

THE UNIFORM CIVIL CODE ANALYSIS I RESPECT TO MUSLIM WOMEN AND ITS EFFECT ON PERSONAL LAWS AND KEEPING WITH CONSTITUTIONAL PROVISIONS

B. Pratap Naik

Research Scholar

Shri JYT University

Rajasthan

Dr. Jaipal Reddy Battu

M.Sc, LLM, PhD

Principal, Bhaskar Law College

Hyderabad

ABSTRACT

Today, the issues of ladies rights in Muslim individual Law is very questionable. Uniquely, Muslim ladies rights identifying with triple talaq separate, legacy, support has got much consideration now a days. Be that as it may, Indian Constitution has ensured balance and opportunity from separation dependent on sex or religion, yet at the same time there are different practices which depend on inhumane preservationist culture. As we probably am aware a vast piece of Muslim Personal Law is still uncodified and the majority of the legitimate choice articulates by the courts dependent on the standards referenced in Quran and hadith. The focal discussion on elucidation of Muslim individual laws has both positive just as negative viewpoints. A few creators has upheld that, Muslim individual laws has given different rights to Muslim ladies, for example, decision in marriage, legacy and so forth. Though, some are of the sentiment that, there are different practices which is against the soul of Indian Constitution. Accordingly, certain inconsistencies need to kill by giving a genuine embodiment of Holy Quran to support the Muslim ladies' rights. My investigation of Muslim ladies' rights in India was directed by the hypothetical and methodological methodology. Who prompted researchers to disaggregate the state and the general public (from an exploration point of view), and investigate the frames of mind communicated by different government substances toward various segments in the public eye through an examination of open arrangements. I consequently dissect the state at different dimensions—legal and parliamentarian, national and neighborhood—and while applying this technique to the network, I endeavor to disaggregate the moderate versus the traditionalist voices of the two people.

Key words: Women Rights, Personal Law, Triple Talaq, Muslim Women

1.0 INTRODUCTION:

The personal law in India is a law for people of different religion and applicable according to the religion of the person. For many decades Muslim women are fighting for gender equality in the Islamic law that govern right related to marriage, divorce and property rights. However, All-India Muslim Personal Law Board is, is one of the main influential body in Muslim community. There are lots of supports as well as criticism about this board. Many time this board rejected the proposal to change the Muslim personal law as they believe it

will infringe the basic principles of Islam. Further, there are many male members domination in that particular board. Whereas Quran does not support a system that is only managed by the patriarchy system. Muslim women rights of marriage, divorce, inheritance has encouraged many Muslim women activists to fight for their rights.

Personal laws in India and especially Muslim personal law has been a major political and controversial issue, and has been extensively debated. Since independence it has been a rallying point for not only Muslim organisations, but also for Hindu rights wing politics. After the 1986 Shah Bano Case, and the enactment of the Muslim Women (protection of Rights on Divorce) Act thereafter, the debate has assumed a central position, and majority identity politics has gained mileage, evident in the weakening of centrist secular parties. In the absence of the proper codified law in Muslim personal law women are at much disadvantage position, because of the unclarity in the various rights and various interpretation of Quran. Moreover, many baseless 'fatwas' most of time go against the right of the Muslim women. Muslim women always remain the most economically and socially depressed section in Muslim community itself.

There is great need for the codification of Muslim personal Law today. It should be done as early as possible. What is known as Muslim personal law today, was known either's as Anglo- Mohammendan law during the British period or simply as Mohammendan law and was enacted by the British. But after independence the terminology changed and the Anglo Mohammendan law in order to wipe out its colonial stamp, came to be renamed as Muslim personal law. However, its contents did not change. Thus changes in its terminology was a political act, not a harbinger of Social Change as in other Muslim countries to de colonise its name is not enough, one must de colonise its contents as well. During the colonial period women were not supposed to play an active role in socio political matters, at least among Muslims though there were exception like Biamma (mother of Ali brothers) and many other women who played important role in freedom struggle.

2.0 Indian personal law system from a women's rights perspective:

The Indian Supreme Court's judgment in Shayara Bano, wherein the Court announced the Muslim type of separation by triple talaq invalid, and the present discussions about a Talaq Bill by and by exhibit the reality of the talk around close to home laws. The case was started by five Muslim ladies and their petitions were upheld by various Muslim ladies' rights associations. An assortment of inquiries included in the hearings, judgment and the media talk around the case: Can religion-based individual laws be tried against the essential ideal to balance (Articles 14 and 15 of the Indian Constitution)? Is triple talaq secured under Article 25 as a fundamental routine with regards to Islam? Furthermore, can the Supreme Court meddle in the issue, or do either the religious networks or the Indian governing body have the specialist to alter the individual law framework? Not these inquiries were completely and agreeably replied by the Court. Along these lines, even after this milestone judgment, no doubt key inquiries stay unanswered in the territory of individual laws, making it a challenged landscape where not exclusively religious opportunity is happened against sexual orientation fairness, however these perspectives are additionally entwined with contentions around character, patriotism, advancement and secularism. This writing audit looks to assess

the grant that connects with the Indian individual law framework through a sexual orientation focal point. As per this framework, certain family and property matters (marriage, separate, upkeep, guardianship, selection, progression and legacy) of Hindus, Muslims, Parsis and Christians just as Jews are administered by their particular religious laws.² Notwithstanding the discussions about a substitution of this framework with a Uniform Civil Code (UCC) which date back to pre-Independence times, to date, the personal laws have been maintained and the Constitution's directive principle to "endeavour to secure for the citizens a uniform civil code" (Article 44) remains unfulfilled. Using Gopika Solanki's terminology, this plurilegal system of family law could be described as one of "shared adjudication": the State enjoys only restrained autonomy in this area and willingly splits its adjudicative authority with religious and societal actors and organizations.

3.0 Talaq and Polygamy under Muslim Personal Law:

Muslim intellectuals are to initiate measures for drafting a comprehensive law duly codified which will embody the Quranic spirit. Triple Divorce and unregulated polygamy has often been the cause of attacks on otherwise quite progressive Islamic personal law. Polygamy may not be abolished completely but strictly regulated as directed by the Quran. In fact both the verses on polygamy i.e 4:3 and 4:129 should be read together to understand the real Quran intent. Even the first verse, i.e, 4:3 requires rigorous justice to all wives by warning that "if you cannot do equal justice then marry only one. The second verse, i.e, 4:129 makes it clear that equal justice is humanly impossible. With such warning polygamy should not be practised unregulated. Other Muslim countries except Saudi Arabia and Kuwait have introduced strict measures to regulate it. Thus a draft law should introduce such regulatory measures and specify circumstances in which one could take a second wife. Those circumstances could be when the first wife is terminally ill or medically proved to be infertile or barren and that too with the permission of the first wife and the court of law.

Further, Quran permitted polygamy to help women in distress like widows and orphans, not to do injustice to them. Thus there is crying need for codified personal law, will become a model law for other Muslim countries who follow the Islamic law. Therefore, women in Islam can enjoy all the rights related to Talaq, marriage, property etc. Therefore, it is fallacy on the part of those who understand that polygamy is a fundamental right of a Muslim Male. Polygamy is exception, but not a rule. The relevant Quranic provision on polygamy institution itself considers monogamous marriage as an ideal one. No doubt that there is misuse of this provision; this can be checked by providing effective machinery through legislation. Under the provision of the dissolution of Muslim Marriage Act 1939.

The other major problem is that of triple divorce in one sitting. This form of divorce has indeed caused a lot of misery to a large number of Muslim women in India. What is worse, it is still in practice although it was disapproved of by the prophet himself. The Quran does not mention it at all. The Quranic divorce not only requires two arbiters, one from the wife's side and one from the husband's side, but also two reliable witness for pronouncing divorce. Thus the Quran says, and if you fear a breach between the two, appoint an arbiter from among his people and an arbiter from among her people. If both desire agreement, Allah will affect harmony between them. Therefore, from above discussion it is every much clear that, Quran

itself has laid down the proper procedure for divorce but still people are following very informal way to pronounce the Talaq and left the Muslim women helpless. Therefore, Islam does not allow the husband or wife to use divorce as mockery and takes extra precaution for the welfare of wives. A former Supreme Court Judge Justice Krishna Iyer remarked that “a deeper study of the subject discloses a surprisingly rational, realistic and modern law of divorce. A few distortions seem to have crept in dispensing justice in British India and even in the decision of Privy Council, which decreed Muslim husband’s right to divorce his wife at whim. Such misguided views have had sustenance in the opinion of illeducated moulvis who had already been serving their clientele with their faulty understanding of the Quranic law of divorce.

4.0 Property Rights of Indian Muslim Women

Much like those of women of any other country, property rights of Indian Muslim women have evolved out of continuing struggle between the status quoist and the progressive forces. Indian Muslim women always used to get fewer rights in terms of right to property in comparison to male. As we know Muslims personal law have not codified their property rights of Muslim women neither the Shias nor the Sunnis. However, Mahr is an important concept in Islamic law which is directly connected with the right to property of the Muslim women and empowerment of the women. Mahr is basically is called as a gift which becomes due from a Muslim husband to his wife on marriage as a token of respect symbolising his sincerity and love for her. The subject matter of mahr can be money or any other thing having value, depending upon the acceptance of the wife. Upon the object or property given as a mahr, the ownership lies exclusively with the women. Further, the grant of absolute ownership of the mahr property to the Muslim wife shows the revolutionary measure adopted by Muslim personal law to vest women with the property rights to ensure them an equitable marital status. Hence, married Muslim women who had been ever deprived of status of marriage have such property rights which are exclusively vested in her property rights.

5.0 ANALYSIS:

The nature of the present study is mostly explorative and descriptive; it has drawn insights from different works related to Political Science, Sociology, and Islamic Law, Hindu Law and other Laws, constitutions of different countries and the various views of legal and religious luminaries. Thus, the study has adopted an interdisciplinary approach. The researcher has ascertained the view point of different people of different sections of society too. Hence, the study is essentially analytical and descriptive in its conception as well as execution. The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this paper, so as to discern a trend in the judicial pronouncements.

Research Design

The research design used for the study includes explorative, descriptive and analytical studies.

Sources of Data

The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this paper, so as to discern a trend in the judicial pronouncements.

Collecting Primary Data

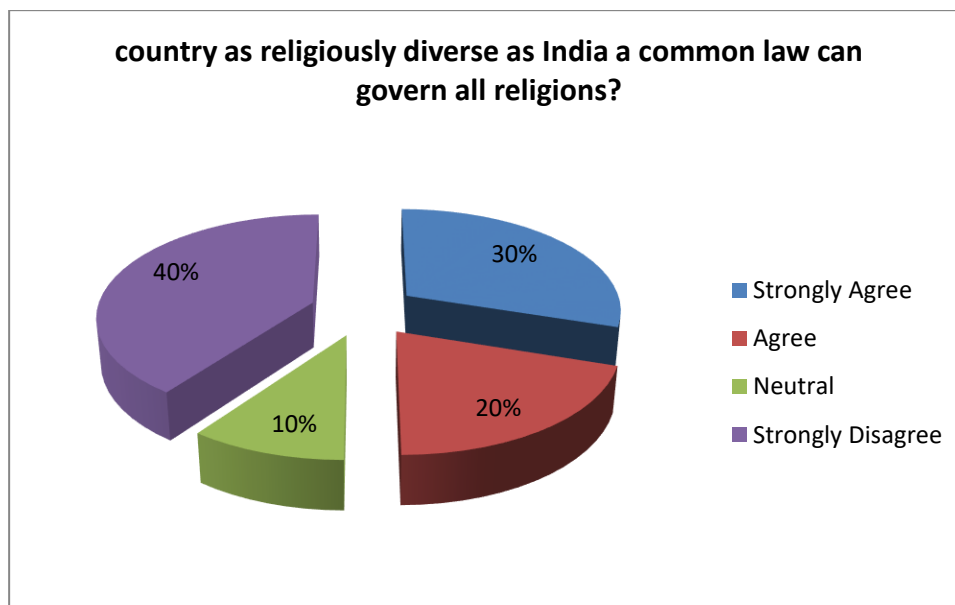
Primary data is collected through the responses of the customers through questionnaires which were specially prepared for this study. The questionnaire contained questions regarding the general and socio-economic characteristics of the respondents such as age, religion, Should triple Talaq be, etc. and also about their reason for taking personal laws, Practice of polygamy, uniform civil code freedom of religion etc.

1) Do you believe that in a country as religiously diverse as India a common law can govern all religions?

The aim of the question is to judge how open the respondents are to the mere idea of having a UCC. This serves the purpose of delving further into the topic and gauging whether the respondents personally want a UCC or believe that or country needs one.

Table 1: Cross-tabulation of Responses to country as religiously diverse as India a common law can govern all religions?

Gender	Response				
	Strongly Agree	Agree	Neutral	Strongly Disagree	Total
Male	25	15	10	30	80
Female	5	5	0	10	20
Total	30	20	10	40	100



Graph 1: Responses to country as religiously diverse as India a common law can govern all religions?

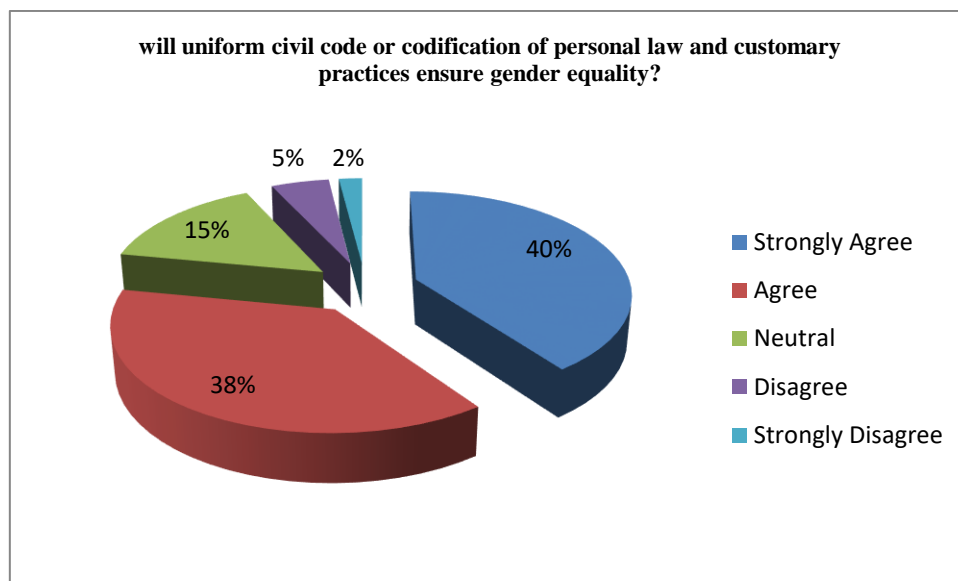
Out of the sample a majority of 46% people believe that our country does not require a Uniform Civil Code. Contrary to this 28% people are of the opinion the UCC is the need of the hour. 26% of the respondents are conflicted and are not sure if having implementing a UCC at the present time in India is a step in the right direction or not.

This question shows that many people are not open to even the idea of a Uniform Civil Code. A number of reasons can exist for such a response. It is a direct reflection of loss in faith not only in the unity of all religions (as was also reflected in the first question) but also a sense of disillusionment and a loss of hope in the judiciary and the legislative process as a whole.

2) Will uniform civil code or codification of personal law and customary practices ensure gender equality?

Table 2: Cross-tabulation of Responses to will uniform civil code or codification of personal law and customary practices ensure gender equality?

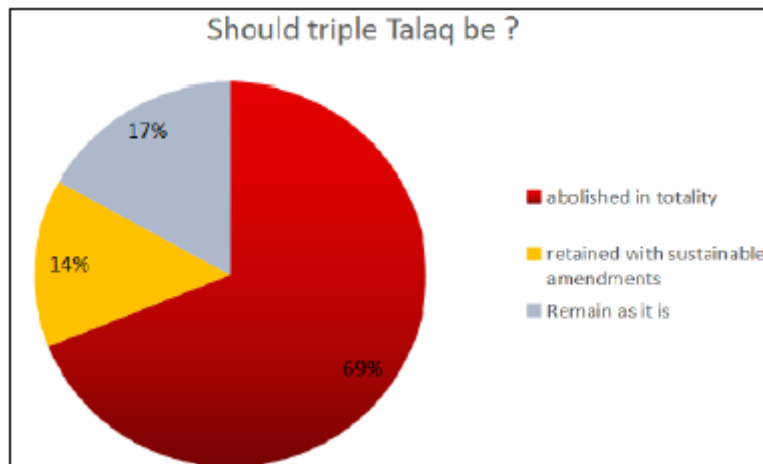
Gender	Response					Total
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	
Male	32	33	10	5	0	80
Female	8	5	5	0	2	20
Total	40	38	15	5	2	100



Graph 2: Responses to will uniform civil code or codification of personal law and customary practices ensure gender equality?

A majority of the respondents (93%) in this question, feel that a uniform code will ensure and enhance gender equality and give more power to women.

3) Should triple Talaq be?



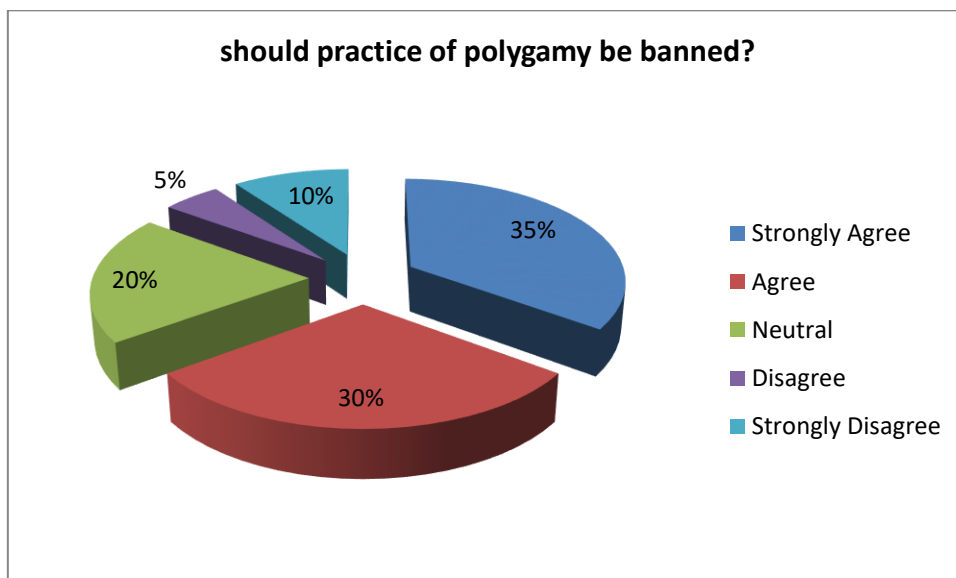
Graph 3: Should triple Talaq be?

Again, a majority of 69% feel that Triple Talaq should be abolished in totality, although a smaller section of 17% still feel that it can be retained with sustainable amendments.

4) Should practice of polygamy be banned?

Table 4: Cross-tabulation of Responses to should practice of polygamy be banned?

Gender	Response					Total
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	
Male	30	25	15	5	5	80
Female	5	5	5	0	5	20
Total	35	30	20	5	10	100



Graph 4: Responses to should practice of polygamy be banned?

Here, a whopping majority of 85% respondents feel that Polygamy should be banned.

6.0 CONCLUSION:

As key focuses in the twentieth century, additionally, religious and political pioneers as Zoya Hasan has contended, started state codification of Muslim individual law in light of a legitimate concern for the network solidarity and character the milestone demonstrations are the Muslim Personal Law (Shariat) Application demonstration of 1937, the Muslim Dissolution of marriage Act of 1939 and most as of late, the Muslim ladies' (Protection of rights on Divorce) Act of 1986. This last, in spite of its name, avoided Muslim lady (who had been hitched under Muslim individual law and therefore separated) from falling back on the criminal system code as ladies of different religions can do to verify insignificant upkeep from their previous spouse. Subsequently, after the exchange of every above perspective it very well may be presume that, popular feeling should be guided into favoring such liberal decisions and certain uniform arranged laws which help in a significant manner to invalidate somewhat the disparities in the current individual Muslim laws. Accordingly, there is have to dispatch a mindfulness battle against the abuse of a different Muslim ladies rights identifying with marriage, separate, property rights and so forth polygamy and so on.

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