can be estimated from the fact that almost one sixth of total world population is following Islam. It is applicable to some 15 crore Muslims in India, 12 crore in Pakistan and 13 crore in Bangladesh. There are various Muslim countries in the world. The development and transformation of Muslim Personal law has varied from country to country. The various stages of development reached in different countries of the world may be better understood by classifying these countries into three different groups: -

1. Countries where classical Muslim family law **remain unchanged** like; Saudi Arabia, Yemen, Bahrain, Kuwait, Somalia etc.
2. Countries where Muslim family law has been **completely abandoned** by modern law like, Turkey, Soviet Union, Tanzania, Kenya etc.
3. Where law is **reformed through legislative process** like-India, Pakistan, Malaysia, Indonesia, Iran, Iraq etc.

Law is practical orientation and Indian society is changing rapidly and there is need to do social engineering by balancing interest of individual and society and society need to do it in keeping pace with our Constitutional Law, Personal Laws and societal developments. So, what should be our personal laws, to what extent they need to codify and the extent to which society needs to change it? This is the high time to do research and analysis of our social fabric of laws, so that they can be made most useful for the society. Society needs proper and balanced law so there is need to work on Muslim Personal Law and gender justice.

Through the news gathered from different sources of print and electronic media, society has formed a general notion that Muslim Law treats women unequally and unfairly. To our right hold the view that Islam treats women unequally or unfairly and gender justice is not possible within Islamic law known as Shariah law would not be correct. This assertion is partly true and partly false. True as far as

Shariah Law is concerned, untrue as existing laws are written during 2nd and 3rd centuries of Islam when general perspective of women's rights was very different from today's perspective. The Quaranic verses which are quite fundamental to Islamic law were interpreted so as to be in conformity with the views about gender rights prevailing then. Islam speaks in terms of gender equality in the Holy Quran. In the Quran there are several verses to indicate that women are not inferior than men from socio-religious or economic point of view.

Those, who oppose any change in theological formulations and Shariah Laws are people, who are afraid of losing their dominant position and priesthood, who are interested in promoting their interest rather than spiritual source of inner enrichment. In Islam it is common belief that the Shariat Law is divine Law and hence not subject to any change. Whenever any measure for gender justice is proposed, one meets with the strong arguments. **It is important to note that Shariah though undoubtedly based on Holy Quran is the human endeavor to understand the divine will. It is an approach to, rather than divine will itself.**

The priesthood i.e. community of ulama projects it as divine end itself and hence refuse to admit any change. The Shariah is divine has become commonly accepted notion, thus, what was thought of women's rights during the early period of Islamic history has come to be final and unchangeable. Even to thinking of changing it is interfering with the divine and hence unpardonable sin. It is causing great deal of hardship to Muslim women everywhere. Even Muslim women are speaking out about several discriminations and are fighting for refraining from personal laws to promote justice and equality in the family.

So after analyzing the several facts it becomes imperative for the researcher to do research on such an emerging issue of rights of women in Muslim Personal Law. So, the researcher started the analysis of law **from Shah Bano 1985 to Shayrabano 2017.**

2. Statement of Problem

There is a big gap between Quranic pronouncements and Shariah laws. While Quranic pronouncements are purely transcendental in spirit the Shariah law has been influenced by human situation as well as human thinking on all related issues. Women

are in subordinate position in all the patriarchal society and this subordination came to be reflected in Shariat laws relating to their rights. The divine spirit was conveniently ignored and prevailing situation was rationalized, through contextual Quranic pronouncement. As pointed out above there is always a creative tension between what is and what ought to be. However, this is often resolved in favor of prevalent rather than emergent situation.

Combination of male dominated society, vote bank politics and economic realities has led to a refusal, to question the clerics on their interpretation of the Shariah. But society is changing with more education and exposure. More and more Muslim women are talking about these things and people have started saying that there is a need to change in Muslim Persona Laws. Women are not ready to accept old practice like triple talaq, polygamy, ban on entry in religious places etc. The most fundamental values reflected in Quran are justice, benevolence and compassion. In Quranic terms these are called “adl”, “Insan” & “Rahman”. It is thus, the concern for justice which makes Quran show deep concern for weaker sections of society and women certainly belong to this weak category as far as the patriarchal society is concerned.

It is important to note that values like justice & compassion cannot be applied independent of age and time. It is different from what was in medieval period and what it is today. Quran supports gender equality in its various verses.

Rising literacy has impacted all sections of society. Huge changes in communication technology have allowed the Quran to be read on mobile phones, Muslim women have sought to reconcile feminism with Islam, progressive legislation such as the Protection of Women from Domestic Violence Act 2005 have left deep mark on Muslim community. As dissatisfaction with Family Courts (Dar-ul-Qaza) grew, A Muslim women’s Personal Law Board came in to existence in 2005 and the number of women in the all India Muslim Personal Law Board became increasingly visible.

3. Aim and Objective

The researcher, during her research work, through the extensive study, desired to achieve the following objectives.

1. To study and examine national and International Muslim Personal Laws in reference to gender justice particularly in matter of divorce and.
2. To understand the real social status of Muslim women in Indian society.
3. To find out changes brought in lives of Muslim women through legislation and judicial pronouncements in matters of divorce.
4. To analyse the historical and present position of divorce laws in context of Muslim Personal Laws in India.
5. To find out the ways to provide gender justice to Muslim women particularly in the matter of divorce.

4. Hypothesis of Research

Taking in to account the research problem and the objectives of the study, as stated above, the following hypothesis have been formulated for this research study.

1. Constitution of India guarantees Gender Equality however, gender equality is not ensured to Muslim women in India.
2. There is rigidness in Muslim Personal Law in unilateral gender equality, divorce, polygamy, halala etc.
3. Slow and steady reforms in Muslim Persona Law in India.

5. Result of Hypothesis

1. The first hypothesis is that, the Constitution of India guarantees gender equality however, gender equality is not insured to Muslim women in India is the gist of the conclusion of the third chapter. Therefore the researcher reached the conclusion that the hypothesis of research is proved and it proves that irrespective of the constitutional guarantee of the equality, the Muslim women do not enjoy

equal rights, equality of status and equal opportunity in India. They face so many biases and discriminations in every walk of their lives.

2. The second hypothesis is that there is Rigidness in Muslim Personal Law in unilateral gender equality, divorce, polygamy, halala etc is found proved as combined study of chapter 5, which is based on judicial pronouncements of Honorable Supreme Court and various High Courts and chapter 7 which is based on analysis of data collected from 300 respondents who belonged to Muslim community. Combined effect of chapter 5 read with chapter 7 a show that in Muslim Society right to give divorce is heavily tilted in favor of male. A woman faces discrimination due to acceptance of practice of polygamy. There are so many rules, restrictions, and procedures are provided by the Holy Quran for conducting second third or fourth marriage, and there is a proper procedure for giving divorce but these precious rules are not followed by the male members of the society. Therefore, the researcher reached on the conclusion that second hypothesis is proved that there is rigidness in Muslim Personal Law in unilateral gender equality, divorce, polygamy, halala etc.
3. The third hypothesis is that there are slow and steady reforms in Muslim Personal Law in India. It had been so long since when, women are fighting against this sinful but valid form of divorce i.e instant triple talaq. There are various pronouncements of Honourable Supreme Court and various High Courts from 1932 to 2018, which brought significant changes in law of instant triple talaq, maintenance and right to mehar etc. in the case of *Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 Hon'ble Justice Krishna Iyer* pronounced that Muslim women are entitled to apply for maintenance under section 125 of the Code of Criminal Procedure. This right was earlier not available to Muslim women. Court also declared that this maintenance amount should be such, which should be sufficient for whole of the life of the respondent i.e. Muslim woman. Now in 2017 instant triple talaq was declared void and unconstitutional by the Court in case of *In Re-Muslim Women's Quest for Equality v. Jamiat Ulma-i-Hind*. After this, in 2019, The Muslim Women (Protection of Rights on Marriage) Act 2019 has enacted by the Indian Parliament, which, makes provision for protection of rights of women in case of instant triple talaq. This Act not only declares triple talaq

void but also criminalizes it and provides punishment for it. Therefore this hypothesis is also proved.

6. Research Methodology

The topic of research that is “Gender Justice in Muslim Personal Law with Special Reference to Divorce” is a **socio-legal study**. Human society has an eternally dynamic structure. So to understand society, study of society is important and relevant. Without sociological enquiry or knowledge understanding of any problem is difficult therefore, researcher has adopted **doctrinal as well as non-doctrinal** method of research.

In Doctrinal Method **Primary and Secondary data** sources like various Acts and statutes, Law Commission and various Committee reports , judgments of the Supreme Court and different High Courts, Lok Sabha and Rajya Sabha debates, books written by various authors and articles found in various journals, Legal Periodicals, Magazines have been collected and used. In empirical study **Questionnaires** and **Interview Method** have been adopted for collection of Data from male and female Muslims of different age groups in district Lucknow of Uttar Pradesh and district Chhatarpur of Madhya Pradesh .

For the purpose of elaborate analysis of data throw empirical study researcher has divided Muslims male and female in different age groups-

- 1) From 0 to 25 years.
- 2) From 26 to 45years.
- 3) From 46 to 60 years.
- 4) Above 60 years.

So that various aspects of Muslim law like literacy of parties, consent in marriage, their knowledge of option of puberty , their right to get Mehar etc can be studied properly.

7. Limitations of Research

1. There was limitation of research, as researcher belonged to a particular group and religion so respondents were hesitant and not willing to share information with the researcher. This impaled to take help of a girl of their community with whom they were comfortable.
2. Non willingness of sharing information despite being aware of the facts was another limitation.
3. Respondents don't want to give opinion against their religious belief.

8. Chapter Plan

The whole thesis “**Gender Justice in Muslim Personal Law with Special Reference to Divorce**” is divided into eight chapters.

Chapter I - Introduction

This chapter comprises introduction of the topic of research, importance of research topic, aim and objective of research, outlined research problem, hypothesis, research methodology and result of hypothesis testing. Brief of all the chapters is also included in this chapter.

Chapter II - History and Concept of Gender Justice and Divorce in Muslim Personal Law in India

This chapter dealt with the meaning of word gender and sex and in which reference these words are being used in our day to day life. What is the difference between word gender and sex? After dealing with it elaborately, the researcher has given the history of gender justice in USA, UK and India. While giving the account of history of gender justice and how the progress is made in these regions the researcher has also elaborated the developments which took place in United Nations in the field of gender justice.

ChapterIII- Gender Justice in Muslim Personal Law in International Perspective

The third chapter of the thesis deals with the condition and position of gender justice in Muslim Personal Law particularly in International legal system. Here the

word “Personal law¹” means legal principles applied on the basis of religious adherence. These are the matters which, believe to have a religious aspect of life like personal status, marriage, divorce, family relations, inheritance, gift, will, domestic obligations and endowments etc.

Dealing these matters in International perspective the researcher means “Islamic countries” or “Muslim states.” Here Islamic countries mean those sovereign nations of the modern world which are ruled or otherwise dominated by the followers of Islam.

In third chapter while dealing and discussing the Muslim Personal Law in International perspective the researcher elaborated the developments and gradual reforms which took place in various Islamic countries and how these countries came in to present form of law. This chapter looks in to development and reform in Muslim Personal Law in International Perspective and discussed its development in three stages².

1. The first phase of personal law reform from 1911-1950
2. Second phase of reform 1951-1970
3. Third phase of reform 1971-1986

This chapter also elaborates that how the Universal Declaration of Human Rights played a very important role in protection and preservation of rights of individual male and female in various societies of the world. Various conventions have also been formed due to effect of Universal Declaration of Human Rights. In 1981 the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) was adopted and this came into existence in 1985.

This chapter also dealt with the various laws of different Muslim countries which deal with the protection of rights Muslim women.

1. Pakistan

¹In Islamic countries the term Muslim Personal Law is applicable to the laws of marriage, divorce, family relations, succession, will, gift, pre-emption and waqfs. Interchangeably this law is also described as “Islamic law”, “Muslim law”, “Sharia law” “Shari’at”. All these expressions are in use also in the Muslim countries of SouthAsia and South East Asia.

²TahirMahmood , Personal Law in Islamic Countries{ History ,Text and Comparative Analysis} First edition 1987 , pub Academy of law and Religion,pg 4,5

2. Bangladesh
3. Afganistan
4. Iran
5. Malaysia
6. Brunei
7. Indonasia
8. Somalia
9. Turkey
10. Algeria
11. Iraq
12. UAE

Chapter IV - Gender Justice under Indian Constitution with Reference to Rights of Muslim Women

The basic content of this chapter is based on various provisions of the Constitution of India which are provided in Preamble, Fundamental Rights, Directive Principles of State Policies, various reservations provided to women by Constitution of India and 73rd and 74th amendment of the Constitution of India. Besides these provisions this chapter also provides various legislations enacted by the Parliament of India for the welfare and protection of the women.

1. The Plantation Labour Act, 1951
2. The Family Courts Act, 1954
3. The Special Marriage Act, 1954
4. The Hindu Marriage Act, 1955
5. The Hindu Succession Act, 1956 with amendment in 2005
6. Immoral Traffic (Prevention) Act, 1956
7. The Maternity Benefit Act, 1961 (Amended in 1995)
8. Dowry Prohibition Act, 1961
9. The Medical Termination of Pregnancy Act, 1971
10. The Contract Labour (Regulation and Abolition) Act, 1976
11. The Equal Remuneration Act, 1976
12. The Prohibition of Child Marriage Act, 2006
13. The Criminal Law (Amendment) Act, 1983. 2005, 2013 and 2019

14. The Factories (Amendment) Act, 1986
15. Indecent Representation of Women (Prohibition) Act, 1986
16. Commission of Sati (Prevention) Act, 1987

Here in this chapter an effort has been made to incorporate various judgments of different Courts in chronological order. These Judgments includes landmark as well as leading casses related to gender justice. This chapter also deals with the Constitution of India and right of Muslim women in detail.

Chapter V - Judicial Response towards Gender Justice in Muslim Personal Law

Here in this chapter researcher tried to incorporate various judgments of different Courts in chronological order. In tracing this chronology number of leading as well as important cases has been elaborated with their facts and judgments. This incorporates analysis of cases from 1932 to 2018 which brought significant changes in rules of instant triple talaq and issues of maintenance. Debate which took place while passing Triple Talaq Act 2019 in Parliament has also been incorporated. This chapter aims to trace the concept, origin & development of divorce law with regard to Muslim women and Muslim Personal Law. The take of judiciary in interpreting Muslim Personal Law and providing gender justice to Muslim women have been discussed and analyzed in this chapter.

It's been so long since when women are fighting against this sinful but valid form of divorce which is known as instant triple talaq. Here the researcher tried to analyze relevant cases which brought significant changes in rules of instant triple talaq. Few important cases incorporated in this chapter are as follows:-

In 1932 in case of *Rashid Ahmad v. AnisaKhatoon*³ the court held that tripal talaq pronounced to please his father by the husband is valid divorce and it dissolves the marriage ties between husband and wife.

In 1971 in case of *Yousuf Rawthery. Sowramma*⁴ Sowramma, a Hanafi girl, around 15, married in 1962 with Yusuf Rowther, nearly twice her age, but they live together hardly for few days and after that an action for dissolution was instituted by

³ 1932 BOMLR 475

⁴ AIR 1971 Ker 261

the wife against the husband. The husband having taken another wife and the later having wed again after dissolution was granted in appeal.

In 1985 a historic case came before the Apex Court in India which became the landmark in cases of divorce and maintenance laws. The name of the case was *Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985*⁵, Further in 1994 in case of *Rehmatullah v. State of UP*⁶ Allahabad High Court held triple talaq unconstitutional but the judgment was reversed in appeal by Supreme Court.

The constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act 1986 was challenged before Supreme Court in case of *Danial Latifi & Anr v. Union of India, 2001*.

In 2002 in case of *Shamim Ara v. State⁷ of UP* the whole jurisprudence of tripal talaq has undergone a vast improvement particularly with regard to communication of pronouncement of talaq to wife and with regard to attempt of reconciliation before finalization of divorce.

In 2008 in case of *Masroor Ahmed v. State (NCT OF DELHI)*⁸ after Shamim Ara case, for effective talaq, pronouncement of talaq must be proved, reasonable cause must be shown, and also the attempt of reconciliation must be demonstrated to have taken place. This will apply to Ahsan talaq, Hasan talaq, and also on Talaq-e-biddat . Tripal talaq or talaq -e- biddat shall be treated as one revocable talaq. While it may not be essential that talaq has to be pronounced in the presence of wife. It is essential that for such pronouncement to be effective is made known to her, communicated to her at the earliest.

During the continuance of the battle for justice in 2015 five women were fighting against the system of triple talaq in courts of different states. The cases were:-

1. Shayra Bano v. Union of India and others 2016
2. Afreen Rehman v. Union of India 2016
3. Gulshan Parveen v. Union of India and others 2016

⁵Mohd. Ahmed Khan vs Shah Bano Begum And Ors 1985 AIR 1985 SCR (3)844

⁶ AIR 1994 ALL H.C.

⁷ AIR 2002 SC 3551

⁸2008 (103) DRJ 137 DEL.

4. *Ishrat Jhan v. Union of India and others* 2016
5. *Atiya Sabri v. Union of India and others* 2017

This chapter talks all about how the honorable Supreme Court suo-moto took cognizance of all these cases together and gave it the name *In Re-Muslim women's Quest for Equality v. Jamiat Ulma-i-Hind*⁹. Finally on 22 August 2017 the court set aside the triple talaq and declared it unconstitutional and held that if a person gave triple talaq in one go then it will not have any consequence on valid marriage i.e. it will not dissolve the marriage. Further in this case the S.C. directed the government to make law in this regard.

Chapter VI - Analytical Study of, "The Muslim Women (Protection of Rights on Marriage) Act 2019"

This chapter deals with the "The Muslim Women (Protection of Rights on Marriage) Act 2019". The main aim of this chapter is to analyze that how this Act of 2019 protects the rights of the Muslim female in the matter of her marriage and divorce. The preamble of the Act itself declares that this is, "An act to protect the rights of married Muslim women and to prohibit divorce by pronouncing instant triple talaq by their husbands and to provide for matters connected therewith or incidental there to"¹⁰. This Act of 2019 has declared the practice of instant triple talaq is void and illegal and has also laid down that any husband practicing such talaq would be liable to be punished with imprisonment up to 3 years. This chapter also deals with the issues of maintenance and custody of the children born to the husband and wife. This chapter focuses on the bone of contention in this Act as it is the criminalization aspect of the pronouncement of triple talaq, while the Act itself is civil in nature.

In this chapter the researcher tried to analyze how this enactment imposing penal and criminal consequences for a civil wrong. As it is well accepted that Marriage under Islamic law is a civil contract, the breach of it should not lead criminal punishment. As far as criminalization is concerned the state should adopt a modest approach. Putting the person behind the bars and curtailing his liberty should be the last resort¹¹. Criminal law is only one of many mechanisms to censure and

⁹ Writ petition © no. 118 2015

¹⁰ Introductory para of The Muslim Women (Protection of Rights on Marriage) Act 2019

¹¹ Andrew Ashworth, "Is the Criminal Law a Lost Cause?" 116 *LQR* 225 (2000)

prevent deviant conduct. Only the most serious violations should attract the most coercive and condemnatory technique, i.e. criminalization¹². State must adopt a minimalistic approach in criminalization of offences because a stronger justification is required where an offence is made punishable with imprisonment¹³.

This chapter throws light on the point that the main aim of the The Muslim Women (Protection of Rights on Marriage) Act 2019 is to prohibit instant triple talaq and to safeguard the rights of married Muslim women. It is important to note that if the husband will be imprisoned then it will be very likely that all his family members including the wife would become destitute. In addition to this when the act of pronouncement of triple talaq has itself been declared void by section 3 then such pronouncement would not have any legal consequence at all and would have no effect on the validity of marriage. The marriage would still remain valid in the eyes of law. However it is impracticable to expect that the marriage would not suffer. There is a possibility that if the husband is in prison then it would lead to irreconcilable differences among the husband and wife. After coming from the jail the husband might divorce his wife by following the proper Quranic procedure. Such imprisonment would result in to unfair denial of conjugal rights to the Muslim married couple. The apprehension of such adverse consequences would discourage the Muslim wife from complaining such incidents of triple talaq. It means that there would not be any deterrent effect of such a provision in the Act. So the women would not have any remedy at all.

This chapter also throws light on the point that while in his Act of 2019 the offence has been a cognizable offence, the police officers have the right to arrest husband without any preliminary investigation. The woman would have nothing to say in the procedure. Also neither the Courts nor the Shariat law has declared this practice to be a crime. The Hanafi School which recognizes this form of divorce, considers it to be sinful and Abominable¹⁴. It is bad in theology, but not a crime. The punishment which is prescribed in the Act is not proportionate to the gravity of the wrong. Punishment of three years has been prescribed for much serious offences in Indian Penal Code which include sedition (124A), promoting enmity between classes

¹²Andrew Ashworth, "Is the Criminal Law a Lost Cause?" 116 *LQR* 225 (2000)

¹³Joseph Shine v. Union of India, 2018 (11) SCALE 556

¹⁴Asaf A.A. Fyzee, *Outlines of Muhammadan Law* 147 (Oxford University Press, Oxford, 2008)

of people, rioting armed with deadly weapon Section 148 of IPC etc. Imposing such a punishment for a civil act does not seem justified. Another aspects against the criminalization of instant triple talaq is that the Act discriminates between Hindu and Muslim males as it makes divorce a criminal act for the Muslim male while it as a civil act for the Hindus¹⁵. So it is against Art.14 of the Constitution.

Chapter VII - Social Impact of Triple Talaq Act 2019 on Muslim Women: A Field Study of District Lucknow (U.P.) and Chhatarpur (M.P.)

This chapter presents and analyses the data, related to the study in detail. The data has been presented in chart and tabular form followed by the detailed analysis. The data presentation is done in such a way that it will comprehensively present and analyse the data in the holistic perspective of the study.

For collection of data Questionnaires as well as **interview method** have been adopted from male and female Muslims of different age groups in district Lucknow of Uttar Pradesh and district Chhatarpur of Madhya Pradesh.

Aim of chapter VII is to analyse information gathered, to study about “Gender Justice in Muslim Personal Law with special reference to divorce”. This chapter is very important part of this study. Through textual discussion, tabular and graphical presentation, the data is critically analysed and reported”. The finding shows the information about the Gender justice in Muslim Personal Law with Special Reference to Divorce. For better understanding of the work, the questionnaire has been divided in three parts i.e. part A, B and C. Part A tells about socio-economic profile of the respondent while part B deals with 22 questions which forms the body of the questionnaire. Through these questions in this chapter, the knowledge of respondents regarding their right to equality in Constitutional Law, in their families and in society have been gathered. At the same time it was also tried to know that what is the impact of triple talaq Act in society and what are the opinion of male and females about the Act of 2019.

¹⁵Kavita Krishnan, “Civil Offence for Hindus, Crime for Muslims: The Triple Talaq Ordinance is Plainly Discriminatory”, Scroll.in, September 24, 2018, *available at* <https://scroll.in/article/895448/civil-offence-forhindus-crime-for-muslims-the-triple-talaq-ordinance-is-plainly-discriminatory> (last visited September 10, 2019).

Part C of the Chapter deals with the comparison of opinion between male and females and how it affects the society at large.

Chapter VIII - Conclusion and Suggestion

This chapter is prepared on the basis of this research study, certain conclusions are drawn and some suggestions are also placed for consideration.

9. Conclusion

Complete gender justice is complex to achieve typically in a country like India. The diversity of cultures, subcultures, is vast and there is a lot of rigidity in traditions and beliefs. Lack of education, Lack of development, Poverty, Improper enforcement of the laws, lack of awareness among women, deep rooted patriarchy, economic dependence of women, all leads to the subversive condition of women in our society. Gender hierarchies in Europe and USA are relatively more balanced than in India. Quite simply, most of their gender equality laws are mostly centered on employment and workplace. Not only that, the equality laws also explicitly include trans-genders and the rights have been extended to gay and lesbian communities which was unprecedented in India till Naz Foundation case. Gender development in any sphere and in any country is a key component of the development and overall welfare of any state. Various NGO's and government agencies, activists have been promoting gender rights and vocal in their protest against discrimination. Even though, there has been progress in securing gender justice, there is still a lot to be done. It is quite heartening to notice that women have entered in of profession and occupation, which were almost a preserve of the male. Today women are holding positions in every walk of life in our country and globally. Senior bureaucrats, pilots, service officers in army, navy and air force, doctors, diplomats, parliamentarians, architects, engineers, software entrepreneurs, business entrepreneurs, journalists, writers, fashion designers etc. Full responsibility for the progress in equality of relations, is required to be shared in order to achieve the goals of gender equality, developments and peace for women. In India women, together with men, must be full participants, in the shaping of society and its policies and structures. Women's equality cannot be achieved through equal opportunities due to unequal status of women in society, which exist. It is therefore,

necessary that gender issues become an integral part of policy analysis, planning, decision-making, evaluation and impact assessment.

The condition of social and individual life is mutually interdependent. Stability of society therefore depends to the large extent on preservation and maintenance of just and equitable relationship among individuals not only in the professional and public life but also within the four walls of home. All those branches of countries legal system, which regulate these relationships, thus play a vital role in the social progress of its people. One of these is family law.

In India the intellectual leadership has in the recent past played a very important role in social importance of family rights, obligations and relations. And therefore, the need for the betterment of such intellectual and religious leadership in promoting equal rights, obligations and relations has not been neglected. But as in all other multi-religious societies social legislation affecting the family has in this country been always problematic. Though a lot had been achieved in the recent past even before the advent of freedom, the subject has been of vital interest in the post-independence era. The Constitution of India specifically empowered the state to legislate on Marriage and divorce, infants and minors, adoption, wills intestacy and succession, joint family and partition.¹⁶ Moreover it has issued a mandate to the state directing it to endeavor to secure for citizens an uniform civil code throughout the territory of India. The progress so far made in exercise of the aforementioned legislative power and towards the goal of uniformity includes the enactment of:-

1. Special Marriage Act 1954,
2. Hindu Marriage Act 1955
3. Hindu Succession Act (1956),
4. Hindu Minority and Guardianship Act 1956,
5. Hindu Adoptions and Maintenance Act (1956).
6. Dowry Prohibition Act 1961.
7. The Foreign Marriage Act 1969

¹⁶ List iii ,Entry 25

Reference may also be made to provisions relating to the maintenance of wives under Criminal Procedure Code 1973, as amended in 2005, 2013 and 2019

Modernization of Muslim Personal Law has during recent years been the subject of lively debate between the pro-reform section and the anti-reform traditional forces. In 1963 the Central Government had planned to set up a committee to study the ways in which the Personal Law of Islam reformed in some of the Muslim countries. But in view of the strong opposition, this very sensible move had to be given up. Apart from this unsuccessful move, no efforts have been made by the government to educate the Muslim masses regarding drawbacks in their Personal Law and the possibilities of their removal or amend it. On the contrary the party in power has given assurance to the Muslims that it has no plans of “tempering” with their religious Personal Law. At times it has chosen to bow down to the obstructionist forces which refused to move even an inch in the direction of family law reform. The intellectuals in the Muslim community have not, however been sitting idle. These intellectuals have been quite active, through vituperated against and even insulted by the orthodox. They have shown a consciousness as to the need for reform and an anxiety to secure it. Among the various institutions of Muslim Personal Law, most frequently talked about are, arbitrary polygamy, unilateral divorce and iniquitous succession right of men and women. Contemporary legislations in West Asia, North Africa and other Muslim regions (Including Pakistan and Bangladesh) are often quoted by them in order to show that there is sufficient authority and also enough materials within the broad framework of Islamic Law itself. With the help of incidence of these countries the Muslim Personal Law can be reformed in India too, so that these differences can reduce the diversity between Islamic Law and the other personal law prevailing in the country.

There is however, another side of picture too. The Muslim public opinion, if that term could apply to the views of a substantial majority, is vehemently against any reform of classical Muslim law. The religious leadership of the community is not, generally, convinced of the exercise of any drawbacks in its social life. The Muslims find in every suggestion for reform, an organized effort, if not a conspiracy, to wipe out their culture from the soil of India and not a desire to bring about social change. The result is that even those who actually are conscious of existence of certain drawbacks in their social life do not want them to be remedied by legislation. They

are convinced that if they agree for the reforms of their personal law today tomorrow they will have to digest its replacement by the Common Civil Code.

Unfortunately a Common Civil Code is in the eyes of common Muslim a nightmare. Responsible for this widespread aversion are those pseudo-reformist who cherish and propagate the belief that the Common Civil Code spoken of in the Constitution will be stuffed wholly with the concept of Hindu jurisprudence and have nothing in it is derived from the legal system of Islam. The influence of this idea is so strong that they ridicule and dismiss the reality that the planned Common Civil Code will derive all the super elements from Islamic jurisprudence too, and will in fact be much nearer in the Islamic legal system than any other classical personal law.

The Ulama of India will never have any consensus on any item of agenda of reform. The unity which they have recently shown in opposing the reforms must not be expected in favor of any form of reform whatsoever. It is too much to expect unanimity to ooze out of this perplexing group in regard to any suggestion for reform.

It must be remembered that in Turkey Mustafa Kamal had to adopt the ready-made Swiss Civil Code after he was utterly disagreed with the committee of Ulemas, he had to set up for drafting an Islamic Code, which failed to agree on the single article after having been in session for several years. The only way to secure law reform in India is to get the necessary legislation promulgated by the state. There is no other alternative.

It is fallacious on the part of the opponents of social reform to take shelter behind article 25 of The Constitution of India. Article 25 guarantees freedom of conscience and the right freely to profess, practice and propagate religion. It does not contemplate freedom to treat fellow citizens here Muslim woman as cattle .On the contrary it clearly lays down that nothing in it shall prevent the state from making any law providing for social welfare and reform. Also article-51A specifies our fundamental duties. Among these duties, one important duty is to renounce practices derogatory to the dignity of women, and to develop scientific temper humanism and the spirit of enquiry and reform.

The constitutional mandate to state is to; directing it to endeavor to secure for the citizens a uniform civil code throughout the territory of India has not been seen in its true perspective. The implementation of this directive is almost invariably

demanding in the name of the uniformity and equality and not for the sake of change in the timeworn social traditions and out modern norms of family life.

It is crystal clear that as far as the rights of Muslim women especially mentioned in the Shariat Act are concerned, many abuses have crept in the usage and interpretations over a period of time. Most Muslim countries have either modified personal law or interpreted it liberally without violating the spirit of Quran. They have legislated comprehensive reforms in the marriage and divorce law, and changes done on maintenance law is part of that package.

There is great relevance of the fact for Indian Muslims, that Islamic countries like Pakistan, Turkey and Indonesia are examining their outmoded and discriminatory social and legal practices like polygamy and unilateral divorce and modifying their personal laws. As India is not an Islamic state renowned author of various books on MPL Tahir Mahmood¹⁷ says that Muslims in India should adjust themselves like Muslims in other countries and they should willingly welcome the Common Civil Code. No Muslim country has so far denied the authority of the source of Shariat. All the Muslim countries accepted Quran and traditions of the prophet Muhammad as the main source of Muslim Personal and Family Law. But they claim that just as in the past Muslim jurists had the right to reinterpret personal laws, so also today Muslim society has the right to reinterpret personal laws to meet the requirement of the present age.¹⁸

There are various enactments which have been passed by various Muslim countries, which shows that Islam is not a barrier to progressive reforms. Lebanon enacted a new Civil Code in 1932, Syria in 1949 and Iran in 1953. Egypt made changes in its Personal Law in keeping with the spirit of modern age in 1920 and again amended it in 1929, 1931 and 1962. Syria regulated polygamy in 1953. Tunisia prohibited polygamy in 1956 and Iran in 1959. Inheritance laws were subjected to change, in keeping with the requirements of the modern age, in Egypt in 1943 and 1964. Tunisia made changes in Inheritance Laws in 1959¹⁹. Pakistan has also now changed the family laws and declared plurality of wives and the pronouncement of

¹⁷ Eminent scholar and Jurist of Muslim Law

¹⁸ Mushirul Haq, Religion and Law in Pakistan in quarterly bulletin, Shimla Institute of advanced studies, January 1969 pg 23-29

¹⁹ Kewal A. Farooqui, Adviser on Law to the Central Institute of Islamic Research, , edi1972

instant triple talaq illegal.²⁰ The instances of Pakistan are particularly relevant to the point because Muslims who are now in Pakistan and the Muslims in rest of India were governed by the same personal law. Then why the Muslims in secular India are unable to experience even that limited degree of modernization which Muslim in Pakistan have been able to achieve.

Muslims are divided on the question of reform of the personal law. The orthodox Muslims opposes the reform of Muslim personal law while the secular and progressive Muslims are in favor of it. The problem is that the secular Muslims do not enjoy the confidence or respect of religious scholars and of the community in general. They are often criticized for their so called mala fide Intention. As the orthodox Muslims think that this is the attempt to denigrate Islam in order to be recognized by Hindu as liberal and progressive.²¹

Reformists of Muslim Personal Law suggest that what is important in the spirit of Islam. For instance they argue that Islam has nothing to do with the socio political life of people. Law formulated by the jurist could be replaced by better laws provided that they were in keeping with the spirit of Islam. They think that monogamy and other laws which are in favor of women are in keeping with the spirit of Islam.²²

Some scholars are also of the opinion that no effort needs to be made at all to reform Muslim Personal Law. They believe that the best way to reform Mohammedan Law is not to reform it at all. Justice M.H. Baig believes that if an ideal civil code is formulated and made available to all the citizens then several Muslims would naturally abandon their own personal law in favor of the ideal code because of its inherent superiority and advantages. Formulation of an ideal “Hindu Code” applicable to all persons who want to be governed by it or who may opt for it because they prefer it to their own unreformed personal laws. The advantages of such code will attract so many persons that it will pave the way towards the preparation of The Uniform Civil Code.²³

²⁰ The Statesman New Delhi, October 23, 1967.

²¹ Hamid Dalwai, by Sayyid Nasir Ali, Urdu weekly Al-Jamiat, Delhi, June 12 1970.

²² Chiragh Ali, The Proposed, Political, Legal and Social Reforms, Bombay 1983

²³ Justice M.H. Baig, A Uniform Civil Code, Indian Express, May, 24, 1973

It does not seem a practical view, because in the absence of positive steps by government and progressive Muslims, the Muslim mind cannot be prepared to accept reforms. Deliberate efforts must be made to remove widespread misconceptions in the Muslim minds to expose false and misleading arguments put forth by obstructive elements and other people who have vested interest and to include government to take steps in the direction of reforms. It is a matter of deep regret that Maulvies with their obstructive and primitive beliefs continue to dominate Muslim society. They have succeeded in barring inequality into region. They not only oppose changes in Muslim society, but even they attempt to restrict any movement towards change. They have closed their minds towards the demands of modern human and egalitarian values. It has also been seen nowadays that undue attention has been given to various pity issues in personal law while neglecting the more serious problems of community like continuing deprivation or discrimination.²⁴ Vote bank politics becomes the reason why governments do not want to interfere in matters of personal laws of the minority communities of the country. They shifted their attention from basic economic and political task. They try to exploit communal and ethnic issues for their political gain. Politicians have tendency of taking benefits from major sources of conflict and confrontation and forcing Indian ethnic and religious minorities to fall back on their primitive resources and think in terms of struggling for survival in line of religious and communal directions.

It is also true that ethnic religious and communal issues have been exploited by the unscrupulous Muslims religious leaders and corrupt Muslim political leaders to strengthen their hold on Muslim community. They have played the usual politics of grievance, bargaining and recrimination without bestirring the community to fight the real enemies like Poverty, illiteracy, social injustice backward customs etc. The deplorable condition of Muslim women in society is mainly due to its self appointed leaders. These leaders don't have genuine desire to uplift the Muslim women and Muslim community socially, economically or educationally.

The greatest tragedy of post partition India is that liberal Muslims have generally chosen not to go in national political parties. Thereby they denied themselves a platform from which they can address their Muslim and other Indian

²⁴ H.A.Gani,Reforms of Muslim Personal Law,Deep and Deep Publication,New Delhi

brothers. As there is no national level Muslim political leader this has made it easier for the obstructers to increase their stronghold on the community.

Muslim conservatives must also be reminded that the Muslim women constitute 47 to 49% of the Muslim community and that no progress either economic or social or political is possible without their wholehearted support, cooperation and participation. Such male chauvinism as has been widely demanded by conservative Muslim leadership without in any way addressing the problems that women face. These people can only create a breach within the community which itself defeats the wider purpose of unifying the community. It is true that vast majority of Muslims are affected with a sense of insecurity and anxieties and this in turn has bred deep religiosity in them. A good course of action would be required from educated liberal Muslims to come together and be more actively involved in the basic problems of Muslim society and basically of Muslim women.

The argument that Muslim personal law is divine and cannot be changed by human beings, is not only unattainable but is also irrelevant as it is based on confusion between changing the Shariat and changing and inadequate interpretation of Shariat. The traditional interpretation of Shariat law is now inadequate. The early divine injunction was meant for human beings and was to be interpreted by human beings. This was done in accordance with existing new or intellectual capacity. Corresponding to the advancement in man's knowledge there is also a change in his mental capacity and this change calls for a change in the interpretation of laws. If with the advancement in knowledge no change is instituted in the interpretation there will be no correspondence between knowledge and action and this will retard the growth of the society.

Moreover if the Muslim Personal Law is divine and cannot be changed by men then personal law would not have been reformed in all countries except a handful of Islamic states. Muslim personal law in India cannot and should not be equated with the Shariat. Sharat is the name given to Islamic corpus of law, religion and ethics and was in the past administered by the Muslim ruler with Muslim judges for Muslim subjects.

10. Suggestions

- 1.** It is now empirically established that women's education is a single cure for thousand societal ills. Female education is a must, irrespective of their religion, cast, creed, or place of residence. Therefore government should take special initiative for female education in general and Muslim female education in particular
- 2.** It is important for the government to take proper measures to enhance and implement women reservation for equal representation at the places where women need support to get equality and equal social position. Therefore reservation in favor of women has shown rapid increase in female representation in corporate decision-making as well as policies.
- 3.** Special rules governing women's reproductive work and aimed, in any event, at achieving equal working conditions for rural men and women should also be formulated.
- 4.** Special legislations should be enacted for domestic women workers to deal with minimum wage, social security and social services.
- 5.** To ensure that the principle of non-discrimination is observed, express provision should be made for fines as a penalty for contravention of the rules, and monitoring and inspection bodies should be established to ensure compliance there to.
- 6.** Legislation expressly stipulating that rural women be included in organizations and provided technical assistance and training should be introduced.
- 7.** The State should guarantee women's access to formal and informal education, technical training and new technologies for women in general and Muslim women in particular.
- 8.** The most important thing for the reform in Muslim Personal Law is to improve the status of Muslim married women. Like restrictions on reasonless talaq or, restrictions on the plurality of marriage, provisions for dissolution of marriage on account of incompatibility of temperament etc. The All India Muslim Personal Law Board and other Muslim organizations must have to take reasonable efforts to set the life of Muslim married women in order. If it

happened this will automatically improve the life and living standard of family which will turn in to healthy and happy society.

9. The Kazis Act 1880 should be suitably amended. Obtaining marriage certificate must be made mandatory on stamp paper of sufficient amount of money, where the mehr amount as fixed must be mentioned in certificate. Stamp duty should be fixed according to the amount of the mehr fixed between the marriage parties. In this way a sufficient amount would be available to grant maintenance to such divorcees who have no other means to support and the marriage certificate issued by Kazi who officiated at the wedding ceremony would be more authentic²⁵.
10. Though instant triple talaq have been declared unconstitutional by Muslim Women (Protection of Rights on Marriage) Act 2019, but it is still prevalent in the society so its proper implementation should be ensured by the government.
11. A clause for maintenance for life or maintenance until women do second marriage can also be stipulated with the charge on husband's property. The state should consider providing a model Nikahnama which should be adopted by couple at the time of marriage.^{26 27}
12. Muslim community should be educated in such a way that their perception regarding government's interference in Personal Law through Uniform Civil Code removed. Government should take proper measure to enact Uniform Civil Code in order to comply constitutional mandates and to remove social and legal biases against the women in general and Muslim Women particularly.
13. Government should conduct a referendum among the Indian Muslim community in which all the adult Muslim men and women of 18 years and above can participate freely after a campaign of information, in the press, radio television and political meetings conducted by the Muslim themselves. This referendum could be organized by the Muslim community with administrative help and advice provided by the Indian Election Commission. In the referendum the Muslim community can be invited to pronounce on the following questions

²⁵ Mohammed Ynus Saleem, This is non issue, Times of India March 30, 1986.

²⁶ A.G.Noorani , Muslim Law Reform: Codify and enforce Divorce Law, Indian Express 1086.

²⁷ H.A.Gani, reforms in Muslim Personal Law , Deep and Deep Publications 1988 pg 162

- Monogamy or polygamy?
 - Practice of talaq and payment of maintenance to divorced women until marriage.
 - The right for Muslim women to work freely in the outside world.
 - The wearing of pardah (hizab) by women.
14. The Indian Parliament can pass the necessary modification in the laws based on the result of the referendum and this will save the Indian Government and Hindus from the accusation of interference in the religious freedom of Muslims. This can also help to avoid unnecessary law and order problems and futile bloody violent communal manifestations. This will enhance the image and prestige of India as a secular country which is famous for its unity in diversity.
 15. The long term solution of the Muslim Personal Law reform lies in spreading education among Muslim masses. It is the duty of the Muslim leaders and government alike to raise the social, educational and economic standard of Muslims. The only obstacle in the reform of Muslim Personal Law is backwardness of the community and the lack of courage and vision on the part of its leadership. Equal attention should be paid to the education of boys and girls. If this is done, women will be as educated as men and will be as capable of earning their own living as men are. Divorced women will not be dependent for maintenance on men .It will increase their importance in their family as they will be independent members of the family who can help family members financially.
 16. Instead of taking Ulemas in confidence government should try to gain confidence of public. So that in case Ulemas don't agree for reforms in Muslim Personal Law, public opinion could be formed against them.
 17. Muslim Women should be informed properly about their rights in Constitution and other laws including Muslim Personal Law through electronic media so that they can raise their voice against the discrimination and injustice.
 18. Small video clips and advertisement related to the rights of Muslim Women in Personal Law, Constitution and other laws can play a vital role in educating those Muslim Women who are not allowed to go out of four walls of their homes for study or any other purpose. This kind of advertisement and video

clips should be played in between news, feature films, serials, as advertisement at, you tube, face book and other social media platforms.

In the opinion of researcher the time has come to consider the matter of reforms in Muslim Personal Law in its totality, and to present to the government of India a concrete proposal for reform, which restore those rights to the women, which they are entitled, under the Holy Quran, Shariat Act and Constitution of India, which is the supreme law of the nation, but denied to them.

Last but not the least; it is the need of the hour that women must possess self-worth, self-confidence, and freedom to decide for their needs and requirements. Women need to understand and accept that discrimination among people on the basis of gender is unreasonable. Women herself need to realize that, they are paid less, expected to cook, and restricted by their family members. To overcome these situations and to have an independent role in society, women need to realize their own importance themselves first after that the society will cherish their success and celebrate their importance.