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MUSLIM PERSONAL LAW; PRESENT LOCUS POSSIE

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Abstract: Today, the issues of women rights in Muslim personal Law is highly tendentious. Specially, Muslim women rights relating to triple talaq divorce, inheritance, maintenance has got much inquisitiveness now a days. However, Indian Constitution has guaranteed equality and freedom from bigotry based on gender or religion, but still there are various practices which are based on heartless conservative culture. As we know a large part of Muslim Personal Law is still uncoffined and most of the legal decision pronounces by the courts based on the norms mentioned in Quran and hadith. The central debate on interpretation of Muslim personal laws has both positive as well as negative aspects. Some authors has supported that, Muslim personal laws has given various rights to Muslim women such as choice in marriage, inheritance etc. Some are of the opinion that there are various practices which are against the spirit of Indian Constitution. In this line this research paper attempts to analyse the on-going debate on the implications of Muslim Personal Law in India and suggests various solution to empower Muslim women. Therefore, certain anomalies need to eradicate by giving a true essence of Holy Quaran for the perquisite of the Muslim women's rights. Muslim personal laws in India have never been systematically codified, in marked contrast both to Hindu family laws in India and to Islamic family laws in much of the Muslim-majority world, both of which have been subject to a far greater degree of codification. This article examines the call being made by one prominent new fan fled Muslim women's organisation, the Bharatiya Muslim Mahila Andolan (BMMA), for the wholesale codification of Muslim family laws in India as a pathway to protecting women's rights. It demonstrates how this document synthesises discourses of women's rights drawn from a series of Qur'anic, constitutional and transnational reference points. By drawing from such diverse sources, and while legal codification in much of the Islamic world has instituted fundamentally patriarchal legal norms.

KEYWORDS: MUSLIM PERSONAL LAW, CODIFICATION, WOMEN'S RIGHTS, MUSLIM WOMEN

INTRODUCTION

Soon after independence, voices are being regularly raised against the Muslim Personal Laws, and plots and intrigues are being continuously hatched to abolish these laws. However, recently, this exercise has become more intense and the real intentions of the Government have come into open. The attitude that the supreme court has adopted during the hearing of a case of a non-Muslim couple with regard to triple talaq and polygamy, the manner

in which the law commission issued the questionnaire, and the stand of the Central Government has rightfully disturbed the muslim organisations, Islamic scholars, Muslim intellectual Social workers and all other serious-minded people of the country. It has become essential now to take serious notice of this and create awareness in Muslim on this issue and regenerate the desire and passion in them to strictly follow and adhere to the Family Laws of Islam (Muslim Personal Law), make the people of other communities understand that Family Laws of Muslim are part of Quranic Ordinances and are based on justice and fair play, and also make it clear to the Government that the Muslims will not tolerate any interference in the laws bestowed by Allah and that they are read to offer any sacrifice in order to protect their personal law.

WHAT IS MUSLIM PERSONAL LAW?

Islam gives guidance in every segment of human life and formulates laws for its followers. A part of these laws are those which pertain to family life and in which the rights and responsibilities of the members of a family have been fixed. These laws are known as "Personal Law" or the "Fixed Law. During are era of muslim rule in India, Islamic Laws were in force in almost all the spheres of human life and Muslims used to follow and obey these laws. However, when the British came to power, they gradually began to replace the Islamic Laws with British Laws. At first, the criminal laws were abolished, and then preparations began to be made to change the personal law too. At that juncture. Islamic scholars raised their voice. Because of their efforts, "The Muslim Personal Law (Shariat) Application Act" was enacted in 1937. This law applies to Muslims and reads as follows, and is popularly known as the Muslim Personal Law: "Not With Understanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contact or gift or any other provision of Personal Law, marriage, dissolution of marriage , including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

After independence when the Constitution of India was formulated, under Article 25(1) of the Fundamental rights it is stated that: "Subject to public order, Morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise Muslim Personal Law too. But unfortunately, under Article 44 of the Directive Principles of state Policy, it has also been mentioned that:
"The state shall endeavor to secure for the citizens a uniform civil code, throughout the territory of India. "since this article conflicts with article 25(1) which gives freedom of religion, the Muslim members of the constituent assembly protested against it; but still this article about the uniform civil court has remained in the Constitution, based on which the Government, now and then, tries to promulgate uniform civil code by abolishing Muslim Personal Law, and even the Supreme Court delivers such decisions and judgements which clash with the Muslim Personal Law.

REMONSTANCE AGAINST MUSLIM PERSONAL LAW

At the present time, the campaign against the Muslim Personal Law has been stirred up all over the country seemingly under a very well-formulated plot. It is being propagated that under the Muslim Personal Law, Muslim women are oppressed and that it does not treat them with justice and fairness, and hence it is the responsibility of the Government to provide them with justice under the constitution; this aspect of the Muslim Personal Law has been taken up to target it. For example, it is being said that the right to divorce has been given only to men and that women do not have any right to divorce their oppressive husbands; that men have been given the right to have four wives which is against dignity and self-respect of women; that there is no system for the maintenance of divorced women; that women are entitled to one half of the inheritance of what men get; and that it prohibits adoption of children. Many more such objections are made over the Muslim Personal Law and many misconceptions about Islam and Islamic laws are being propagated all over the country, and these laws are being portrayed as outdated, oppressive and remnants of dark ages.

On the other hand, Muslims themselves are not well versed with the Islamic Laws and most of them do not follow them in letter and spirit. Because of this ignorance, instead of taking their disputes to the Shariat courts for adjudication, they take them to Civil Courts of the country, where most of the time judgements are pronounced which are against the Islamic Law (Shariat).
Therefore, it is felt expedient to briefly describe and explain the Family Laws of Islam so that the objections raised against them could be removed and their rationality could be proved beyond any doubt.

ISLAM PERCEPTION OF MARRIAGE

Marriage is a religious and social necessity which is prevalent in all the religions and societies of the world .the perception of marriage that Islam gives id quite clear and unique .You cannot find this perception of marriage in another religion or custom except in Islam. Sexual urge is part of the human nature .Many a times ,strange and unusual methods are adopted to fulfill this urge. Some short sighted persons are under the impressions that it is undesirable and evil act. They believe that man cannot achieve spiritual progress and advancement unless and until this urge is not suppressed or killed together .It is a well-known fact that in Christian and Hindu monasticism ,sexual urge is suppressed and people are exhorted to adopt this method. On the other side ,we find people on the other extreme who have adopted hedonism where complete and unbridled freedom is given to fulfil this urge without any restrictions whatsoever. Islam has adopted moderation in the fulfilment of sexual urge .It has neither instructed to suppress it nor has given proper license to fulfil thgis urge in whatever manner one wants to fulfil it .In Islam neither believes in monsticism nor does it believe in hedonism rather it has established the institution of marriage to fullfil ones sexual urge. It has instructed and urged society to marry off those who have remained unmarried and has also instructed the unmarried men and women to enter into wedlock. The Holy Quran exhorts "Marry those among you who are single ,the virtuous ones among your laves ,male or female;if they are in poverty, Allah will give them means out of his grace ;for Allah encompasses all and He knows all things". A pious civilization and clean society depends on lawful sexual relations between men and women which can be established only through marriage. Through marriage alone a sense of responsibility is created in men and women and they take up the responsibility of nourishing and taking care of their offspring. Through the agency of marriage alone feelings of mutual love ,mercy ,help sacrifice and corporation are created .Without the institution of marriage ,society will become a crowd of ferocious animals whose primary aim would be nothing but fulfilling its sexual urges .Many objectives of the marriage have been described in the Quran. Islam has given the right of assent to the woman in the matter of her marriage .No adult girl can be married off without her assent ;she has been given the right to choose her husband and she can openly declare her choice in this regard.

TALAQ AN UNPLEASANT NECESSITY

Nowadays ,talaq has been made a burning issue ,particularly ,in the media .Everywhere it is being discussed and debated upon and every Tom ,Dick and Harry who has no lining or knowledge about it is discussing the issue and offering his considered opinion and solution to this issue .,which in their opinion has become a tool to oppress Muslim women .They said that talaq is an oppressive and tyrannical act and that it should be banned or abolished. The reason, besides prejudice and enmity towards Islam , is lack of correct information about the necessity of talaq,its efficacy and the wisdom behind it.Marriage is a covenant or contract between man and woman and the Quran has described as meethaq ghaleez(solemn covenant).It should not be taken lightly. It should be entered into with total commitment and full knowledge of what it involves .The partner selected should be the choice for life . One should be mature enough to understand the demands of marriage so that the unions can last longing.
Talaq is similar to surgery which is resorted to when all other medicines and treatments fail to cure a patient .When there is a rupture in the marital relationships with the help of talaq .If the surgery fails and the patient dies , no one demands that surgery should be banned altogether.The islamic law has permitted divorce when there is no other option left and the husband and wife have insolvable differences .The lexicological meaning of the word talaq is to untie a knot .Since with talaq the knot of marriage is loosened ,it is known as talaq .Although permission has been given in Islamic law for divorce,but it has been declared as undesirable act.In one of the sayings of the prophet,it is said that satan is the happiest person when there occurs a separation between husband and wife and thus a home is destroyed.There are two opinions with regard to the issue of triple talaq .Majority of

the opinions of the prophet of Allah ,Tabayeen ,the four imams of the four fiqh consider the triple talaq as three talaqs ,while a few of the companions and tabayeen ,Allama Ibn Qayyim,Sheikh Dawood Zahari etc consider as one talaq.It is the considered opinion of the islamic scholars belonging to hanafi school of jurisprudence that if the pronouncer of triple talaq claims that his intention was to pronounce one talaq only,and his statement would be accepted after taking an oath from him.It is necessary to remove this misconception from the mind of muslims masses educate them the correct method of talaq described by Quran and Sunnah.Planned Halala is also unlawful .It is even more foolish and a blunder to arrange for a halala or muhallil after hastily pronouncing the talaq thrice.No sensible and true muslim will ever act in such manner.

ISLAMIC LAW OF INHERITANCE

Islam has its own law of inheritance, according to which shares of all the eligible heirs of a deceased person have been stipulated and determined, and its performance is obligatory on all Muslims. Both the male and female heirs of a deceased person are eligible to receive their respective shares. Whether the inheritance is large or small. It has to be divided according to the stipulations of Holy Quran and Sunnah. Allah ordains in the Holy Quran: “From what is left by parents and those nearest related there is a share for men and women, whether the property be small or large-a determined share.”When a person dies, the wealth and the property left behind him is to be dispose off in the following manner:1. On his funeral expenses.2. His will be implemented on the condition that it should not exceed one third of his entire state and is not in favour in any of his legal heirs.3. Loans, if any, will be repaid4 whatever remains thereafter will be distributed amongst his legal heirs. The Islamic law of inheritance is not based on poverty or necessity that the poorest is supposed to get larger share in the inheritance. Rather, it is based on kinship. Kindered can be many, but the Islamic law .Negligence deviation and indifference are generally found in the Muslim community with regard to division of inheritance according to the regulation sets out by Quran and Sunnah. After the death of a person, his property is remain undivided for many years together or it remains under the use of a few combined heirs and the others are denied their share; the share of the widow and aged heirs is not given; the share of the women particularly in agricultural lands is never given and the women themselves refuse the share fearing retaliation from their brothers and other male relatives which might result in severing their relations. Moreover it is usually considered that the expenses incurred during the marriage of the female members of the family and the money and other things given to them as gifts wipes out their share in the inheritance of his parents. All these thoughts and practices are against the teachings of islam. In the holy Quran, the laws of inheritance have been described as the limits of Allah,”transgression of which land a person in hell in the Hereafter. The Holy Quran avers:

“Those who disobey Allah and his Messenger and Transgress his limits will be admitted to a fire, to abide therein; and they shall have a humiliating punishment.”

It should be remembered that the question of inheritance rises only after the death of a person. There is no sanction in the Islamic law for a person's offspring to demand their share in his property when he is still alive. However, a person can divide and willingly give away his property to his offspring in his lifetime , but such a division and apportioning will not be considered division of inheritance, but a gift(hiba) from him. A person is the master of property and can dispose it according to his will and wish. However, if he wants to divide his property among his offspring.

SHARE OF WOMEN IN INHERITENCE

Misconceive objections are raised against the Islamic law of inheritance particularly with regard to the share of women in the property. The objectors cite the share of women being half of that men, as an example of gender inequality in Islam. This is not entirely true. Only in certain circumstances a woman gets half of what a man gets as inheritance; in other circumstances, a woman gets more than the share of a man.

For example, if a person dies leaving behind his parents and one daughter, the daughter gets half of the property and the parents each get one-sixth . In certain circumstances, both men and women get equal shares. For example, if the inheritors are only husband and one sister, the inheritance would be divided equally among them.

Only in a few circumstances, the share of women becomes half of the share of men. For example, in the event of a deceased person leaving behind boys and girls or sisters and brothers, then only the share of the female inheritors become half of the male inheritors. This share of the son would not have been less than that of the father, or the share of the mother would not have been less than that of the daughter.

The Fundamental reason for this difference is the status of man and woman in the Islamic society. Man has been assigned the responsibility of earning livelihood and maintaining the members of the family, whereas women have been exempted from this activity. In childhood, a woman is looked after by her father, in married life, by whatever wealth she possesses will be safe with her as she need not spend on others , whereas man has to spend his wealth on the upkeep of his wife and other members of his family. Hence, it is just and fair that the share of man should be double of that of the woman; if equality were to be maintained, it would be unfair to man.

This is the reason that whenever the financial responsibility of man gets lessen or ends, no difference is made between men and women with regard to division of inheritance. For example, if the deceased has left behind his parents and his offspring, then the share because in the event of a person having grown up offspring who themselves are ,married and settled, his responsibility as far as financial matters are concerned get lessened and sometime is nonexistent, and his status would generally be that of the guardian of his grandchildren. However, if the deceased person has no offspring and his father has other offspring, then the father has to bear the financial burden of bringing up his children. Therefore, the share of the father in this circumstance has been fixed more than that of the mother, i.e. the father gets two-third and the mother gets one-third.

MOMENTOUS NATURE OF CHALLENGE

The prevalent situation in the country is very serious and dangerous for the muslim community. On the one hand, the judiciary is passing judgments which are against the Islamic law and on the other hand, demands are made on the central government to formulate common civil code and the government is also showing its inclination to do so. The communal forces too are exerting pressure for the abrogation of the muslim personal law by fabricating stories of oppression of the muslim women. Groups of so-called progressive elements have many times raise demand for the amendment and reformation in the personal law, new interpretation of the Islamic law of marriage, divorce and inheritance according to the new situation," although these laws are not result of human speculation and deliberation, but are based on the divine revelation as contained in the quran and the sunnah which cannot be altered or deleted.

In this dangerous situation, we should struggle hard to defeat the plots and intrigues of the opponents and enemies of islam, so that we can follow and disobey the ordinances and instructions of islam in every spheres of our lives, particularly those teachings which are embodied in the muslim personal law. To achieve this objective we have to do three things:

First of all, we should strive hard to reform ourselves and our society according to the teachings of the quran and sunnah. It is a fact that a greater part of the muslim society is unaware of the fundamental and societal teachings of islam. The members of the family-husband,wife,children, and parents – do not even know the rights and obligations that have been ordained by islam on each other and thus are unable to fulfill them which create differences and hatred among them. It is essential we should try to get acquainted with the teachings of islam and willingly follow them and fulfil the rights of each other. This can be achieved on the individual level and also through the establishment of family counseling centres Secondly, we should take a firm decision that whenever family dispute arise between us, we will not take the matters to the court but take them to the shariat courts or shariat panchayats, and accept willingly and cheerfully the judgement and decisions pronounced therein according to the teachings of Allah and his prophet (pbuh). It should be the responsibility of muslim leadership to establish shariat courts or panchayats in every nook and corner of the country. Thirdly, we should approach our non-Muslim brethren and apprise them of the importance and efficacy of the muslim personal law so that their misconceptions about it can be cleared.