

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 4 | Issue 4

---

2021

© 2021 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of any suggestion or complaint, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Islam and Gender: Religious Debates in Contemporary India

---

AARUSHI UTPAL DEY<sup>1</sup>

## ABSTRACT

*A dynamic multicultural society, contemporary India is largely pluralistic in the domain of personal religious laws. With India being a cultural hub, it is only natural that a lot of beliefs and practices, even in modern India, owe their allegiance to religion and the concept of divinity. Keeping this in mind and to unite the people as one during the post-colonial time, the framers of our Constitution let the citizens continue following their personal religious laws. "Though personal religious laws allow for inclusiveness in religion, the history of these laws in India shows that they have been used selectively as a tool of governance and often to the disadvantage of women."<sup>2</sup> Lack of clarity and flawed understanding of the concept of inclusion over time, as enshrined by the Quran, has become a topic of controversy and increasing misconception that the religion somehow advocates gender in-equality. Though the majority share of accusations about Islamic practices in family law revolves primarily around the institution of family, marital issues, adoption, and inheritance, likewise, the arena of criminal law too considers a testimony by a Muslim woman debatable. It is these fundamental practices of Islam that have been corrupted over the years, which has led to the formation of negative perspectives and creating a sense of divide amongst the Non-Muslims. To address this very issue of gender disputes, the key areas of discussion that form the crux of this paper is the identification, and subsequent analysis of the said problems in the Muslim Personal Laws followed in India from the perspective of the aggrieved. Moreover, the paper additionally also aims to suggest reformative ways for the ideal address of problems at hand.*

## I. INTRODUCTION

Women's rights, the LGBTQ movement, Freedom of Speech and Expression have all seemed to gain notable hiatus in these contemporary times for the realization of the underlying injustice in the lives of ordinary people has set in. Ever since the onset of such movements, the status and role of individuals, particularly women, special impetus on the ones professing Islam has become a topic of debate and deliberation. While approaching the ongoing debates with any

---

<sup>1</sup> Author is a student at Symbiosis Law School, Hyderabad, India.

<sup>2</sup> "Archana Parashar, *Gender Inequality and Religious Personal Laws in India*, vol. 14, pp. 103-112, (2008)."

form of preconceived notion, one must take into account that the “development of Shariat law in India is a product of India’s colonial legacy.”<sup>3</sup> Being heavily influenced by British rule in India, it is safe to say that the Muslim or Shariat law, which we see in practice today, has significantly diverged from the seemingly strict original Shariat Law and can preferably be regarded as Anglo – Mohammedan Law. Ignorance of the essential teachings of Islam, though not a valid excuse, is one of the primary reasons for the rise of malpractices and turmoil undergone by women. What adds to the concerning situation is that women belonging to the LGBTQ community become subject to dual subordination based, namely on account of their; gender and sexual orientation.

Though one can attribute these instances of violence amongst the community to mere ignorance of the authentic Islamic teachings, which in reality set up a high bar for the treatment of women in Islamic societies, forgoing the wrong in this regard is inexcusable. This incapability to adopt the necessary attitudes and mindsets is not defined by social, political, economic, geographical, or educational factors. However, the magnification of engagement of this nature of lewd behaviour shows a substantial increase when people are devoid of primary education at large, particularly to women. It can be regarded that since major disputes of gender inequality revolve around Islam, mainly on account of its non-codification in India, it forms a significant contributor to violence against women and the LGBTQ community. The reason why these topics must continue to be debated upon in the contemporary times is simply because of the ambiguity that surrounds it, “making it a contested terrain where not only is religious freedom played out against gender equality, but these aspects are also intertwined with arguments around identity, nationalism, modernity, and secularism.”<sup>4</sup>

#### **(A) Research Objectives**

1. To investigate the implications of polygamy and whether there is a need to declare the same void on the grounds of gender inequality.
2. To analyze the rationale behind providing a Muslim woman a lesser share of inheritance as compared to her male counterpart.
3. To understand why Khula is a controversial practice among Muslims.
4. To study the techniques of divorce adopted by Muslim men to prevent any judicial involvement in private affairs.

---

<sup>3</sup> “Aziza Ahmed, *Dual Subordination: Muslim Sexuality in Secular and Religious Legal Discourse in India*, vol. 4, (2007).”

<sup>4</sup> “Tanja Herkoltz, *Law, Religion and Gender equality: Literature on the Indian Personal Law System from a Women’s Rights Perspective*, (2018).”

5. To check whether the practice of Mahr was a mere obligation or reform.
6. To study the plight of the Muslim members of the LGBTQ community.

### **(B) Methodology**

The method used for conduction of this research is purely doctrinal and does not involve the use of any other technique of conducting research. This research is based solely on reliable texts, court judgments, and orders from authentic and recognized sources. This research has made use of both primary and secondary sources of data collection. Primary sources of data that were referred to involve books, judgments, and other pieces of legislation. At the same time, articles collected from the World Wide Web comprise most of the secondary sources of data used.

### **(C) Research Questions**

1. Whether polygyny should be declared void since polyandry lies unrecognized among Muslims?
2. Whether the practice of providing a lesser share of inheritance to a woman is justified?
3. Whether it is practically impossible to practice Khula among Muslims?
4. Whether a preferred technique of divorce exists among Muslim men only to avoid legal processes?
5. Whether Mahr is an activist reform or a legal obligation?
6. Whether Muslim women belonging to the LGBTQ community are victims of dual subordination?

### **(D) Review of Literature**

#### *1. Mahr: Legal Obligation or Rightful Demand? – Mona Siddiqui*

This piece of literature deals with the concept of Mahr, which essentially refers to the ‘dower’ or ‘bride price’ the payment of which helps determine a man and woman as husband and wife. This paper makes a valuable contribution to the present research, for it brings out the contrast in the psyche behind the practice in Islam and what has become of it with regards to the Anglo-Muhammadan Law currently followed. It also brings clarity to the existing debate revolving on the downside of religious practices in Islam.

#### *2. Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law ---- Sylvia Vatuk*

The following piece made an excellent choice for reference for my research paper. This paper

highlights the constant need for reforms in the Muslim Personal Laws in the country. It brings into the notice the increase in awareness among Muslim women about the discriminatory practices in the name of religion, which led to the much - needed Islamic Feminist women. Being a piece of literature solely dedicated to the rise in the Islamic Feminist Movement, “where women share the common goal – to spread awareness of ‘the correct teachings of Islam’ about women’s rights (*huquq-e niswan*) to find ways to help women gain practical access to them”<sup>5</sup> thus helped gain valuable insights on the topic.

3. *Indian Muslim Women, Politics of Muslim Personal Law and the Struggle for life with Dignity and Justice – Razia Patel*

This research essentially deals with the political and sociological impact of the Muslim Personal Law on the Muslim Women in India. It speaks of the impact of the Law on Muslim women and the nature of practices undertaken against them, in the name of religion or for their benefit, which is nothing but ways of patriarchal suppression. This study also highlights how the Quran and Hadith are interpreted to suit the needs of the man and objectify women, in turn forming a basis for debate in the wake of the feminist movements across the world.

4. *Dual Subordination: Muslim Sexuality in Secular and Religious Legal Discourse in India – Aziza Ahmed*

This research paper deals with the interplay of sexuality with religion and the personal laws of Muslims. This analysis explores how Indian laws “give meaning” to “sexuality through the legal structures manifested by state and religious regulatory bodies and argues that both religious and state legal institutions need to be reformed to create an environment that furthers rather than inhibits the full realization of sexual rights.”<sup>6</sup> This paper is of great significance as it provides an additional perspective on the pressing issue of the ongoing debates revolving around gender injustice, which is dealt with in my research.

5. *Muslim Women and Marriage Laws: Debating the Model Nikahnama – A. Suneetha*

Being a reformative piece of literature, it suggests a method to reduce the plight of Muslim women in the country as against those who merely highlight their problems, this helped devise a solution amongst others in the present research. “The paper locates a detailed exploration of the initiative of a new *nikahnama* within the broader and historically shifting context of the

---

<sup>5</sup> Sylvia Vatuk, *Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law*, vol. 42, pp. 489-518, (2008).

<sup>6</sup> Aziza Ahmed, *Dual Subordination: Muslim Sexuality in Secular and Religious Legal Discourse in India*, vol. 4, (2007).

debates on Muslim marriage laws.”<sup>7</sup>

## II. CONCEPT OF POLYGAMY

The existence of polygamy continues to be one of the highly debated elements of the institution of marriage under Islam. Research by various religious scholars over the years is testimony, that the holy book, the Quran continues to justify the practice of multiple marriages since its inception. The fourth *Surah* 4:3 permits polygyny as opposed to the more generic polygamy which would apply to either sex.<sup>8</sup> The *Surah* 4:24 in the holy book, additionally strengthens the gender inequality debate, by specifically excluding polyandry as a practice. It specifically forbids women from having more than husband. However, what happens to be a much more popular contention as regards to polygamy, is the reason why women are prohibited from possessing a second spouse while allowing a Muslim man to have as many as four wives.

Islamic Feminists while fighting for more gender uniform legislation in the country, seem to abide by the holy Quran instead of the Constitution of the country. They believe that the holy book does infact grant them various rights which have only been denied to them over time. “They accuse the male ‘*ulama*’ of foisting ‘patriarchal’ interpretations of the Quran on the unlettered Muslim masses.”<sup>9</sup> A thorough study of the Quranic verses especially of the institution of marriage reveal that the contentions made were entirely “right-based” for woman and “duty-based” for men. Though the concept of polygamy was introduced to provide recluse to the widowed and orphaned after the battle of Uhud, the tables turned quickly with selective and partial interpretation of the Quran. Though the Quran permits polygamy, it in no way allows the demoralization and degradation of the dignity of a woman. It rather upholds it by warning men, that they must not at any point treat their wife in an unjust manner or leave her hanging in the air (4:129). Even the very surah that allows this practice (4:3) directs men to treat their wives at parity lest they marry only one. The Mu'tazila theologians insisted on reading both verses on polygamy 4:3 and 4:129 together and insisted Qur'an recommends monogamy emphasising rigorous justice for co-wives in case of polygamy which is humanly impossible.<sup>10</sup>

However, these medieval era texts hardly find application in contemporary times. Women today are not as helpless and lost as they used to be, but continue to be distraught victims of

---

<sup>7</sup> A. Suneetha, *Muslim Women and Marriage Laws: Debating the Model Nikahnama*, Economic and Political Weekly, vol. 47, pp. 40-48, (2012).

<sup>8</sup> Abdullah Yusuf 'Alj, *The Meaning of the Holy Quran* 4:3 (11<sup>th</sup> ed. 2004) (1425 A.H.).

<sup>9</sup> Vatak, S., *Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law*, Modern Asian Studies, 42(2/3) (2008).

<sup>10</sup> Abdullah Yusuf 'Alj, *The Meaning of the Holy Quran* 4:129 (11<sup>th</sup> ed. 2004) (1425 A.H.).

currently dysfunctional medieval practices. Keeping this under consideration, the opposers of polygamy, by stating the Quranic injunction to treat multiple wives equally is impossible either to comply with or to enforce, make a valid argument. Observing the present social, cultural, economic framework of the surroundings, the prevalence of polygamy becomes increasingly difficult. None of the historical references produced to justify polygamy hold ground today. Yet it continues to be a primary reason of major socio-economical difference between man and woman in Islam. The central idea behind rejecting polygamy and cementing the concept of a monogamous marriage: the condition of justice and equity amongst wives is perceived not only in an economic and financial sense, but also from the perspective of love, affection and emotional attachment which cannot be disturbed equally in a polygamous relationship.<sup>11</sup> Moreover it is a clear violation of Article 14 of the Constitution which apart from men is also available to women. Polygyny not only threatens the position of Muslim women in the society by giving rise to feelings of insecurity and ill feeling among the wives, but also cements their existence as a subordinate gender. Economic conditions too have played a vital role in causing the decrease in the rate of polygamy. With the growing disparity in the allocation of wealth, it becomes particularly arduous to maintain more than one wife and all the children she bears. Apart from Article 14, Article 21 which pertains to the right to live with dignity too remains threatened. With reference to the abolition or sustenance of polygamy in India, the Indian Judiciary may judge, based on the precedents set in the Indian Courts itself. The case of *Javed v. The State of Haryana*<sup>12</sup>, the court regarded “Polygamy is injurious to public moral and can be superseded by the State just as the practice of Sati.”<sup>13</sup> The cases of *Khursheed Ahmed Khan v. State of U.P. & Ors*<sup>14</sup> and the *Narasu Appa Mali* case<sup>15</sup> were recent Supreme Court judgements reiterating the practice of polygamy being inhuman and against public order, morality and thereafter a violation of Article 25. Hence, it is safe to say that it is about time that monogamy replaces polygamy to achieve the long-standing goal of gender justice and staying true to the words of the Quran.

### III. INHERITANCE SHARE DEBACLE

It is generally accepted that the chronic lack of gender equality represents one of the troubling realities that many developed world nations are experiencing today. Rights of succession and inheritance under Islamic Law too are a witness of the underlying prevalence of gender injustice

---

<sup>11</sup> Doi, A.R.I., *Shari'ah: The Islamic law*. Ta Ha Publishers (1984).

<sup>12</sup> AIR 2003 SC 3057.

<sup>13</sup> *Javed v. The State of Haryana*, AIR 2003 SC 3057.

<sup>14</sup> AIR 2015 SC 1429.

<sup>15</sup> *The State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.

experienced by women. Under the provisions governed by the Sharia Law, the daughter gets half the share of the son, and the widow receives one- fourth the share or at times one- eighth the share if she has children. The woman's share of inheritance as wife, daughter, and mother is unlike that of the corresponding male heir. "In practice, rarely do daughters or widows receive their due share of the inheritance."<sup>16</sup> Since women were mainly the property of the husband on account of marriage being a mere contract, "inheritance rights primarily belonged to the male agnates of the deceased on the principle of 'nearer in degree excludes the remote'.<sup>17</sup>"

The inheritance laws in the Quran are very specific in nature so as to facilitate an "explicit system" for wealth distribution of the deceased. The prevalent issues have arisen not because of the Quranic texts but on account of the difference of opinions between the Shia and Sunni Schools of thought. Major difference between the two, lies in the recognition of the female heirs of the deceased. In situations when the female heir receives a half of what the male member of the family would receive, for the Quran says that a male is eligible to the sum receivable by two female heirs. "The reason for this seemingly inequitable rule is not gender discrimination *per se*, but rather a tangible recognition of the more substantial male responsibility of supporting his own wife and children.<sup>18</sup>" Further study in matters of inheritance reveals the difference in the percentage of shares received among the female heirs of the deceased namely the divorcee, widow, daughter and mother. This difference is not a result of discrimination but simply because an unmarried woman or the widow especially the one with kids in the absence of the deceased becomes dependent on the other male members of the family. These women become an additional burden on the other male members in situations where the other party is not financially sound. To prevent this form of undue dependence they enjoy a higher share in the wealth. The entire issue is such that while providing a high share to one party, many a times the one who inherits the least is eligible to the maximum share with a slight change in relationship. However, the problem isn't merely that based on the Quranic Injunctions. The issue of inheritance is also sociological in nature. A woman claiming her legal right to the property of the deceased is shunned and looked down upon by both her family and society. She is been looked at as a negative entity despite the law being in her favour. This simply forces women to give up their shares in the property to please

---

<sup>16</sup> Sona Khan, *Inheritance of Indian Women: A Perspective*, India International Centre Quarterly, vol. 27, pp. 139-154, (2000).

<sup>17</sup> Mohd Altaf Hussain Ahangar, *Succession Rights of Muslim Women in the Modern World: An Analytical Appraisal*, 28 ARAB L.Q. 111 (2014).

<sup>18</sup> Mary F. Radford, *The Inheritance Rights of Women under Jewish and Islamic Law*, Boston College International and Comparative Law Review (2000).

the conventional beliefs of the society.

#### IV. CONTROVERSY BEHIND KHULA

The characteristics of this type are “*mutatis mutandis*,” much like those of man’s right to talaq; therefore, any Muslim wife has the right to Khula regardless of its insertion of a provision in the marriage act between the parties. Patriarchy, as is, continues to put down women even in matters of divorce by declaring their emotional nature as an obstruction in their power of decision making, thereby contributing to higher divorce rates and social anarchy. Despite the gaining momentum received by feminist movements in India, the judiciary in India remains divided over the practice of Khula. The cases of *Zohara Khatoon v. Mohd. Ibrahim*<sup>19</sup> and the ruling in the case of *Mrs. Sabah Adnan Sami Khan v. Adnan Sami Khan*<sup>20</sup>, are often referred to by the Indian judges. Both these cases lay down a common rule: consent of the husband is necessary to validate woman’s claim for divorce thereby highlighting the functioning of male dominated society.

The practice of Khula is significantly hindered as it is “an agreement made between the parties to marriage on giving some consideration to husband for the release of wife from the marriage tie.”<sup>21</sup> The case of *Mst. Sakina v. Umar Bukhsh*<sup>22</sup> explicitly mentioned the payment of consideration value to the husband to dissolve the marriage. However, payment of this amount involves forgoing the mahr value to the husband. This implies that the wife must give up the entire or part value of the concerned amount. This serves more as a bane than a boon for often, parties engage in payment of deferred dower to their spouses. In such scenarios the husbands often claim the part of the mahr which has been paid to consummate the marriage in addition to some other form of consideration in money or property. This ultimately leads to Muslim men exacting more than what they actually gifted their wives prior to the dissolution of marriage.

Women end up facing more backlash attached to this process instead of benefitting the same. To prevent them from making hasty decisions on account of their alleged emotional nature, providing consideration would make them rethink their decision not only for the sake of money but also the attached prestige of their own families. All of these factors combined have instilled a lot of pressure and stigma for a Muslim woman seeking divorce in India. Activists have often

---

<sup>19</sup> AIR 1986 SC 587.

<sup>20</sup> AIR 2010 Bom 109.

<sup>21</sup> Akhtar, S. and Ali, M.W., *Repudiation of Marital Tie at the Instance of Muslim Wife: Misgiving and Clarification*, Journal of the Indian Law Institute, 45(3/4) (2003).

<sup>22</sup> PLD 1964 SC 456.

shown their support and asked for a more sympathetic response from religious functionaries in the case where the husband has refused to give divorce. Though resorted to by Muslim women to save cost and social stigmatization, their contentions continue to be in vain.

## V. TALAQ-E-BIDDAT VS. JUDICIAL DIVORCE

Under Islam, a marital partnership is a civil contract, and divorce is rendered as a mere corollary of matrimonial rights. The Courts before the historical judgment of *Shayara Bano vs. Union of India*<sup>23</sup> had always displayed a somewhat sceptical approach to matters related to instant triple talaq. There has always been a current dilemma among Muslims in the society about the practicality of the practice; it has always been looked out as an escape for a Muslim man from the institution of marriage and to simultaneously avoid any court procedures. Though the said practice has been regarded controversial in law, it is still backed by staunch supporters of patriarchy as a means to hide the atrocities and abuse endured by their wives. Talaq-e-Biddat, despite doing more harm than good, has been a refuge for the Muslim men to suppress issues related to marriage than settle the same in the court of law.

“The rights given to women in Islam have been misappropriated and suppressed to deprive them rather than empower them.”<sup>24</sup> Extent of the gap between theory and practices after examination of the opinions of the different schools of Islamic thought. Both Hanafi and Maliki schools despite considering the use of Triple Talaq as *Talaq al-bidah*, “continued to regard it as valid, irrevocable and effective talaq once pronounced in a single sitting.”<sup>25</sup> Interestingly enough, the Hadith (7/129) used to prove the authenticity of the disputed practice, is often criticised and deemed to be unauthentic itself. However, the question still remains, if the existence of the Triple Talaq is itself questionable, why is it still practiced? The primary reason behind the said practice is the payment of mahr. The concept of mahr in many house-holds is not treated with the similar degree of importance as is by the holy Quran. To merely consummate the marriage due to its contractual nature, parties engage in payment of partial mahr instead of the whole amount. Demand for the remaining amount of the mahr often becomes a show of mistrust and resulting in threatening the wife by pronouncing talaq. Payment of the entire dower amount is pertinent to cementing the social position of the wife thereafter the marriage. It is only after the consummation of the marriage from all spheres, legal and religious that a Muslim man can seek divorce from his wife. However, taking matter to

---

<sup>23</sup> 2017 (9) SCC 1.

<sup>24</sup> Hussain, S., *Unfolding the Reality of Islamic Rights of Women: Mahr And Maintenance Rights In India*, Pakistan Journal of Women's Studies, 20(2) (2013).

<sup>25</sup> Hernandez-Andrews, K.L. and Fontaine, C., *Talaq, Talaq, Talaq—Women Suffering In India Because of the Misuse of Triple Talaq* (2006).

court would mean that the husband would not only be liable to his wife for payment of the remaining mahr amount but also the maintenance following the divorce which is mentioned in the “*Surah* (2:241).<sup>26</sup>” There would be no turning back from paying the amount for Muslim men are not only bound by religion but also by the force of law. Triple Talaq solves this problem for Muslim men especially when faced with a higher dower value. It provides them with a ticket away from having to pay their wives such an amount especially in the face of a divorce. The practice assists men to assume a high position by a show of strength and a remainder of the existing patriarchal structure of the society. It allows them to take action as they please at the cost of their distraught wives and even drive them to the point of them seeking *khula* and ultimately forgoing their dower and maintenance right. A judicial divorce would only backfire in the light of the present situation and has thereby led Muslim men to prefer Triple Talaq.

## VI. REALITY OF MAHR

Islam has laid down upon the man a duty to give his wife Mahr, which may be regarded as a certain amount to bind them into a marriage successfully. According to the Islamic Jurist, Ameer Ali, “Mehr is that sum of money or property which a Muslim wife is entitled to get from her husband on marriage as a token of respect towards herself.”<sup>27</sup> The significance of mahr (mehr or dower) in the institution of marriage, highlights the contractual nature of Muslim marriage. The case of *Suburanuessay v. Sabdar Shaik*<sup>28</sup> treads on the similar path by bringing out a direct comparison between Mahr and a contractual consideration. “Muslim jurists have shown strict adherence to the principle that mahr is not a voluntary gift but rather a financial obligation imposed by Islamic law on the husband towards his wife.”<sup>29</sup> Though, there exists no compulsion of payment of the entire amount at once, there is a considerably smaller number of women who receive it. This simply implies that for the consummation of the marriage to be complete, payment of mahr or in this case consideration for the marital contract is pertinent. Since contract and consummation of marriage are not independent of the other, recognition to the wife as her “husband’s sexual partner” is only received after payment of the entire mahr value. From being a cushion to women after hasty divorces, a chance at a new beginning; women are often asked to forego the right laid upon them by their husband, which ultimately results as a primary cause of divorce. Partial payment of the mahr value was mainly to semi

---

<sup>26</sup> “Divorced women should be provided with an affordable provision. This is incumbent on the righteous.” (2:241).

<sup>27</sup> Abdur Rahim, *Muhammadian Jurisprudence* (T.L.L. 1907) 334.

<sup>28</sup> 1934 Cal 697.

<sup>29</sup> Rakesh Kumar Singh, *Law of Dower (Mahr) in India*, 12 J. Islamic L. & Culture 58 (2010).

consummate the marriage between the parties whilst preventing the wife from renouncing the marital bond.

The intent behind the practice was not forged in the face of male domination in the world. Though it seemed like an obligation on a Muslim man, it was in fact a safety net for women in the marital relationship. It was a reformatory action which was again twisted to comply to patriarchal norms. Where the payment of the mahr value could be used by the woman to seek divorce or following the death of her husband to maintain her children and herself, it became the newer techniques used by men to claim divorce. The major reason for the existing dispute lies mainly due to the fact there is no legal provision to enforce the payment of the promised amount, thereby falsifying the original idea behind its existence.

## VII. VICTIMS OF DUAL SUBORDINATION

For most Muslims, matters dealing with homosexuality, LGBTQ rights are matters of sin and strict taboo rather than equality and diversity. Homosexuality has always been looked under a negative light due to patriarchal and heteronormative functioning of the society. For ages the Quranic texts and the hadith have been subjected to scrutiny over their interpretations on the concept of homosexuality. While many traditionalists argue that the Quran prohibits the homosexuality, while Islamic jurists believe that the Quran seeks to control the sexual urges of heterosexual males to protect public order (verses 7:80-84, 29:165-166 of the Quran). Homosexuality has not been explicitly shunned upon, it has been “dealt with obliquely by condemning same-sex acts only insofar as they are exploitative or violent.”<sup>30</sup> However, texts like the *hadith* categorized them as an abomination or *zina* and criminalized the homosexual relations in Islamic societies. Sexual relations among women which hinted at lesbianism weren't mentioned in the hadith until, Abu Musa al-Ash'ari, the Prophet states that: "If a woman comes upon a woman, they are both adulteresses, if a man comes upon a man, then they are both adulterers.”<sup>31</sup>

Various Muslim feminist scholars have pointed out that women have been reduced to second class citizens who have no purpose except for reproduction and child rearing. A Muslim woman may seek solace from the patriarchal religious judicial systems of India only to discover that the patriarchal structures of the secular system likewise assist in their subordination and establish room for new models of such compliance. The water-shed judgements of the *Shah*

---

<sup>30</sup> Kugle, S.S.A.H., *Homosexuality in Islam: Critical reflection on gay, lesbian, and transgender Muslims*. Simon and Schuster (2010).

<sup>31</sup> Al-Tabarani in al-Mu'jam al-Awat: 4157, Al-Bayhaqi, Su'ab al-Iman: 5075.

*Bano*<sup>32</sup> case and the *Danial Latfi*<sup>33</sup> decision in the Indian context reveal, the subordinate position assumed by a Muslim woman in the modern world. A persecuted LGBTQ Muslim woman might attempt to resist an extreme religious framework, to find out that the secular Indian State may proceed to oppose an oppressive paradigm to criminalize a specific sexual act wherein they partake. When understood together the plight of being a Muslim woman and the Article 377 of the constitution, it becomes evident that “the secular and religious legal framework exemplify the dual subordination faced by Muslim women trapped between two patriarchal norms that deflect the potential for legal respite to the other.”<sup>34</sup> The Muslim LGBTQ community, alongside women, encounters legalism as a dual repression of sexuality promulgated by a system of masculinity and hetero-sexism. As a group they too are subjected deep rooted structures complimenting and reinforcing the other leading to the suppression and exclusion. It is due to these newer means of subordination of an LGBTQ Muslim, which calls for the constant need for the State to realize in their discrimination and infringement of fundamental human rights, which though essential for all, is nothing short of privilege for these minorities.

## VIII. CONCLUSION

### (A) Reasons

Almost all debates revolving around Islam in contemporary India revolve around nature and the socio-cultural role of Muslim or Islamic Law. All the present-day controversies surrounding this very religious personal law are neither new nor free of the stains of British influence. “The existing corpus of Islam law in the subcontinent owes a great deal to the legacy of colonial jurists who systematized and gave shape to the Anglo-Muhammadan law,”<sup>35</sup> which is followed in India. Since religion had a powerful influence over the lives of the people in the post-colonial era, being ignorant of the Islamic teachings, the only way they could assert power was to decentralize the power through commonly followed norms that allowed the religious elite to exercise control, which in turn manipulated and misinterpreted the sacred texts to suit their own needs. All disputable practices that exist today concerning gender inequality are tainted with the faulty interpretations made by the religious elite with a patriarchal mindset keeping in mind their gain. The original writings of the Quran and Hadith, which form the basis for Islamic Law

---

<sup>32</sup> Mohd. Ahmed Khan vs. Shah Bano Begum & Ors., (1985 (2) SCC 556.

<sup>33</sup> Danial Latifi vs. Union of India, 1985 (2) SCC 556.

<sup>34</sup> Aziza Ahmed, *Dual Subordination: Muslim Sexuality in Secular and Religious Legal Discourse in India*, 4 Muslim WORLD J. HUM. Rts. [i] (2007).

<sup>35</sup> Michael R. Anderson, *Islamic Law and the colonial encounter in British India*, Institutions and Ideologies: A SOAS South Asia Reader 15 (1993).

follow today, actually hold women in high regard. The scriptures ensure special safeguards for women to avoid their suppression under male dominance to mere second-class citizens. Women were given the status of a separate legal entity, rights in marriage, divorce, family, succession, inheritance, all of which the women in the West began to enjoy only now. **“For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much — an obligatory share.”** (Quran, 4:7). These lines indicate that men and women were treated at parity by the Quran. Still, the same does not quite happen in practice owing to the corrupted interpretations of religious scholars debarring women of the rights granted to them by the very Quran.

### **(B) Reforms**

The controversy surrounding the Shah Bano case ever since 1984 played a pivotal role in the realization of the distraught situation of Muslim women in the country. It was since then that people, especially Muslim women, took it onto them to fight for equality and rise out of the disadvantaged situation they had been. It is in line with the worldwide Feminist Movement under which emerged the Islamic Feminist Women. This movement particularly called for the reformation of the existing marriage laws. They did not believe in the decree of the Constitution, but the original writings of the Quran and the Hadith.

However, these contemporary times call for solutions and not just mere identification of the problems. Tag though being an essential step in problem-solving will amount to nothing if no relief is provided. It is to combat this underlying situation of gender inequality among the Muslims was the ideology of the model *nikahnama* born. Created to bring about uniformity in the procedures for the Muslim marriages, “the aim of the model *nikahnama* is to address the issue of Muslim women’s entitlement within marriage, minimize disputes and facilitate their settlement.”<sup>36</sup>

In the 1990s, the importance of the implementation of the Uniform Civil Code was brought into the public eye. Bringing in the Uniform Civil Code would help to alleviate gender-based disputes and help clarify many of the technicalities and underlying ambiguities that are added to the existing personal laws and regulations. Thus, addressing the discrepancies that exist in the pre-existing personal laws. In *Mohd. Ahmed Khan v Shah Bano Begum*<sup>37</sup>, the Supreme Court observed that “A common civil code will help the cause of national integration by

---

<sup>36</sup> A. Suneetha, *Muslim Women and Marriage Laws: Debating the Model Nikahnama*, Economic and Political Weekly, vol. 47, pp. 40-48, (2012).

<sup>37</sup> AIR 1985 SC 945.

*removing disparate loyalties to the law which have conflicting ideologies.*”<sup>38</sup>

Since the implementation of the UCC had its shares of hindrances, the formulation of the All India Muslim-Women’s Personal Law Board (AIMWPLB) and the Muslim Women’s NGO can be regarded as a step in the direction of redressal of the atrocities faced by Muslim women in India. These remedial measures that have been undertaken benefit not only the Muslims but also act as an eye-opener for addressing the wrongs committed on account of the existing personal laws while finally walking to the adoption of the Uniform Civil Code.

\*\*\*\*\*

---

<sup>38</sup> Neepa Jani, *Uniform Civil Code, A Vociferous Judicial Claim and reluctant Political Will*, Voice of Research Vol1 Issue 4, 58 (March 2013).

## IX. BIBLIOGRAPHY

### (A) Research Paper

1. "Neepa Jani, *Uniform Civil Code, A Vociferous Judicial Claim and reluctant Political Will*, Voice of Research Vol1 Issue 4, 58 (March 2013)."
2. "A. Suneetha, *Muslim Women and Marriage Laws: Debating the Model Nikahnama*, Economic and Political Weekly, vol. 47, pp. 40-48, (2012)."
3. "Michael R. Anderson, *Islamic Law and the colonial encounter in British India*, Institutions and Ideologies: A SOAS South Asia Reader 15 (1993)."
4. "Kugle, S.S.A.H., *Homosexuality in Islam: Critical reflection on gay, lesbian, and transgender Muslims*. Simon and Schuster (2010)."
5. "Rakesh Kumar Singh, *Law of Dower (Mahr) in India*, 12 J. Islamic L. & Culture 58 (2010)."
6. "Hernandez-Andrews, K.L. and Fontaine, C., *Talaq, Talaq, Talaq—Women Suffering In India Because of the Misuse of Triple Talaq* (2006)."
7. "Hussain, S., *Unfolding the Reality of Islamic Rights of Women: Mahr And Maintenance Rights In India*, Pakistan Journal of Women's Studies, 20(2) (2013)."
8. "Akhtar, S. and Ali, M.W., *Repudiation of Marital Tie at the Instance of Muslim Wife: Misgiving and Clarification*, Journal of the Indian Law Institute, 45(3/4) (2003)."
9. "Mary F. Radford, *The Inheritance Rights of Women under Jewish and Islamic Law*, Boston College International and Comparative Law Review (2000)."
10. "Mohd Altaf Hussain Ahangar, *Succession Rights of Muslim Women in the Modern World: An Analytical Appraisal*, 28 ARAB L.Q. 111 (2014)."
11. "Sona Khan, *Inheritance of Indian Women: A Perspective*, India International Centre Quarterly, vol. 27, pp. 139-154, (2000)."
12. "Vatuk, S., *Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law*, Modern Asian Studies, 42(2/3) (2008)."
13. "Tanja Herkoltz, *Law, Religion and Gender equality: Literature on the Indian Personal Law System from a Women's Rights Perspective*, (2018)."
14. "Aziza Ahmed, *Dual Subordination: Muslim Sexuality in Secular and Religious Legal Discourse in India*, vol. 4, (2007)."
15. "Archana Parashar, *Gender Inequality and Religious Personal Laws in India*, vol. 14, pp. 103-112, (2008)."
16. "Razia Patel, *Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice*, vol. 44, pp. 44-49, (2009)."

17. "Sylvia Vatuk, *Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law*, vol. 42, pp. 489-518, (2008)."
18. "A. Suneetha, *Muslim Women and Marriage Laws: Debating the Model Nikahnama*, Economic and Political Weekly, vol. 47, pp. 40-48, (2012)."

#### **(B) Statutes and Books**

1. "Al-Tabarani in al-Mu'jam al-Awat: 4157."
2. "Al-Bayhaqi, Su'ab al-Iman: 5075."
3. "Abdullah Yusuf 'Alj, The Meaning of the Holy Quran 4:129 (11<sup>th</sup> ed. 2004) (1425 A.H.)."
4. "Abdullah Yusuf 'Alj, The Meaning of the Holy Quran 4:3 (11<sup>th</sup> ed. 2004) (1425 A.H.)."
5. "Abdur Rahim, *Muhammadian Jurisprudence* (T.L.L. 1907) 334."
6. "Doi, A.R.I., *Shari'ah: The Islamic law*. Ta Ha Publishers (1984)."

#### **(C) List of Cases**

1. "*Mohd. Ahmed Khan v Shah Bano Begum* AIR 1985 SC 945."
2. "*Danial Latifi vs. Union of India*, 1985 (2) SCC 556."
3. "*Suburanuessay v. Sabdar Shaik* 1934 Cal 697."
4. "*Shayara Bano vs. Union of India* 2017 (9) SCC 1."
5. "*Mst. Sakina v. Umar Bukhsh* PLD 1964 SC 456."
6. "*Mrs. Sabah Adnan Sami Khan v. Adnan Sami Khan* AIR 2010 Bom 109."
7. "*Zohara Khatoon v. Mohd. Ibrahim* AIR 1986 SC 587."
8. "*The State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84."
9. "*Khursheed Ahmed Khan v. State of U.P. & Ors* AIR 2015 SC 1429."
10. "*Javed v. The State of Haryana*, AIR 2003 SC 3057."
11. "*Mohd. Ahmed Khan vs. Shah Bano Begum & Ors.*, (1985 (2) SCC 556."

\*\*\*\*\*