
Protective Umbrella Of Law Vis-à-vis Muslim Women

Family law or personal law is that branch of civil law that deals with or governs relations of among the members of the family or we can say that it deals with personal family matters of an individual like marriage, dowry, and dissolution of marriage, guardianship, adoption, maintenance, inheritance, and succession. These laws not help in defining a relationship between a man and women but also helps in determining the relationship between women and the State. The Quran, which is considered as the primary source of Muslim law, have already discussed transformation in the conditions of women fourteen hundred years ago that would improve the situation, however these transformations have not been practiced by the Muslim society in the current times. In spite of the fact that the Islam as appeared to Prophet Mohammad isn't oppressive to women its rendition enacted in the family law, and day to day activities is controlled by males.

Unfortunately, women for the sake of religion and socio-cultural practices, many a times have been prevented for claiming opportunities of development and uniformity of genders (Shima Azizi, 2017). This prevention at times points towards a question, whether the Muslim women have the same status as the Muslim men in regard to family or personal matters? The answer to this question is that women are yet treated according the older beliefs and are considered secondary to men. A women is guaranteed with equal rights in regard to family matters under various provisions laid down by international organizations in respect to human rights. According to the Article 23 of the International Covenant on Civil and political Rights, "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and no marriage shall be entered into unless full consent of the intending spouses.

States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during marriage and at its dissolution." (CCPR General comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, 2020) Article 16 of Universal Declaration of human Rights expressly states that men and women have the right to marry and can own a family without any kind of restrictions thus prohibiting forced marriages of girls. Article 16 of CEDAW states that "the States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, the same right to enter into marriage, to choose a spouse and to enter into marriage only with their free and full consent, The same rights and responsibilities during marriage and at its dissolution, the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation, the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration." (Shima Azizi, 2017)

In India various laws have been established so as to give protection to women, however the heterogeneity in the religious and social practices does not permit for a homogenous civil law. The Constitution of India, provides knowledge regarding the provisions laid down for women which is intricate structure to guarantee equality amongst its citizens. The constitution not only guarantees equality to the citizens, Under Article 14, "The State shall not deny to any person

Equality before the law or the equal protection of the laws within the territory of India”, but also “Article 15(1): Prohibits the discrimination on the grounds of religion, race, caste, sex, place of birth or any of them” moreover, there are other articles under the constitution that guarantee fundamental rights of women such as article 15(3)(1), article 16(2)(2), article 39(a)(3). These articles provide equality to women in all fields. However, nothing in these Articles shall prevent the state from making any other special provisions for women and children. Thus, criminal and civil law are secular, while the personal laws are administered by respective religious beliefs. Hence we can say that religion and personal laws go hand in hand, and each religion and tribal community have their own laws that are formulated in accordance to their customs and practices. Although article 44 of the constitution provides for the aspiration of having a uniform civil code in family and personal matters and therefore is not enforceable by a court of law. Both Hindu and Muslim laws have laws formulated in accordance to their religion specifications, and the local customs and practices. Both the laws do not differentiate much with each other in moral, custom and law.

Islamic law originates from the moral and religious law basically grounded on the provisions laid down in the Islamic religious text, the Quran and the models or examples set by Islamic Prophet Muhammad in the Sunnah. Due to these provisions laid down in the Quran and Sunnah, child marriages are supported, however there is a prohibition that is being laid under the Child Marriage Act which states that a girl in India can't get married before she attains the age of 18 and for a boy it is 21 years, apart from this there are practices like one sided divorce and polygamy in Muslim community. Islamic beliefs states that marriage is an initial phase in making a family, and referred to it as an agreement which might be permanent or temporary and it also allows a Muslim male to have four wives if he treats all of them equally. There ought to a proposition or offer, made by or either by the parties or on behalf of them, this is the condition required for a valid marriage under Muslim law. On account of polygamy, personal laws for Hindus and Christians forbid polygamy and it is condemned by the Penal Code for non-Muslims, it is reasonable for the individuals who are secured by the Muslim Personal Law and the dissolution of marriage can occur either by the procedure of divorce or death of the spouse.

Muslim Marriage Act has a procedure laid down for separation under the Dissolution of Muslim Marriage Act 1939. Both men and women, parties to the marriage contract have an opinion for divorce, yet the rights of the wife in this is secondary as compared to the men. Under the Muslim law, a husband can get divorced from his wife without giving a valid reason of the divorce he just needs to pronounce “talak” thrice and the marriage agreement comes to an end. Although a divorce can be taken by a mutual agreement but the consent of wife does not play a significant role as mere her consent cannot initiate the procedure of divorce under Islamic law. But she can buy her divorce from her husband and can get divorced from her husband through the process of delegation. But the matter of divorce by wife have various exceptions. These exceptions have evolved from various cases like in case of Noor Jahan Bibi V. Kajim Ali, wife of the defendant filed a suit against her husband Kajim Ali who accused that her behavior was not acceptable and even though she had a husband she was having a relationship with Ashgar Ali and has committed adultery with him. In this case it was held that the doctrine of lian is not absolute in the Muslim law and therefore a Muslim wife can bring a suit for divorce against her husband on the ground that the her husband has charged her with false adultery under section 2 (ix) of the Dissolution of Muslim Marriage Act,1939. Moreover, In the case of M.B. Raheem V. Shumsoonnissa Begum, the Privy Council saw that wherein the husband discarded the property of her wife, then limited her to a room as if she was kept in a prison and misbehaved with his wife. The plaintiff in the court argued that as far as the Muslim law is

concerned a wife under no circumstances has a right to live separately from her husband. It was held that if under the Muslim law if a wife cannot separate herself from her husband then such law would be a clear violation of the principles of natural justice. Therefore, the Privy Council upheld the principles of natural justice and decided the case in the favor of the wife. Thus we can say that when a husband has a lot more rights than the wife, it is deemed as the natural justice violation.

The Muslim Women (Protection of Rights on Divorce) Act 1986, lays down provision for maintenance. According to section 3 of the act a divorced women has the right to get a reasonable and fair amount of maintenance from her husband after divorce. The amount should be equal to the sum of mahr or dower agreed to be paid to her at the time at the time of marriage or any time thereafter according to the Muslim law. This amount also includes the properties that she was given before the marriage or after the marriage by her relatives or friends or husband or any relatives of the husband and relatives. If the husband fails to provide her the above mentioned the magistrate can order the payment of the same. This payment needs to be given during the period iddat. Apart from this a divorced Muslim woman who is unable to maintain herself can directly claim maintenance from the State Wakf Board under section 4 of the act and under the same section she can plead inability of her relatives to maintain her. Relatives can be added to the process of the case if they have the capability to maintain the divorced women. This was held in T.N. Wakf Board V. Syed Fatima Nachi. A divorced women even has the right to claim maintenance under section 125 of the Cr.PC even beyond the period of iddat.

Many scholars belief that in 1973, the amendment that was being made with regard to the rights of the divorced women under section 125 of the Criminal Procedure Code. After the amendment the term wife under the section also included divorced wife. This led to protests by the Muslim League as they felt that the amendment was a violation of the Muslim Personal Law. The amendment further excluded Muslim women from the ambit of the section 125 if the wife has already received the maintenance due to them by their husbands.

In the light of this issue a famous case came into existence as the Shah Bano Case in 1986, the case opened gates for the legislative amendments in the Shariat Act which wasn't amended since 1937. After this case the Dissolution of Muslim Marriage Act 1939 again came into existence. In this case it was held that even though the Muslim Law limits the liability of the husband to pay maintenance to his divorced wife till the period of iddat but if the wife is unable to maintain herself after the expiration of the iddat period, she has the right to claim maintenance under section 125 of the Cr.PC. However the ruling given by the court was opposed by prominent Muslim leaders, who claimed that the judiciary was trying to violate their personal laws and if such a decision from the court is passed it would ultimately lead suppressing the Muslim law and superseding the Hindu law. During such protests the government of India, at that time Congress party was under great pressure to pass a law for the Muslim society. In such circumstances the government came up with the Muslim Women's (Protection of Rights upon Divorce) Act 1986. Thus the act provided protection to the divorced Muslim women. Instances can be made evident from the case of Daniel Latifi V. Union of India it was held that section 3(1)(a) of the Muslim Women's (Protection of Rights upon Divorce) Act 1986 makes a husband liable to provide for maintenance to his wife even after the expiration of the iddat period. This maintenance given by the husband shall be continued till the time she gets remarried. This was again upheld in the case of Sabra Shamin V. Maqsood Ansari.

In order to understand more about the concept of marriage under Muslim law we need to understand the relationship between polygamy and dissolution of marriage under the law, in the case of Abdul Azeem v. Fahimunnisa Begum, the wife filed a suit against her husband stating that their marriage has been dissolved and the husband has failed to pay her maintenance for two years. In this case the wife had been living with her parents and the husband got married again.

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