



## **MAJESTY LEGAL**

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### **AN ARTICLE ON WOMEN'S QUEST FOR EQUALITY**

#### **WITH REFERENCE TO MUSLIM LAW**

#### **OUTLINE: -**

Gender equality is a modern ideal, which has become inherent to generally accepted conceptions of justice only in the last decades of the 20<sup>th</sup> century, with the expansion of human rights and feminist discourse. As with other religious traditions, it was not part of the juristic landscape of Islam in the past. But what presents Muslims across the globe today with a distinct problem is that pre-modern interpretations of Shari's, as embodied in classical jurisprudence, are still the source of family law and gender norms. In these interpretations, women are treated as second-class citizens, and are placed under male authority.

The objectives of Human rights and United Nations (UN) are primarily based on gender equality. Constitution of India by virtue of Article 14 declares that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. All human rights treaties prohibit gender-based discrimination but women in 21<sup>st</sup> century are still subjected to discrimination and violence, being deprived of their equality, dignity, and liberty, despite significant progress achieved in securing women's rights all across the world. India is governed by both its legislation and personal laws; however, the issue is that personal laws are predominant with fallacies, which makes it difficult to enforce such rules in the present day. With reference to gender equality, few eminent personalities stated as follows:

**Gloria Steinem**<sup>1</sup> quoted:

“A gender-equal society would be one where the word ‘gender’ does not exist: where everyone can be themselves.”

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<sup>1</sup> American journalist and socio-political activist



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Further **Angelica Fuentes**<sup>2</sup> quoted:

“Gender parity is not just good for women, it’s good for societies.”

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979, prohibits discrimination against women in all its forms. Along with human rights and fundamental freedoms, it forbids all forms of discrimination based on gender and India being signatory of the aforesaid mentioned convention also prohibited all forms of discrimination against women. The Preamble of the Universal Declaration of Human Rights (UDHR)<sup>3</sup> and the Constitution of India expressly mentions equal rights protection for men and women. The Preamble and Constitution by virtue of Article 14, 15, 16 and 21 also ensures equality but there is inconsistency between personal and codified legislative laws despite all efforts.

### **FALLACIES IN PERSONAL LAWS:**

Article 44 of the Constitution of India containing Directive Principles of State Policy defines the Uniform Civil Code (UCC). It proclaims that the state has an obligation to ensure that a uniform civil code exists across all of India's territory for the welfare of its citizens. To rephrase it in another way, it means one country, one rule. It is the uniform system of laws that are applicable to all Indian citizens and therefore are intended to take the place of personal laws (based on religious scriptures and customs). In fact, Goa is the only Indian state with a common civil code and a common family law<sup>4</sup> but from the perspective of women's rights, several aspects of the personal laws are objectionable, and these elements should be confronted and modified as per the changing needs of society.

However, when the entire nation is regulated by several personal laws in addition to the law of the state, concentrating just on a particular religion's personal law does not convey the correct message, due to this, it is the ideal time to discuss the different personal laws that

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<sup>2</sup> President, Angelica Fuentes Foundation

<sup>3</sup> Ratified on 10 December 1948.

<sup>4</sup> Available at <https://www.legalservicesindia.com/article/2157/Uniform-Civil-Code-in-Goa.html#:~:text=Goa%20is%20the%20only%20state,to%20marriage%2C%20divorce%2C%20succession.>



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are objectionable to and discriminate against women and men before both the current government and the courts.

The Hon'ble Supreme Court in **Shayara Bano v. Union of India and others**<sup>5</sup> held the practice of Triple Talaq unconstitutional sparked a larger debate over whether the secular government may be held accountable for wrongs led on by the implementation of religious personal law. According to Islamic law, Muslim husbands are permitted to divorce their wives, but Muslim wives are not. According to the Muslim Personal Law (Shariat Application Act, 1937), women should first file for divorce in court, as per the claims, she was subjected to dowry harassment and domestic violence. In 2016, she was divorced through talaq-e-bidat (pronouncing talak, talak, talak) which initiated the writ petition filed before the Supreme Court. Further in **Shaik Jareena v. Shaik Dariyavali**<sup>6</sup>, the court held that The Supreme Court's decision in the Shayara Bano case (triple talaq) in 2017 would be applied retrospectively, according to the Andhra Pradesh High Court, because it was not clearly mentioned otherwise in the Supreme Court judgment.

Contrary to common belief, particularly personal laws, have undergone significant modifications over the last 30 years as a result of legislative changes and, more importantly, judicial interpretation in cases filed by individuals like Shah Bano.<sup>7</sup> Consequently, court was of the opinion that, this kind of talaq infringes the fundamental freedom guaranteed by Article 14 of the Indian Constitution.

Therefore, in the Muslim Personal Law (Shariat) Application Act 1937 Act must be repealed as being void to the degree that it recognizes and enforces Triple Talaq because it falls under the definition of "laws in effect" in Article 13(1) and tries to do so.

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<sup>5</sup> 2017 9 SCC 1

<sup>6</sup> Civil Revision Petition No. 2477 of 2019

<sup>7</sup> Subramanian, Narendra (2008): "Legal Change and Gender Equality: Changes in Muslim Family Law in India," Law and Social Inquiry, Vol 33, No 3, pp 631–672, Subramanian, Narendra, (2014): Nation and Family: Personal Law, Cultural Pluralism and Gendered Citizenship in India, Stanford: Stanford University Press.



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### **FRAILITY OF MUSLIM PROTECTION ACT**

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The Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 as well as two additional Ordinances, were enacted on September 19, 2018, to immediately implement the Supreme Court's decision. On 25 July, 2019, the same Bill was approved by the Lok Sabha, and on 30 July, 2019 it was approved by the Rajya Sabha. The Muslim Women (Protection of Rights on Marriage) Act, 2019, which received the President of India's approval, took effect on September.

The Muslim Women (Protection of Rights on Marriage) Act, 2019<sup>8</sup>, was enacted by the Indian Parliament after a backlog of numerous instances, including Shah Bano Begam (1985), Danial Latifi (2001), Shamim Ara (2002), and lastly Shayara Bano (2016). The Act declared "Talaq-ul-Biddat or Triple Talaq" invalid and prohibited in all forms, including verbal, written, and electronic (e.g., email, SMS) but the issue in this act is that it attempts to penalize triple talaq as if the husband who practiced instant Triple Talaq shall be punished with the imprisonment for a term up to 3 years and fine, although marriage is viewed as a civil union, civil law should likewise govern the procedures that must be followed when it ends. Regardless of the fact that no other religion has mandated sanction for saying three words, the discriminatory nature of the rule allows Muslim men to be prosecuted and intended to give a three-year prison sentence. By allowing the state to detain husbands without a court's permission, which might be easily abused by women, making the offence cognizable removes judicial authority. Furthermore, women can misuse these provisions over normal arguments between husband and wife.

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<sup>8</sup> The Muslim Women (Protection of Rights on Marriage) Act, 2019 came into force with retrospective effect from the 19th day of September, 2018 giving continued effect to the first Ordinance promulgated on 19th September, 2018.



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### CONCLUSION

We live in a nation that supports equality, but the term "equality" sometimes seems ambiguous because it fails to accord women the status they deserve. The appropriate authority is the only one who can make rules, regulations, and laws; very few actually existed. Half of the population still doesn't know what their rights and responsibilities are and still adheres to rigid custom that says men are better than women. Women have varying statuses in various human societies around the world. Whether the society is developed, developing, or underdeveloped. Muslims play a significant role in Indian society. They make up this country's largest minority.

Since Muslim women continue to fight for their rights into the 21st century, it is time to implement Article 44 of the Indian Constitution, also known as the Uniform Civil Code, rather than enforcing uncodified personal laws based on religion. It concludes that Muslim women, a minority group, are still compelled to remain secluded and submissive.

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<sup>9</sup> Majesty legal is law firm, established in 2013 by Ms. Mahi Yadav and aim of the present article is to provide insights on law and statutes. The opinions presented in the article are personal in nature and not to be deemed as legal advice.