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Muslim Husband's Authority to Give Divorce: A Critique

RIYA SAXENA¹

ABSTRACT

The prevalence of personal laws has always been the used as a reasoning behind violation of fundamental rights of the citizens in order to comply with their religious norms. This paper shall make an attempt to critically examine muslim personal laws where the primary focus shall be on anonymous rights given to the husbands in the context of divorce on the account of suppressing that of the muslim wives. Both marital obligations and divorce obligations in muslim law are studied. And then recommendations are made about how to protect the rights of wives as well as respect the freedom of each religion and hence striking a balance between both the genders.

I. INTRODUCTION

India is a culturally and religiously diverse country. The major religions co-existing are Hinduism, Islam, Christianity, Sikhism, Buddhism, and Jainism. In the author's opinion, when during independence the country got divided because of the diversity, therefore while drafting the Constitution of India the makers aimed for a peaceful co-existence of these religious minded people and avoid another holocaust from taking place. In order to ensure this, "Freedom of Religion" was inscribed in the Constitution of India as a Fundamental Right. Article 25² – Article 28 deals with Freedom of Religions. One more feature of this diversity is the existence and enforceable nature of Personal laws. Different community has its different personal laws e.g. Hindu Law, Muslim Law, Christians, Parsis and Jews all have their own family laws.

Focusing on Muslim Law, it is applicable to all Muslims by birth and the Muslims by conversion, this includes both, the person who professes Islam and where a formal ceremony is performed for conversion.³

Muslim personal law – focuses on Family and involving relationship including marriage, divorce, adoption. Marriage, under Muslim Law is contractual relationship between husband

¹ Author is a student at Symbiosis Law School, Hyderabad, India.

² INDIA CONST. art. 25.

³ DR. PARAS DIWAN, FAMILY LAW 07(11th ed., Allahabad Law Agency Publ'n 2019).

and wife is a debatable topic, but the fact that it is easily revocable depending upon the desire of the husband is unambiguous. Over ages, Muslim wives are facing a direct infringement of their Fundamental Rights as an individual because of the conflict within the personal law.

This research paper involves Doctrinal method of legal research since it includes the study of legal provisions regarding the muslim personal laws in order to examine the rights of wives in the matters of divorce and authority of the husbands to act as per their discretion in the context of marriage and divorce. Secondly, the paper involves Analytical Method of legal research because analysis of legal and religious provisions giving husbands excessive rights to pronounce divorce to their wives, is done; along with the examination of instances where the fundamental rights of women get violated as being the citizen of India.

The main objective is to study muslim personal laws and highlight the promotion of infringement of wives' fundamental rights concerning the aspect of divorce. Furthermore, to lay emphasis on the rights vested with the husbands to give divorce. Lastly, the paper aims to examine the legislations and precedents passed by the Supreme court to safeguard the rights of muslim wives and also to restrict the authority of the husband.

The paper aims to answer the following questions: -

What are the absolute rights given to Muslim husbands to pronounce divorce? How are those absolute rights causing violation to muslim women's right to divorce and other fundamental rights? What impact does the government legislations that claim to provide justice to muslim wives and restricted husband's authority?

II. CONCEPT OF MUSLIM MARRIAGE AND DIVORCE

(A) Validity of Marriage

For terming a muslim marriage as a valid marriage, there are three basic essentials,⁴ firstly, offer and acceptance. For a marriage to take place under muslim law, it is necessary that there should be a proposal of marriage made by one of the parties. This proposal shall be followed by the acceptance made by other party or behalf of it.⁵ Offer is called "*Ijab*" and acceptance is called "*Qubool*".⁶ In the case of *Rashida Khatoon v. S.K. Islam*⁷, it was held that offer and acceptance to the marriage must be completed and communicated to each other in same meeting. And if the contrary happens, the contract would not be considered to be a valid one. Further, another point was made in this case that in Sunni law the presence of two male

⁴ DR. PARAS DIWAN, FAMILY LAW 53 (11th ed., Allahabad Law Agency Publ'n 2019).

⁵ *Id.*

⁶ Ayub Khan, EDUCALINGO, (last assessed on Aug, 20th, 2020). <https://educalingo.com/en/dic-ms/ijab>

⁷ *Rashida Khatoon v. S.K. Islam*, AIR 2005 Ori 56. (India)

witnesses was mandated. It could also be one male and two females as well. However, the absence of which shall lead to a marriage that is irregular in nature. No such requirement is mandated in the context of Shia marriage, nevertheless, witnesses are required at the time of dissolution of marriage. Consent must be freely given, if the guardian consents to marry and girl does not, the marriage will not be valid.⁸ “Marriage brought by a fraudulent means is invalid unless ratified”⁹. In the case of, *Ms. Zainaba v. Abdul Rehman*¹⁰, it was opined that no particular form in which proposal and acceptance shall be made, it can be oral or written. Muslim marriages, in India take place in the presence of *Kazis* or *Mulla*.¹¹ They are formally appointed for the purpose of solemnizing the marriage. “*Kubin Namah*” is referred to the document where all the terms of the deed are mentioned starting from dowry till matters relating to custody of the child.¹²

Second essential, is competency of Parties.¹³ Under Muslim law, inter-religious marriages are prohibited. However, a Sunni is allowed to marry a non-muslim whose religion is based on a book, like Christianity and Jews (*Kitabia*), but Sunni is not allowed to marry a non-muslim whose is a idol-worshipper like Hindu or Parsi.¹⁴ However, muslim women are not allowed to marry any non-muslim. If this happens, marriage is considered to be Void under muslim law.¹⁵ Same is the case of muslim Shia women. Mental soundness, is another component of this essential. The parties should be of sound mind and should have attained majority. However, Indian Majority Act does not apply to Indian Muslims and Quran has not mentioned any minimum age of marriage. Rather, Puberty is considered to be the basis of majority, therefore, fifteen years is presumed to be the age of majority. If a couple gets married before attaining majority, they are given the option to repudiate their marriage, if not consummated. This is called *Khyar-ul-Bulugh*.¹⁶

Speaking of third essential, there should not exist any legal disability. This essential has various other components, firstly, Absolute disability, this has three classifications namely, Consanguinity¹⁷ that says a muslim man cannot marry his grandmother; mother; daughter; grand-daughter; sister, full, half, or uterine; niece; grand-niece. Affinity¹⁸, this says a muslim

⁸ *Adam v. Mohammad*, (1990) 1 KLT 705. (India)

⁹ *Abdul latif v. Niyaz Ahmad*, (1939) 31 All. 343. (India)

¹⁰ *Ms. Zainaba v. Abdul Rehman*, AIR 1945 Pesh. 51. (India)

¹¹ *Supra* 2.

¹² *Id.*

¹³ DR. PARAS DIWAN, FAMILY LAW 48 (11th ed., Allahabad Law Agency Publ'n 2019).

¹⁴ *Id.*

¹⁵ *Supra* 10.

¹⁶ DR. PARAS DIWAN, FAMILY LAW 49 (11th ed., Allahabad Law Agency Publ'n 2019).

¹⁷ *Id.*

¹⁸ *Supra* 15.

person is not allowed to marry his wife's mother; grandmother; daughter; granddaughter; wife of his father, grandfather, son, or grandson. Then is fosterage¹⁹, which says, a person cannot marry his foster mother; foster mother's son; foster mother's daughter; foster mother's son's wife; foster mother's daughter's husband; foster mother's husband. Secondly, relative disability says that any muslim man cannot marry two women at the same time who are related by consanguinity, fosterage, or affinity; he cannot have a fifth wife, this implies that polygamy up to four wives is permitted under muslim law.²⁰ Moreover, he cannot marry a woman undergoing her *Iddat* period. Thirdly, Prohibitory incapacity states that a muslim woman cannot have more than one husband at a time, she can also not marry a non-muslim man. Lastly is Directory incapacity, which says a muslim man cannot marry a pregnant woman; woman on death bed; or offering pilgrimage. It also says that man cannot the same lady he divorced in the past.²¹

(B) Types of Divorce

Talking about divorce, as put the Prophet's teachings “أَبْغَضُ الْحَالِلِ إِلَى اللَّهِ الطَّلَاقُ”،

Which means the most hated of permissible things to Allah is divorce.²², still divorce continues to be the most convenient thing for Muslim husbands to bless their wives with. In unilateral divorce as prevalent in Islam, there is no judicial authority required as the name suggests this divorce is given by husbands. It is called *Talak*. The forms of *Talak* include Express *Talak*, Implied or Contingent *Talak*, Delegated *Talak/ Talak-i-tawfweez* and Divorce of Mutual Consent, it has two forms “*Khul*” and “*Mabaraa*”.²³

Talak or Express Divorces are said to happen when the husband says in clear words “I Divorce Thee”. This further has two types *Talak-i-sunna* – it is revocable in nature and second one being, *Talak-ul-Badai* which is irrevocable after pronouncement.²⁴

Talak-i-sunna further has two forms namely “*Ahsan*” and “*Hasan*”. *Ahsan* is the pronouncement made by the husband during the period of *tuhr* (time between two menstruation cycle of wife) and not having any sexual intercourse during the *iddat* period. Revocation can be made during the first two *tuhrs* but if the husband could remarry his former wife only after the completion of the *iddat* period,²⁵ this was done as a punishment for the husband who abandoned his wife, however no thoughts were given to how the wife might

¹⁹DR. PARAS DIWAN, FAMILY LAW 50 (11th ed., Allahabad Law Agency Publ'n 2019).

²⁰ *Id.*

²¹ *Supra* 18.

²² *Id.*

²³ DR. PARAS DIWAN, FAMILY LAW 132 (11th ed., Allahabad Law Agency Publ'n 2019).

²⁴ DR. PARAS DIWAN, FAMILY LAW 133 (11th ed., Allahabad Law Agency Publ'n 2019).

²⁵ *Id.*

feel i.e. humiliated and punished of a crime she hasn't even committed.²⁶

Talak-ul-Bidda, in other words can be referred to as “instant triple talak” was struck down by the Supreme Court in the case of *Shayara Bano V Union of India*²⁷.

Triple Talak, also called “*Hasan*” is the pronouncement of divorce three times, “Talak-Talak-Talak” by the husband anytime he wants during the period of three successive tuhrs. This pronouncement was irrevocable in nature. Revocation clauses being same as mentioned with “*Ahsan*”.²⁸ If W, the wife is having her period of tuhr and the husband, H without having any sexual intercourse said that he wants to divorce her, would be considered as the first pronouncement. Thereafter, if he again has sexual intercourse with her, the pronouncement gets revoked. Then again, during the period of tuhr, when no sexual intercourse has been taken place, H says he wants to divorce W, the second pronouncement shall be made here. Then again, when the next period of tuhr comes and no intercourse has taken place, H announces that he wants a divorce, the third pronouncement has been made there. The moment he says it the third time, marriage gets dissolved and revoked.²⁹

Next type of *talak* in Islam is delegated *talak* or *Talak-i-Tafweez*. In this husband can delegate his power to give divorce to his wife. She can purchase this right by delegation.³⁰ Many wives make their husbands sign the pre-nuptial agreement which includes the clause of giving the right to divorce to the wife too, on certain grounds or happening of stipulated events as stated in the agreement.³¹

Another instance where wife's opinion and desire for her own marriage and husband is suppressed is the Constructive Divorce which includes *Zihar* and *Ila*.³² “*Ila*” refers to a situation when husband abandons his wife and states that he has nothing to do with her for a period of four months. After the successful completion of those four months the marriage gets dissolved, without the wife having any say in it. And in *Zihar*, when the husband since he is said to be “dissatisfied by his wife and is comparing her with the back of mother or any other women within the degree of relationship “the wife has a right vested with her to refuse living with the husband until he performs penance, if he refuses to do so, the wife can go on to file a judicial divorce but not pronounce it as in all the above states instances, men can

²⁶ *Supra* 19.

²⁷ *Shayara Bano v. Union of India*, (2017) 9 SCC 1. (India)

²⁸ *Supra* 22.

²⁹ *Supra* 22.

³⁰ DR. PARAS DIWAN, FAMILY LAW 134 (11th ed., Allahabad Law Agency Publ'n 2019).

³¹ *Id.*

³² DR. PARAS DIWAN, FAMILY LAW 135 (11th ed., Allahabad Law Agency Publ'n 2019).

anytime they want”.³³

After looking at the brutal nature of Sharia Laws towards women and in order to protect their Fundamental Rights as individuals many case precedents are brought into action, along with various legislations being enacted, namely The Muslim Women (Protection of Rights on Divorce) Act, 1986³⁴. This act was brought in to nullify the effect of Shah Bano judgement.³⁵

Khula, is the type of divorce initiated by Muslim wives. In this, women can file a divorce in the Sharia Council on the condition to give her *Mahr* back.³⁶ This is said to have originated when a wife came to Prophet seeking divorce from her husband and Prophet in return asked her to return the Garden she had gotten at the time of her marriage as a “dower”.³⁷

III. IMPACT OF DIVORCE ON MUSLIM WIVES IN INDIA

(A) Suppression and Infringement of Rights

In the year 1983, through the report of Gopal Singh Committee Muslims in India were declared to be a backward community, which implies that the people of this community are poor in the spheres of economic, social and political. Furthermore, talking about the women of this community, it is righteous to say that their condition too is not all satisfactory. They are denied of basic rights in the country where personal law prevails over uniform law in dealing family matters. Yet, muslim personal law, as discussed the specifics before, is completely male centric to its core. There is a infringement of some fundamental right under the label of following custom. Customs like, pardah system and the above-discussed divorce procedures are the very examples where women are treated to be less than women and hence, the males of this community are continuing to dominate the women around them even after the constitution grants “civic equality, liberty and secularism”³⁸ to the people of India. However, women represent almost half of the population in India, among them only 5% are muslim.³⁹ The worst part is yet to come, those women do not even have the realization of their loss, or their rights, “They even do not know that what status they have been given in Quran and in the life of Prophet Mohammad Saheb”.⁴⁰

³³ *Id.*

³⁴ The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, INDIA CODE (1992).

³⁵ Mohd. Ahmad v. Shah Bano Begum, (1985) 2 SCC 556. (India)

³⁶ DR. PARAS DIWAN, FAMILY LAW 197-198 (11th ed., Allahabad Law Agency Publ’n 2019).

³⁷ The Islamic Sharia Council, <http://www.islamic-sharia.org/downloads/khula/>

³⁸ INDIA CONST. art. 14.

³⁹ Neha Malik, *Rights of Muslim Women: An Analysis of Indian Muslim Personal Laws*, *Legal Services India* (July 18, 2016). <http://www.legalserviceindia.com/article/1338-Muslim-womens-right-for-dissolution-of-marriage.html>

⁴⁰ Nirmala Singh & Rahil Ahmed, *Muslim Women and Human Rights*, INDIAN JOURNAL OF POLITICAL SCIENCE, Jan-March 2012, at 73-84, Vol. 1.

In the above section, while dealing with *Talaq* in muslim law, one thing can be deduced that interests and aspirations of muslim wives in a marriage are not given much of importance. Be it *Talaq-e-Hasan*, *Talaq-e-Ahsan* or *Talaq-i- Tafweez*, thankfully *Talaq-i-Bidda* has been struck down by the Supreme Court in Shayara Bano case⁴¹. Almost at all instances, the interests of women are overlooked in muslim marriage. In *Talaq-e-Hasan* after the man has divorced his wife, he can remarry her after she has married some other man, had sexual intercourse, gotten divorced, and completed her *Iddat* period.⁴² This was done as a punishment for a person who has abandoned his wife. However, no thoughts were given towards how humiliated, the women would feel.⁴³

Even in *Talaq-i- Tafweez*, where the husband delegated the power for filing the divorce to his wife, why is initiating divorce proceedings considered as a “power” and if the marriage took place with the consent of both parties, why is right to revoke it, vested with the male party?

It is a clear infringement of article 14⁴⁴ of the Constitution, that is Right to equality and article 21⁴⁵ of the Constitution, that is right to life and personal liberty and dignity (as falling under the ambit of art. 21).

All these forms and immoral ways of granting divorce are causing misery to a lot of muslim wives in India. Prophet has himself disapproved of all these. As per Quran, divorce requires two arbitrators, one from each side, followed by two witnesses for pronouncement of Divorce.⁴⁶ From this, it can be deduced that Prophet himself laid a proper procedure for divorce, but still these vague and discriminatory ways are existing where husband wakes up one day and can pronounce divorce. Just. Krishna Iyer stated “a deeper study of the subject discloses a surprisingly rational, realistic and modern law of divorce”.⁴⁷

Therefore, Islam itself does not encourages casually pronounced divorces, providing imbalances of powers between husband and wife in a muslim marriage. However, “misguided men have had sustenance in the opinion of ill-educated *moulvis*, who had already been serving their clientele with their faulty understanding of Quranic law of Divorce”⁴⁸.

⁴¹ *Supra* 25.

⁴² *Supra* 22.

⁴³ *Supra* 23.

⁴⁴ *Supra* 37.

⁴⁵ INDIA CONST. art. 21.

⁴⁶ Anita Yadav, *Rights of Muslim Women: An Analysis of Indian Muslim Personal Laws*, AFFIRMATIVE ACTION: WOMEN & LAW, 2015, at 220-226. Also read, Asgher Ali, *The Right Of Women In Islam*, NEW DELHI. 1990, at 159.

⁴⁷ *Id.*

⁴⁸ Saleem Akhtar and MohsWasimali, *Repudiation of marital tie at the instance of Muslim wife: Misgiving and Clarification*, JOURNAL OF THE INDIAN LAW INSTITUTE, vol. 45, 2003, at 506.

Nevertheless, there are two types of divorces where women can initiate the proceedings, *Khula* and *Mubaraat*. In the former, only wife can initiate the proceedings, while in the latter, the divorce can be initiated by either of the spouse. Major setback that these two have is, women has to give her *Mahr* back. “*Mahr* is the dower agreed to be paid to her at the time of marriage by the husband”⁴⁹. Again, though the right is given to the wives, but something has to be done in return of that.

IV. JUDICIAL RESPONSE

There are two views for examining the condition of muslim women in India, first one being the condition of Muslim women in muslim society; secondly, the condition of muslim women in Indian society.

For dealing with the first one, as discussed earlier also, what happens in reality is very different from what is mentioned in the holy Quran, some of them are, “the right to obtain education”; “the right to have their own independent property”; “equality of reward for equal deeds”; “the right to express their opinion and be heard”; “the right to provisions from the husband for all her needs”; “right to negotiate marriage terms of her choice”; “right to have the custody of her children after divorce”.⁵⁰ However, when these rights are demanded by muslim women, the community gets repulsive, one instance of this was the massive violence caused by the muslim extremist after the triple-talaq judgement came in.

Furthermore, for dealing with the second view, one must look at the what the world outside of the muslim community is offering the oppressed muslim women for making their life a little peaceful.

With time government and judiciary have tried to make the ends meet in muslim personal laws through legislations and judgements. Muslim personal law was made to sync with fundamental rights of the citizens. However, still there are some instances where the fundamental rights are compromised for personal laws to exist without any interruption in the country. Some cases where rights of women were chosen to be the priority are: -

Mohammad Ahmad Khan v. Shah Bano Begum⁵¹, in this case maintenance was the issue. The question was, for how long is the muslim husband supposed to maintain his divorced wife under section 125 of Cr.P.C.⁵²? the court said, as per stated by the Holy Quran in a part

⁴⁹ *Supra* 33.

⁵⁰ “S Keerthana & SR Raghuvardhan, *Comparative analysis of divorce laws: A look into the divorce laws of Islamic world*, INTERNATIONAL JOURNAL OF LAW, 2015, at 81-88, Vol 4”.

⁵¹ *Supra* 32.

⁵² CODE CRIM. PROC. § 125.

of its verses, “a muslim woman has the right to seek support of her divorced husband even after the *Iddat* period”. Moreover, the court said that provisions of Cr.P.C. are secular in nature and have the same applicability to every person, regardless of their religious interests.⁵³ This judgement evoked massive debates in the whole country, as the result of which the Muslim Women (Protection of Rights on Divorce) Act, 1986⁵⁴ came in.

Danial Latif v. Union of India⁵⁵, constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was challenged, on the grounds that it is discriminatory in nature and violative of article 14, 15 and 21 of the constitution. The court held that the legislation is constitutionally valid. And this was stated that maintenance of wife by the husband extends beyond the *Iddat* period.

Bai Tahira v. Ali Hussein⁵⁶, it was stated by the Supreme Court that giving back the *Mahr* to the woman does not amounts to maintenance.

Rashida Khatoon v. S.K. Islam⁵⁷, as already discussed in the preceding section of the paper.

Shamim Ara v. State of Uttar Pradesh⁵⁸, in this case the court held that *Talaq* has to be “explicitly pronounced”. In this, the court sets some norms regarding how should a person be pronouncing *Talaq*.

Noor Jahan v. Kazim Ali⁵⁹, here the court opined that can initiate divorce proceedings against her husband when he has charged her falsely of adultery.

The Muslim Women (Protection of Rights on Divorce) Act, 1986⁶⁰, here the greatest flaw, as in the eyes of the researcher, can be seen in section 4. Section 4 highlights “order for payment of maintenance”. According to this provision, after the *Iddat* period is over and the woman has not remarried then the onus to maintain her shifts to the relatives. And if the relatives are not present or are not able to make necessary arrangements for the girl, then the responsibility goes to the State Wakf Board, established under section 9 of the Wakf Act, 1954⁶¹. All this can be done at the orders of the magistrate. There are views that this section is not consistent with section 125, Cr.P.C. However, one must not forget the Maneka

⁵³ KUSUM, CASES AND MATERIAL ON FAMILY LAW 413-414 (3rd ed., Universal Law Publ'n 2013).

⁵⁴ The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, INDIA CODE (1992).

⁵⁵ Danial Latif v. Union of India, (2001) 6 Scale 537. (India)

⁵⁶ Bai Tahira v. Ali Hussein, AIR 1979 SC 362. (India)

⁵⁷ *Supra* 6.

⁵⁸ Shamim Ara v. State of Uttar Pradesh, (2002) 7 SCALE 183. (India)

⁵⁹ Noor Jahan v. Kazim Ali, AIR 1977 Cal 90. (India)

⁶⁰ The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, INDIA CODE (1992).

⁶¹ The Wakf Act, No. 29 of 1954, INDIA CODE (1992).

Gandhi⁶² and Olga Tallis⁶³ case where it was held by the court that no one can be deprived of the “right to life or livelihood except by the procedure established by law that must also be reasonable, right, just and fair”. After making the above notations, it must not be wrong in stating that there is a discrimination faced by Muslim women and that they are being treated differently as the provision of MWPRD is contrary to the uniform procedure mentioned in chapter IX of the Cr.P.C., which applies to all divorced women, either Hindu, Buddhist, Sikh, Jain, Parsi or Christian. All this also makes the act violative of article 14⁶⁴ of the Constitution.

Thereafter, all these concerns were addressed in the case of Danial Latif v. Union of India⁶⁵. In this case, 5-judges bench led by Justice Rajendra Babu upheld the constitutional validity of section 3 and 4 of the said act⁶⁶ through a process of “ingenious interpretation”. With respect to section 3, phrases “reasonable and fair provision” and “maintenance” were focused upon. As per the court, here the word “provision” implied the right of divorced woman that is different and in addition to mahr and it is for the *iddat* period. Furthermore, in the context of section 4, the court interpreted “*iddat* period” to be the deadline by which some arrangement should be done with regard to maintenance. The court added, “nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the *iddat* period and not beyond it”, therefore, the right to be maintained shall exist till they get remarried. However, the court opined that section 4 talks about just “maintenance” and does not talk about “any provision made by the husband w.r.t section 3(1)(a)”. This differentiation has proven to answer all the above-mentioned issues raised before the court. This case has turned out to be very beneficial as it widens the scope of seeking maintenance for the wives as under section 125 of the Cr.P.C., “even if she is a billionaire, she can get capitalized payment of amounts under section 3 of the said act which a divorced wife under section 125 of Cr.P.C. cannot”⁶⁷. Likewise, under the MWPRD even after remarriage, the wife has no liability to return the capitalized amount to the former husband.

V. CONCLUSION AND RECOMMENDATIONS

After analyzing all the aspects of muslim marriage and divorce, in India. Many observations can be made, namely, in Indian context, where personal laws prevail, women are facing

⁶² Maneka Gandhi v. Union of India, AIR 1978 SC 597. (India)

⁶³ Olga Tallis v. Bombay Municipal Corporation and ors., AIR 1986 SC 180. (India)

⁶⁴ *Supra* 37.

⁶⁵ *Supra* 54.

⁶⁶ *Supra* 53.

⁶⁷ Narendra Subramaniam, *Legal Changes and Gender Inequality*, JOURNAL OF LAW AND EQUITY, 2008, at 631-672, Vol 31.

discrimination and infringement of their fundamental rights as individuals

Considering the scenario in India, there is a lot of scope for improvement. Starting from codification of muslim personal laws. Once, the laws get codified, women shall be more aware of the rights they have along with the modifications made, in their interests. Codification, alone will not be of much benefit. India needs voluntary organizations to spread out awareness about various issues like, family; divorce; marriage; maintenance; polygamy; children's custody and the modifications made from time to time. The motive behind this is, though muslim personal laws have not provided equal status to both husband and wife, in a marriage, yet the government is introducing legislations like Muslim Dissolution of Marriage Act, 1939⁶⁸; Muslim Women (Protection of Rights of Divorce) Act, 1986 to make the situation better, besides this, courts are giving judgements that are setting new standards for, all this to be communicated and informed about, to the common man for whom it is actually done.

Along with this, as per section 3 of Muslim Women (Protection of Rights of Divorce) Act, 1986⁶⁹, *Mahr* should be given back to the wife after *Talaq*. If it is decided that *Mahr* to be paid after *Talaq* shall be higher with some fixed percentage of what was mentioned at the time of marriage. After this is done, there might be a possibility that husbands refrain from pronouncing *Talaq* due to financial constraints.

Last but not least, a committee should be created to do the mammoth task of looking at the models of various other countries like the United Kingdom for Uniform Civil Code and challenges encountered by them, comparing it with Indian context, even the thought of introducing the Uniform Laws shall be inviting a wholesome debate, with much of communal and political violence accompanied by the fact that every religion will have their own and different points. Better alternative, as in the view of the researcher, shall be the introduction of Sharia Councils to India, with a mandate that these councils must operate within the framework established by Law. To rephrase, laws must regulate the functioning of Sharia Councils. This way, Sharia councils will act as a link between government and Muslim personal laws, without any direct intervention of the government or national laws in their personal laws.

⁶⁸ Dissolution of Marriage act, No. 8 of 1939, INDIA CODE (1992).

⁶⁹ The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, INDIA CODE (1992). § 3.