

## THE POLITICS OF INTERPRETATION AND MISINTERPRETATION: THE CASE OF INDIAN MUSLIM FEMINIST MOVEMENTS

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**Abstract:** There has been an attempt to bring out the politics behind the interpretation of personal laws in India. The MPL is not divine dictat as it is imagined rather a work of human interpretation. The problems that the women of the Muslim community face under such laws are more a result of the misinterpretation of the laws by the clerics and Ulamas which are a product of the patriarchal society cutting across many regions and communities within the country. The solution has come from within the community itself. Movements like Bhartiya Muslim Mahila Andolan have proposed to train women Qazis, so that the power and authority of interpretation or 'mis-interpretation' rather does not remain with their male counterparts. The superimposition of the universal civil code may not be the best solution to the problem, but attempts to reclaim the personal laws by the weaker gender definitely seems to be a more promising choice. The politics of the time forces us to ask whether the demand for Universal Civil Code being furthered in the garb of championing women's cause, really about the women. Where does the solution lay, and does it lay in the universal civil code at all? Bhartiya Muslim Mahila Andolan has rejected it as a solution. Assessment of Goan family law, the only form of universal law within the country also fails the test of gender fairness.

**Key words:** Muslim Personal Law, Islamic feminist movements in India, Bhartiya Muslim Mahila Aandolan.

**Introduction:** Many Islamic countries have looked up to Sharia as their law and Sunnah as the commandments to be followed. These were embraced in the hope that these will give justice and civilisation to the followers. Yet, the history proves that what followed was an attempt to interpret and misinterpret these commandments to further vested interests specific to the groups who were interpreting them. Mohammad Hashid Kamali claims that there are various means of interpretations in Islam listing Qiyas, Ishtishab, Istihsan. Khaled Abou El Fadl lists other two Shura and Maslallah. In India itself the interpretation of Muslim Personal law, which is considered the Islamic law is open to interpretation by All India Muslim Personal Law Board, its various breakaway schools, with their own interpretations, Islamic feminists as well as other women activists in India, arch secularists and even Hindu communalists (Jones, 2010). The interpretation of the Islamic laws is a result of not only the patriarchal power structures of the society in India, but also a product of the majoritarian and minoritarian vote bank politics. The women's rights under the personal laws specially the muslim personal laws have time and again become hostage of the Hindu-Muslim relations within the country. After the notorious Shah Bano case, which broke the hell lose, and the enactment of the Muslim women (protection of Rights on divorce) Act, the debate of scrapping the personal laws and implementation of the universal civil code has been burning.

### **What is Muslim personal Law?**

The eminent Jurist and Scholar A.A.A Fyzee called it as the "Mohammadan Law". (Fyzee, 1963) According to him the term implied that the law was limited and

specific to a particular group of population. It was not Shari'ah in its purest form, but rather a combination of Shari'ah, Case laws, with the influence of English procedures and such English Legal principles as the "Justice, equality and Good conscience" (Fyzee, 1963). According to Razia Patel, the sources of Muslim Law are many, and not just the Shari'ah. She claims that Muslim personal derives from (1) The Holy Quran, (2) Ahadis and Sunnas (stories and practices of Prophet as given by the eyewitnesses) (3) Ijma (principles devised by the jurists, who could not find the solution to the problems in the context of Quran) (4) The Qiyas (use of reason for exercise of independent judgement). Also there are various law books available for further interpretation of this law. Winsinck's (1927) Handbook of Mohammedan Traditions itself contains as many as seven authoritative books on Muslim law. Out of the two main sects of Shias and Sunni's, the Shias themselves have four law books (Patel, 2009). The above mentioned diversity of the source seems like a perfect recipe for ambiguity, misinterpretation and struggle for claim of authority over the law. Thus, the Muslim Personal Law is not really the divine words of the god as is widely believed. These are human in origin result of human excellence and human errors both.

### **From the Pages of History to the Issue today**

**Mohd. Ahmed Khan v. Shah Bano Begum** (1985 SCR (3) 844) The Shah Bano case of 1985 was a controversial maintenance lawsuit concerned with Muslim personal law of divorce and maintenance. Shah Bano, a 62-year-old Muslim mother of five, was divorced by her husband. She filed a criminal suit in the Supreme Court of India. Supreme court gave a verdict declaring her right to alimony from her

husband. However, she was subsequently denied the alimony when the Indian Parliament reversed the judgement under pressure from Islamic orthodoxy. Soon after the development, the majoritarian opposition party got the opportunity to brow-beat about the in-justness of the Islamic ways of life, and how muslims were people who did not want to obey the Supreme court. On the other hand the minority back lashed stating that it was the infringement of their religious rights to try and impose universal civil code on it (Ali, 2005). In both the cases, the two groups concentrated on furthering their agendas without taking into concern the rights of the Muslim women and their opinion in the matter.

**Imrana Case, Deobandi Fatwa, and the Panchayat Diktat** In the case, Imrana a poor muslim woman from a sleepy town of Muzaffarnagar was raped by her Father-in Law. The case was taken to the local Ansari Muslim Panchayat, and the Panchayat declared Imrana's marriage nul and void, and declared Imrana as the wife of his father in law. On the other hand the Dar-Ul -Uloom brought out a Fatwa declaring her wedding as scrapped but she would not have to be her rapists wife (METCALF, 2006). The decisions taken in the Imrana case were merely the result of the interpretation of the Shari'ah by a Male chauvinist Panchayats in one of the most patriarchal setups of the country. Here the counterparts of the Ansari Panchayats in the form of the Hindu-caste-Khap panchayats also exist in the same form and authority. While on the other hand, the Deoband school, which is one of the most orthodox school of Islamic interpretation got the legitimacy to interpret the situation just because it was in the close vicinity of the area of the incident. In both the cases the Islamic law was very narrowly interpreted and was biased to the core. Yet, the decision came to be misrepresented as the example of the status that Islam assigns women. The eminent writers like Salman Rushdie, wrote in The New York Times under the title *India Pakistan's code of dishonour*, clearly expressing his own negative view of Islam (METCALF, 2006). The self-proclaimed Islamists only brought negative lights to the already much misunderstood religion. The intellectuals and the well-read scholars of the religion could not come for help because they did not enjoy the legitimacy in the eyes of the orthodox society that sat for the judgment at all levels.

**The need for Universal civil code and the rush for it:** Universal civil code is enshrined in Article 44 as the directive principle of state policy only stating ambiguously and without closure that "state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India" (Constitution, Part IV) (India, 1947). The constitution remains silent on the nature of Uniform Civil Code (Baxi, 2007), and

the ripe conditions in which it is desirable. The progressive argument seeks assurance on "not just the codification but also a just codification". (Baxi, 2007) Also, if the constituent assembly did not think that the time had come to implement universal civil code at the dawn of the independence of the country, then when was the right time for it to be implemented? Universal Civil code is a well acknowledged part of our directive principles of state policy, yet our Supreme Court has not failed to acknowledge the fact that the superimposition of the code may only invite backlash. It should be implemented only when the society and particular religious communities are ready to accept it. Hence, the debate of universal civil code in spite of the hue and cry it raised over years remained in a state of limbo. The personal laws a major role for many decades in the lives of the people. What then was the mode of remedying the wrongs in these laws? According to Nivedita menon, feminists have since long tried to find the remedies of the ills like triple Talaq and forced polygamy through special and well defined laws like Domestic violence act, 2005 and Protection of rights on divorce act 1986, to obtain maintenance, custody of children etc. (Menon, 2016) Then what is the need of the universal civil codes, if the correct interpretation and implementation of these personal laws, coupled with some special legislation can take care of all the wrongs happening in the society. Scholars like Iris Marion Young, argue that identifying equality with uniformity actually overlooks the underlying differences of social positions of different communities. Normalisation of the standards, where same shoes fit all policies are implemented continue to create disadvantage for the members of the historically excluded community, and also continue to retain and strengthen the already existing power structures (Young, 2005). This can be better concluded by the analysis of the only existing universal code in the form of Portuguese civil code of Goa.

**Analysis of the Portuguese Civil Code: The only example of the universal civil code in India:** The Portuguese civil code may be the only example of a universal civil code in India, yet it is not truly universal in its character. Different laws continue to apply to men and women of different communities. Under the law the right to property are joint rights, but the prerogative to handle these rights goes to the husband. As per the reality check by the United Nations population fund, the code of Goa promotes bigamy wherein a man can remarry a second time if he does not have a baby with his first wife till 25 or does not have a male child till the age of 30 (BIGAMY ALLOWED IN GOA, SAYS A UN STUDY, 2013). This law is not only biased towards the wife but also the girl child also. Thus, a major emphasis should not

only be on the implementation of the universal civil code, but there should also be a major public debate about the nature of the universal civil code, and whether it will really be for the women. Since this debate on the nature of universal civil code never surfaced, the reforms in the personal laws, and above all the laws related to the women, were subjected to Hindu nationalist imaging. These laws became an agenda for those who did not think that the victims and the bearers of the religion could be given a chance to bring the reforms from within. Yet the rush to implement universal civil code can be attributed to

- 1) The stereotypes that justify Muslims as backward, and incapable of reforms from within. Given our post-colonial context, the attitude reminds us of the White man's burden justifications.
- 2) Another argument used to legitimise the demand for UCC is the need to wage 'War on terror'.
- 3) The attitude of Muslims in India who have tried to find refuge in the legal tradition as a symbol of survival, because of their minority position.
- 4) Fundamental suspicion that Muslims in India are viewed with due to the tragedy of Partition of the country.

#### **What do the Muslim women of India want?**

In a data survey taken from 200 women in Jamia area of Delhi, to check women's understanding of Koranic studies and personal laws in 1995, the majority of women showed a personal lifestyle where they were dependent on their family or male members for major decisions and chores of life. Looking at the data, it could be seen that out of all the participants except for one, who was unmarried, all the women were the first and only wives in their marriage. The divorces in Muslims were not common at all. But generally the practice of triple divorce was despised by most of the participants. As per the survey and to quote Sabeeha Bano's work, when the women were asked to express their views on Universal civil code and the need to replace the Muslim personal law, the results were "Only 29 (14 per cent) respondents said that Muslim Personal Law should be replaced with a gender-just Uniform Civil Code, and a roughly equal number 30 (15 per cent) felt that Muslim Personal Law should be retained as it is. Of the remaining respondents, 35 (28 per cent) felt that Muslim Personal Law should be retained with minor changes and another 57 (29 per cent) said that Muslim Personal Law needs drastic reforms, but that these changes should be brought about within an Islamic framework." (Bano, 1995)

**Recent voices of the Muslim women Bhartiya Muslim Mahila Andolan-** Bhartiya Muslim Mahila Andolan was a human rights platform formed in 2007

for the rights of the Muslim women. Since its inception it has raised many demands such as scrapping of the 'triple Talaq' from the Muslim personal law. Their most recent initiative called Darul-Uloom Niswan, a center for Islamic theological learning passed its first batch of women Qazis (Ratnam, 2016). Also the voice of support for BMMAs demand for scrapping triple Talaq, came from a woman Qazi named Hina Zahir Naqvi, from Kanpur who agreed that the law had been widely misused by the men (Anonymous, 2016). There are voices demanding the reforms coming from within the community, something that the majoritarian political forces had least expected. The women are coming out of their personal spaces, making them political, but none of their demands is out of the bounds of the fundamental Islamic law yet. They want the reforms in the law but not the scrapping of the entire law to replace it with a common Universal civil code. Although they did show full support towards the Hindu women movement for the Shani Shingnapur temple entry (BMMA, 2016). Thus, the movement is essentially feminist but not anti-Islamic or anti-Muslim-personal-law as a whole. They are launching attack at the root cause of all the malaise, i.e the politics of interpretation and misinterpretation, but honing skills of the women to act as Qazis themselves.

**Conclusion:** The fact cannot be ignored that Muslim women have suffered at the hands of the other sex and also their own sex, given the patriarchal interpretation of the religion, not just within the country but also worldwide. But the solution to this malaise does not lay in negating and despising the entire religion or in the Indian case the Muslim personal laws. As a fact it can be easily read and understood in this situation that Universal Civil Code is a far cry given the present condition of our society. Thus going by the wisdom of Supreme Court of India, we will have to give up on this idea for time being. The solution has been proposed and also implemented in their limited ways by the current women's movements in India. The interpretation of the personal law cannot remain the domain of the men alone. The religion and the personal laws have to be claimed by the fairer gender as by their counterparts. The salvation can only come from within. The objective should be to bring the reforms for the good of all, without taking away the religious rights from any individual from any religion. Looking at the present developments in the society we can conclude without hesitation that the time has come to bring the reforms in the Muslim personal laws to make it just for all the genders alike

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24. Qiyas- analogical reasoning, Istitishab- Presumption of continuity, Istihsan- Judicial preference. See Hashim Kamali's Sources, Nature and objectives of Shari'ah, Islamic quarterly, 1989.
25. Shura- consultation, Maslallah- principles guided by public good, *Shura* has been described as the Shari'ah rule by consultation according to god's law instead of rule based on personal whims and fancies, See Khaled Abou El Fadl's book *Speaking God's name: Islamic law, authority and women*, page 33. An act justified by pursuit of public welfare, this can be justified as a way of interpretation of Shari'ah, as was historically followed by some kings in the Islamic world. But the act should be impersonal and non-whimsical. See Khaled Abou El Fadl's book *Speaking God's name: Islamic law, authority and women*
26. See pg 44-45, Indian Muslim women, Politics of Muslim Personal Law and struggle for Life with dignity and Justice , Economic and Political Weekly, Oct 2009, for the detailed discussion on the constituent of the Muslim personal law
27. *Gandi Sobhan*, English Language Acquisition Through Literature; Arts & Education International Research Journal : ISSN 2349 - 1353 Volume 2 Issue 1 (2015), Pg 72

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