

MUSLIM WOMEN AND GENDER JUSTICE: REVISITING MUSLIM WOMEN ACT OF 1986.

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INTRODUCTION

The history of Indian women in general and Muslim women in particular has been eventful. Differentiated across gender, class, customs and traditions, Indian Muslim women are subject to the interface between gender and community within the Indian social, political and economic context. Always dependent on the different interpretations of Shari'ah, the Indian Muslim women are subject to a combination of principles varying from traditional and patriarchal to a relatively modern egalitarian social role. Social Commentators have observed that the gender Politics of Minority have become more acute and complex since many years following the with intensification of communal politics in India and the consolidation of fundamentalist factions across religion in the wake of the Shah Bano Controversy in 1985-86, the tragedy of Babri Masjid in 1992 etc. All these have significant consequences for the articulation of gender identity for Muslim Women in Contemporary India. Stereotype of Muslim Women, entrenched by the trinity of multiple marriage, triple talaq and Purdah have held them hostage for so long that they have become difficult to dislodge. The path-breaking Supreme Court decision upholding the constitutional validity of the controversial Muslim Women's Act is an interesting study of the issue of gender justice. So this article will try to locate crucial issue relating to divorce and maintenance (i.e. Muslim Women's Act 1986) that need to be fore grounded to galvanise Muslim Women struggle for justice and equality and will discuss various prospects as well as hurdles in the path of evolving alternative discourses.

MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986: STRUGGLE FOR GENDER JUSTICE

After the controversial judgment in the Shah Bano case, a new statute was enacted in 1986, which prescribed certain new remedies to divorced Muslim woman. But since this statute, the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA) was enacted amidst protests from women's rights groups and progressive social organisations, it was viewed with suspicion by these sections. Hence the first response of the protesting groups was to challenge it

constitutionality, rather than examine its viability. Since the act was passed amidst protests many writ petitions were filed challenging its constitutionality. Most of these were filed by husbands who had felt aggrieved by these decisions. If indeed the act was depriving women of their pre-existing rights and was enabling husbands to wriggle out of their economic liability towards their ex-wives, why were the husbands finding themselves aggrieved by the orders passed under a blatantly anti-women statute?. Hence, it became expedient to examine whether the new act provided Muslim women with a more viable and feasible alternative to the prevailing remedy under Sec 125 CrPC by invoking Islamic principles of a 'fair and reasonable settlement'.

The Muslim Women (Protection of Rights on Divorce) Act of 1986 could be termed as one of the most controversial legislations of all times. Enacted amidst protests from women's organisations and Muslim intelligentsia, the act symbolised the loss of secular values in public policy and betrayed the communal tendencies of the then ruling Congress government. The act deprived Muslim women of the rights granted under a secular provision; Sec 125 of the Criminal Procedure Code (CrPC) on the basis of religion alone and thus violated the constitutional mandate of equality. The act was also a clear departure from the Directive Principle of enacting a UCC.

From the period between the pronouncements of the Shah Bano judgment by a constitutional bench in April, 1985 upholding the divorced Muslim woman's right of maintenance under Sec 125 CrPC, to the time the act was passed under a party whip, by the Congress government headed by Rajiv Gandhi, in May 1986, was a turbulent one for Muslim women. A crucial right of subsistence and survival seemed to have been cruelly snatched away from an extremely vulnerable section, the divorced Muslim woman. As the debate progressed, media projected two insular and mutually exclusive positions, i.e., those who opposed the bill and supported the demand for a UCC as modern, secular and rational, while those in support of the new act and other opposing the UCC as orthodox, male chauvinist, communal. Progressive, modern and secular, in fact also meant nationalist, the opposing side being projected as anti-national. The judgment was used by the Hindu right-wing to whip upon anti-Muslim hysteria. Ironically, the fury which was whipped up, it seemed to be divorced from the core component of the controversy, a small sum of Rs 179.20 pm, far too inadequate to save the middle-aged divorced women and led her to homeless and destitute. Suddenly, the lump sum provisions for future security, which the courts were awarding within the framework of Islamic principles, seemed to be a better safeguard against destitution, than the meagre sums which women were entitled to under Sec 125CrPC through a monthly recurring entitlement.

A reading of the judgments indicates that the act had rid itself of the agenda of alleviating vagrancy and destitution among divorced women and had extended itself to the claims of women

from higher social strata, than merely those who live below poverty line. The raging controversy finally led Shah Bano herself to make a public declaration renouncing her claim. If this entitlement was against her religion, she declared, she would rather be a devout Muslim than claim maintenance. The hurriedly drafted and hastily enacted statute was full of contradictions and loopholes. The issue of women's maintenance was pushed to the back seat by everyone concerned due to communal tensions and riots. The act provided virtually two different sets of remedies depending upon the high court under whose jurisdiction the woman resided. While in some states she was entitled to a fair and reasonable provision in addition to maintenance during 'iddat' period, in others, her right was restricted to maintenance for the 'iddat' period.

After the long inertia, the Supreme Court was ready to hear the matter. The entire group of cases, more than 25 in numbers, revolving around the issue of Muslim women's maintenance. Arguments on behalf of women revolved around the constitutional validity of the act and its un-Islamic characteristics and premises. Opposing them was the All India Muslim Personal Law Board (AIMPLB), the architect and ardent supporter of the controversial act, defending its constitutionality. The AIMPLB's concern was the apparent wrong interpretations by the various high courts. A significant number of cases carved out space for protection of women's right from discriminatory statute by the endorsing the spirit of Islam and Shariah and reflecting the sensitivity of Prophet who is the great champion of Women Right. Doing precisely what the act in its title proclaimed i.e., protection of rights of divorced Muslim women, the judiciary turned what had initially appeared to be a misnomer and a mockery into a factual reality and ushered in a silent revolution in the realm of Muslim woman's rights. The most significant issue which emerged out of the enactment, revolved around the stipulation of 'a fair and reasonable provision'. The first significant judgment on this issue was pronounced by Justice M B Shah, then presiding over the Gujarat High Court, on February 18, 1988 (*Arab Ahemadhia Abdulla v Arab Bail Mohmuna Saiyadbhai* [AIR 1988 Guj 141].), following this the Kerala High Court upheld the woman's right to Rs 3, 00, 000 as fair and reasonable provision and also awarded Rs 7,500 as maintenance during the iddat period. In the years that followed, the full benches as well as the division benches of Punjab and Haryana and Bombay and single judges of several other high courts upheld this view. The courts ruled that even when a wife has some source of income the right under Sec 3 of the MWA is not extinguished.

But the struggle has not been easy. Women had to fight every inch of the way due to the ambiguities caused by callous drafting. The act provided ample scope to husbands to exploit the situation which led to protracted litigation beneficial to husbands and a nightmare to women. But women withstood the ordeal with courage and determination, with patience and perseverance. After a decade and a half, the end results of this persistent struggle are clearly visible. The positive interpretation have ushered new era of protection of rights within the established

principal of Muslim law, but still many changes in MPL is yet to come. Now is the right time for Muslim intelligentsia to come up to campaign for their Womenfolk of their basic right to survival.

CONCLUSION

MPL needs drastic reforms but these changes what the Muslim wants is to be brought within Islamic framework so it is clearer indication for the leaders of the community to initiate a process for reform. The broader consensus which seems to be emerging in Indian Society with respect to enactment of UCC is that such a enactment is a difficult proposition but the objective sought can be achieved by process of reform in personal laws through internal initiative of the Communities themselves. The need of hour is to codify Muslim Personal Law. Progressive movement must align their action to provide reform in laws that will be closure to Constitutional values. Muslim Women and progressive organisation should create mass movement for change. The teaching of Koran does not support a system that is controlled by Patriarchy and the government has to treat this matter on a war footing if they truly mean to bring about gender Justice. India can't just be proud of being democratic. The tasks are further deepened and consolidate. And this certainly depends on treatment of minorities. There is certainly a hopeful sign yet it is far from sufficient. It is just a beginning. Though one cannot expect drastic change in plight of Muslim Women in India in near future but one can certainly hope for incremental changes. The time has come for Muslim Women to draw argument from Quran and Hadith in their demand for gender Justice and reclaim their right to religious knowledge and participate in the contemporary debate on Islam and Women's right in the light of their personal experiences as member of contemporary Society. Muslim Women need to build co-operation between gender and communities to address their own needs, priorities and space for what they feel is appropriate for their effective evolution. There is urgent need for change in Mindset. Unless and until mindset doesn't change it will be very difficult to bring any change. Time has certainly come to be pro-active for improving Muslim Women's status in India.

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